

**ALASKA NATIVE LANDS:
ABORIGINAL TITLE, TO ANCSA AND BEYOND**

BY: DAVID S. CASE

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AND WOLF**

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I. ALASKA NATIVE LAND BEFORE ANCSA

A. Aboriginal Title in Alaska

- . Aboriginal title doctrine (See FIGURES 1 & 2)
 - Johnson v. McIntosh, 2 U.S. 543 (1823)
- . The ambiguity of the 1867 Treaty
 - Art. III "Uncivilized tribes" to be treated as "aboriginal tribes" of U.S.
 - Art. VI Land free of encumbrances "except merely private individual property holders".
- . The ambiguity of the 1884 Organic Act
 - § 8 "Natives and others" shall not be disturbed in possession of lands "actually in their use and occupation or now claimed by them".
- . The confusion in the courts
- . The IRA reservations Hynes v. Grimes Packing Co., 337 U.S. 86 (1949)
- . Maintaining the status quo
 - Tee-Hit-Ton Band of Indians v. U.S., 348 U.S. 272 (1955)
 - Kake v. Egan, 369 U.S. 60 (1962)
- . Tlingit and Haida Indians of Alaska v. U.S., 177 F.Supp. 452 (ct. cls. 1959)
- . Alaska v. Udall, 420 F.2d 938 (9th Cir. 1969)
- . Section 4 of ANCSA
- . Post ANCSA cases
 - Amoco Production Co. v. Village of Gambell, 480 U.S. 107 S. Ct. 1396

**EXCERPTS FROM
1867 TREATY OF CESSION
(15 Stat. 539)**

Article III

The inhabitants of the ceded territory, according to their choice, reserving their natural allegiance, may return to Russia within three years; but if they should prefer to remain in the ceded territory, they, with the exception of uncivilized native tribes, shall be admitted to the enjoyment of all the rights, advantages, and immunities of citizens of the United States, and shall be maintained and protected in the free enjoyment of all their liberty, property, and religion. The uncivilized tribes will be subject to such laws and regulations as the United States may, from time to time, adopt in regard to aboriginal tribes of that country.

Article VI

In consideration of the cession aforesaid, the United States agree to pay at the treasury in Washington, within ten months after the exchange of the ratifications of their convention, to the diplomatic representative or other agent of his Majesty the Emperor of all the Russias, duly authorized to receive the same, seven million two hundred thousand dollars in gold. The cession of territory and dominion herein made is hereby declared to be free and unencumbered by any reservations, privileges, franchises, grants, or possessions, by any associated companies, whether corporate or incorporate, Russian or any other, or by any parties, except merely private individual property holders; and the cession hereby made, conveys all the rights, franchises, and privileges now belonging to Russia in the said territory of dominion, and appurtenances thereto.

**EXCERPT FROM
1884 ORGANIC ACT
(23 Stat. 24)**

Sec. 8 [Creation of land district.] That the said district of Alaska is hereby created a land district, and a United States land-office for said district is hereby located at Sitka. The commissioner provided for by this act to reside at Sitka shall be ex officio register of said land-office, and the clerk provided for by this act shall be ex officio receiver of public moneys and the marshall provided for by this act shall be ex officio surveyor-general of said district and the laws of the United States relating to mining claims, and the rights incident thereto, shall, from and after the passage of this act, be in full force and effect in said district, under the administration thereof herein provided for, subject to such regulations as may be made by the Secretary of the Interior, approved by the President: Provided, That the Indians or other persons in said district shall not be disturbed in the possession of any lands actually in their use or occupation or now claimed by them but the terms under which such persons may acquire title to such lands is reserved for future legislation by Congress: And provided further, That parties who have located mines or mineral privileges therein under the laws of the United States applicable to the public domain, or who have occupied and improved or exercised acts of ownership over such claim, shall not be disturbed therein, but shall be allowed to perfect their title to such claims by payment as aforesaid: And provided also, That the land not exceeding six hundred and forty acres at any station now occupied as missionary stations among the Indian tribes in said section, with the improvements thereon erected by or for such societies, shall be continued in the occupancy of the several religious societies to which said missionary stations respectively belong until action by Congress. But nothing contained in this act shall be construed to put in force in said district the general land laws of the United States.

**EXCERPT FROM
THE ALASKA STATEHOOD ACT**

(PL 85-508)
[COMPACT WITH UNITED STATES]

Sec. 4. As a compact with the United States said State and its people do agree and declare that they forever disclaim all right and title to any lands or other property not granted or confirmed to the State or its political subdivisions by or under the authority of this Act, the right or title to which is held by the United States or is subject to disposition by the United States, and to any lands or other property (including fishing rights), the right or title to which may be held by any Indians, Eskimos, or Aleuts (hereinafter called natives) or is held by the United States in trust for said natives; that all such lands or other property (including fishing rights), the right or title to which may

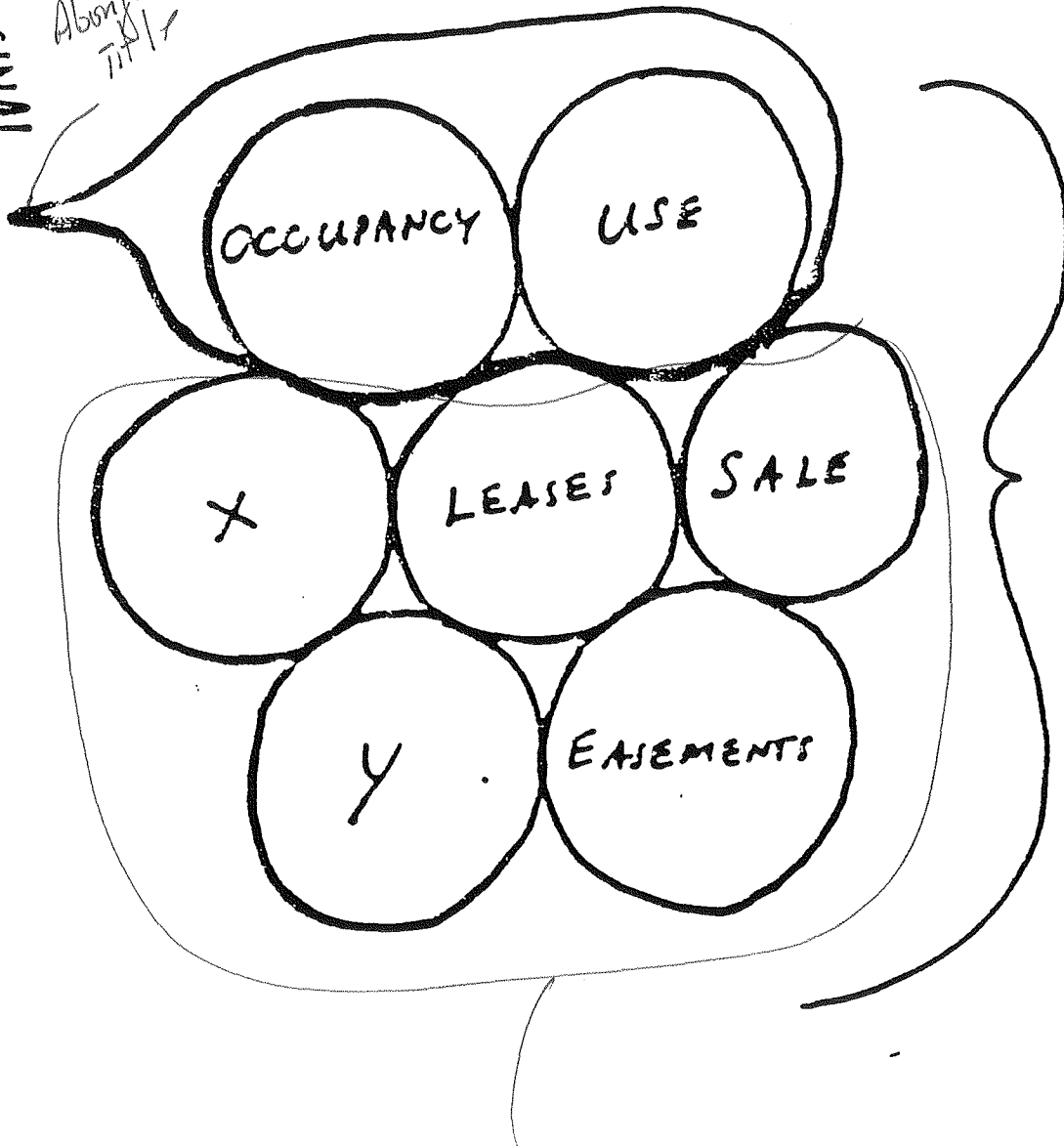
be held by said natives or is held by the United States in trust for said natives, shall be and remain under the absolute jurisdiction and control of the United States until disposed of under its authority, except to such extent as the Congress has prescribed or may hereafter prescribe, and except when held by individual natives in fee without restrictions on alienation: Provided, That nothing contained in this Act shall recognize, deny, enlarge, impair, or otherwise affect any claim against the United States, and any such claim shall be governed by the laws of the United States applicable thereto; and nothing in this Act is intended or shall be construed as a finding, interpretation, or construction by the Congress that any law applicable thereto authorizes, establishes, recognizes, or confirms the validity or invalidity of any such claim, and the determination of the applicability or effect of any law to any such claim shall be unaffected by anything in this Act: And provided further, That no taxes shall be imposed by said State upon any lands or other property now owned or hereafter acquired by the United States or which, as hereinabove set forth, may belong to said natives, except to such extent as the Congress has prescribed or may hereafter prescribe, and except when held by individual native in fee without restrictions on alienation.

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ELEMENTS OF "TITLE"

ABORIGINAL
TITLE

Aboriginal
Title



Role of Discovery

ABORIGINAL TITLE

. EXCLUSIVE RIGHT OF USE
AND OCCUPANCY

. NOT 5TH AMENDMENT
PROPERTY

. PROTECTED FROM
TRESPASS

. ONLY CONGRESS
CAN EXTINGUISH
ABORIGINAL TITLE

*Communal Title
(Tribal)*

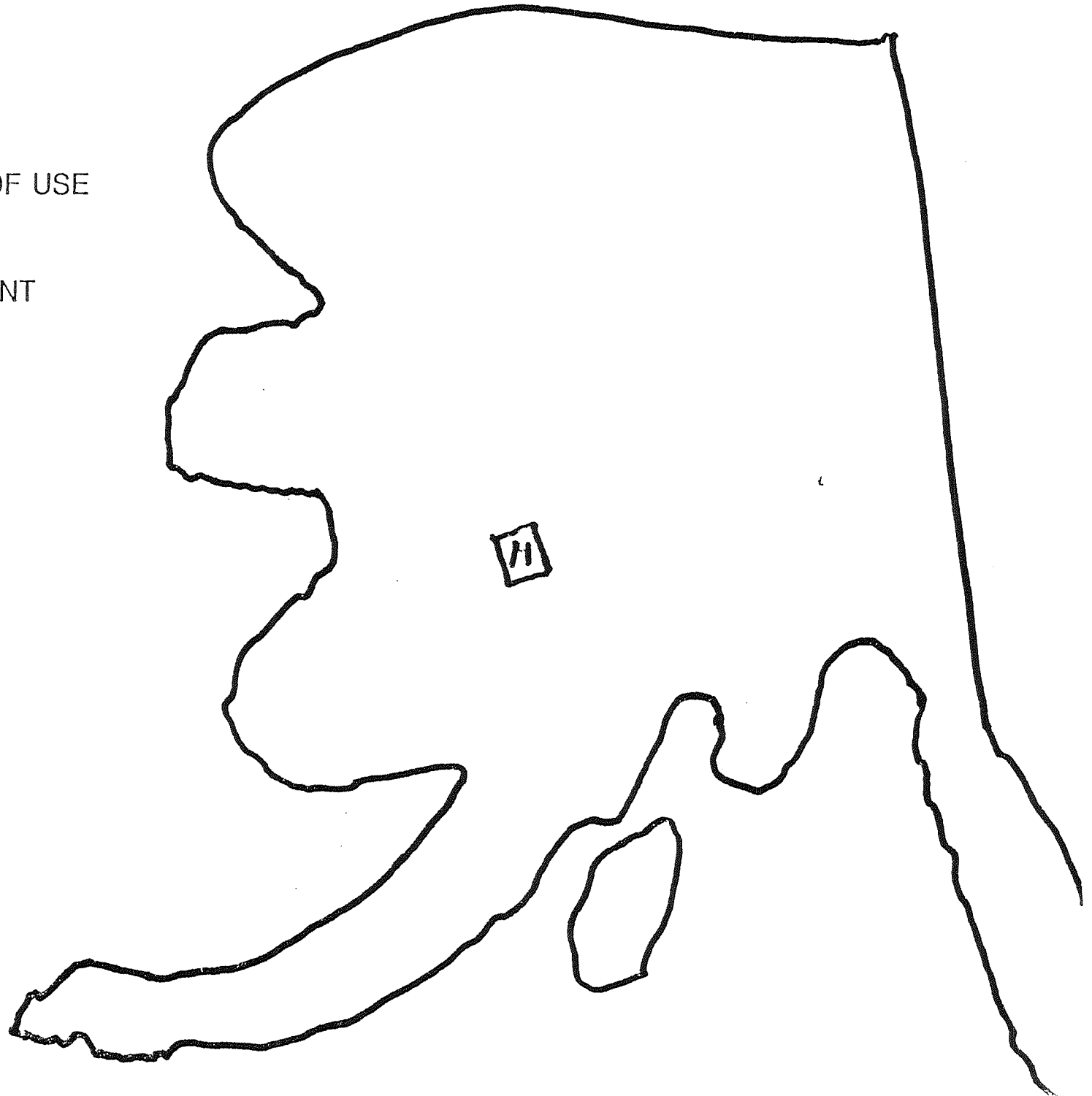


FIGURE 2

- On remand, People of the Village of Gambell v. Hodel (Gambell III) 869 F.2d 1273 (9th Cir. 1989)

. See generally Case, Alaska Natives and American Laws pp. 47-82

B. Allotments and Townsites

. Individual rather than group lands

. Issues related to them were seldom litigated until the last 15 years

. Both have become obstacles to other federal land disposition programs in Alaska

. See generally, Case, Alaska Natives and American Laws, pp. 131-192.

C. Native Allotments

- 1906 Act as amended in 1956

§ 270-1. Allotments to native Indians, Aleuts, or Eskimos; conveyance of allotted land.

The Secretary of the Interior is authorized and empowered, in his discretion and under such rules as he may prescribe, to allot not to exceed one hundred and sixty acres of vacant, unappropriated, and unreserved nonmineral land in Alaska, or, subject to the provisions of sections 270-11 and 270-12 of this title, vacant, unappropriated, and unreserved land in Alaska that may be valuable for coal, oil, or gas deposits, to any Indian, Aleut, or Eskimo of full or mixed blood who resides in and is a native of Alaska, and who is the head of a family, or is twenty-one years of age; and the land so allotted shall be deemed the homestead of the allottee and his heirs in perpetuity, and shall be inalienable and nontaxable until otherwise provided by Congress: Provided, That any Indian, Aleut, or Eskimo, who receives an allotment under this section, or his heirs is authorized to convey by deed, with the approval of the Secretary of the Interior, the title in the land so allotted, and such conveyance shall vest in the purchaser a complete title to the land which shall be subject to restrictions against alienation and taxation only if the purchaser is an Indian, Aleut, or Eskimo native of Alaska who the Secretary determines is unable to manage the land without the protection of the United States and the conveyance provides for a continuance of such restrictions. Any person qualified for an allotment as aforesaid shall have the preference right to acquire by allotment the nonmineral land occupied by him not exceeding one hundred and sixty acres. (May 17, 1900, Ch. 2469, 34 Stat. 197; Aug. 2, 1956, Ch. 891, 170 Stat. 954.

Land Requirements

Personal Requirements

Restricted Title

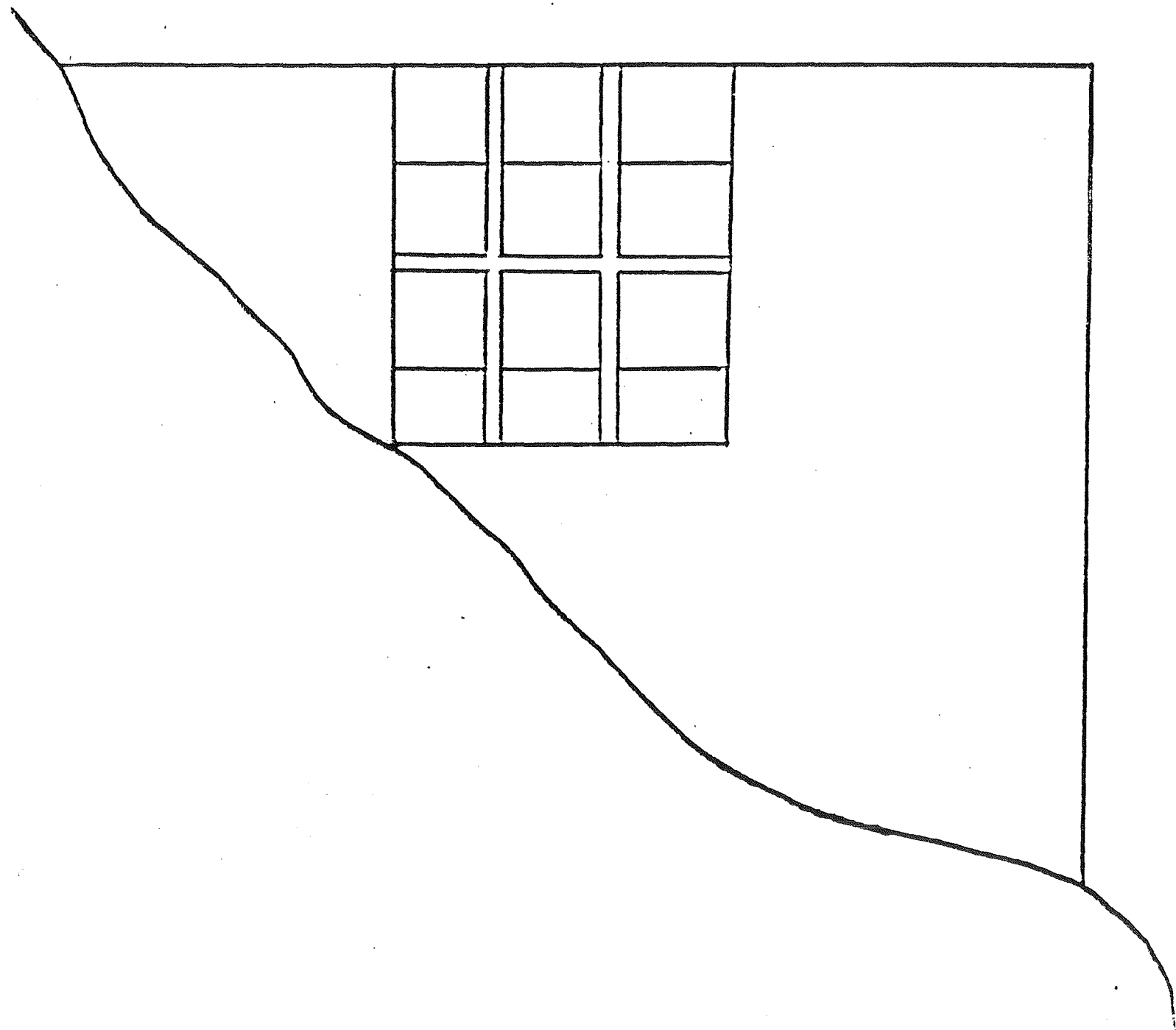
Preference Right

- Pre-ANILCA adjudication
- Pence v. Kleppe, (Pence I), 529 F.2d 135 (9th Cir. 1976)
- Aguilar v. U.S. (Aguilar II), 424 F.Supp. 433 (D.C. AK. 1979)
- Effect of Section 905 of ANILCA (43 U.S.C. 1634)
 - . Legislatively approved thousands of allotments without further BLM adjudication.
 - . Exceptions . Mineral lands . Old parks pre-1971 TA/selection of State patented lands . protests (Native Corp., State or private) . Relinquished Allotments
 - . Gravel excluded from mineral classification.
 - . Adjusting conflicts 905(b) : 30% Rule/Decision secretary or allottee : 2 or more allotments
 - . Amending descriptions 905(c): Frederick Howard, 67 IBLA 157; Mary Olympic; Thorsen v. Westcoast, 83 IBLA 237.
 - . About 10,000 applications pending for 15,000 separate parcels, amounting to about 1 million acres of land.

D. Native Townsite Lots (FIGURE 3)

- 1926 Native Townsite Act
 - . 43 U.S.C. 733 et seq.
 - . Trustee similar to County Judge
 - . Application & Survey
 - . Patent & "Entry"
 - . Subdivision & Occupancy
 - . Vacant subdivided lots
 - . Unsubdivided lands
 - . Unincorporated communities

ALASKA NATIVE TOWNSITES



- **Saxman Opinions (1959 & 1960)**

- . Restricted disposition of subdivided lands to Natives
- . Did not address unsubdivided lands
- . 1960 Opinion preventing municipalities from getting lands

- **Klawock v. Gustafson, 585 F.2d 428 (9th Cir. 1978)**

- . Non-Native occupancy of unsubdivided lands
- . Municipality got title to vacant subdivided and unsubdivided lands.
- . Attorney fees

- **Aleknagik Natives, Ltd. v. U.S., ____ F.2d ____
(9th Cir. 1989)**

- . Effect of Klawock a non-Native occupancy
- . Effect of FLPMA repeal in 1976
- . Unsubdivided townsite lands are not public lands and were not withdrawn under 11(a)(1) of ANCSA
- . Lands not occupied prior to October 21, 1976 in unincorporated communities to be deeded to village councils

II. **ANCSA LANDS**

A. **The Alaska Native Claims Settlement Act ("ANCSA")**

1. **Enacted December 18, 1971 (P.L. 92-203, 85 Stat. 691, 43 USCS 1601 et seq.)**

- Three major political constituencies (State of Alaska, Alaska Natives and Environmentalists).
- Alaska Native villages as "tribes" filed blanket protests to state land selections based on aboriginal title (1961 -1971).

- Udall's land freeze (1966); PLO 4582 withdrew all of Alaska (Jan. 23, 1969); upheld in (Udall v. Alaska, 420 F.2d 938 (9th Cir. 1969).
- Oil discovered at Prudhoe Bay and state paid \$900 million (1969).
- Environmentalists insisted on withdrawal of lands for study in the "national interest" under section 17(d)(1) and (2) [43 USCS 1616(d)(2)] and limitations on Native selection rights in federal parks and refuges.

2. Extinguished aboriginal title and claims:

- to prior conveyances [43 USCS 1603(a)],
- based on use and occupancy (including aboriginal hunting and fishing rights) [43 USCS 1603(b)],
- based on any U.S. statute or treaty [43 USCS 1603(c)].
- Extinguishment covered all lands and waters "in Alaska".

3. Native regional corporations paid \$962.5 million for the extinguishment of claims (about \$3 per acre). [43 USCS 1605]

- Money distributed on a per capita basis to regional corporations.
- About 50% of the money was required to be passed through regional corporations to village corporations and at large regional shareholders [43 USCS 1606(j)].

4. Native corporations granted about 44 million acres in fee simple title.

- Village, urban and group corporations received only "surface" estate [43 USCS 1611(a) and (b) and 1613(a) and (b)].

EXCERPT FROM
THE ALASKA NATIVE CLAIMS SETTLEMENT ACT

(PL 92-203)

DECLARATION OF SETTLEMENT

Sec. 4. (a) All prior conveyances of public land and water areas in Alaska, or any interest therein, pursuant to Federal law, and all tentative approvals pursuant to section 6(g) of the Alaska Statehood Act, shall be regarded as an extinguishment of the aboriginal title thereto, if any.

(b) All aboriginal titles, if any, and claims of aboriginal title in Alaska based on use and occupancy, including submerged land underneath all water areas, both inland and offshore, and including any aboriginal hunting or fishing rights that may exist, are hereby extinguished.

(c) All claims against the United States, the State, and all other persons that are based on claims of aboriginal right, title, use, or occupancy of land or water areas in Alaska, or that are based on any statute or treaty of the United States relating to Native use and occupancy, or that are based on the laws of any other nation, including any such claims that are pending before any Federal or state court or the Indian Claims Commission, are hereby extinguished.

* * * *

- 12 regional corporations received mainly "subsurface" estate [43 USCS 1611(a) and (b) and 1613(e)].
 - 6 of 12 regions received substantial amounts of combined surface and subsurface under the "land lost" formula [43 USCS 1611(c) and 1613(e)]
 - 12 regions receive some surface lands from a pool of 2 million acres on the basis of population [43 USCS 1613(h)(8)].
5. About 80,000 "Natives" were enrolled for benefits and became shareholders in one or more Native corporations.
- "Native" under ANCSA means a citizen of the United States who is one quarter or more Alaska Native blood and was alive on December 18, 1971 [43 USCS 1602(b) and 1604(a)].
 - Natives became shareholders in a regional corporation and the village corporation of the village where they resided.
 - Natives not residing in a village became "at large" shareholders in the region where they resided.

B. ANCSA Corporations

1. Four categories
- 13 regional corporations
 - 203 original village corporations
 - 4 urban corporations (Sitka, Juneau, Kenai and Kodiak)
 - 8 to 10 group corporations

2. Restricted stock

- Until December 18, 1991, ANCSA stock cannot be alienated except in certain limited circumstances. [43 USCS 1606 (h)(1) and (2)].
- After December 18, 1991, it can be freely alienated ONLY if at least a majority of the shareholders of the affected corporation amend their articles of incorporation to permit it [43 USCS 1629c].
- As long as the stock is restricted, only Natives or descendants of Natives have stock voting rights.

C. **ANCSA Land Rights**

1. Summary of Native land entitlements

- 22 million acres: Surface estate to 203 village corporations and subsurface estate to 12 regional corporations on basis of population.
- 16 million acres: Surface and subsurface estate to 6 regional corporations on basis of amount of land claimed under "land lost" formula of section 12(c) of ANCSA[43 USCS 1611(c)].
- 3.7 million acres: Surface and subsurface estate to villages on former reserves [43 USCS 1618].
- 2 million acres: Surface estate for miscellaneous purposes, such as the 4 cities, Native groups, historic sites, and individual primary places of residence. 12 regional corporations get the land left over after the other purposes are satisfied on a per capita basis [43 USCS 1613(h)].

2. Land withdrawals [11(a)(1), (2) and (3)] (FIGURE 4)

- 11(a)(1) - Core township and 24 surrounding townships
& withdrawn around each village, except for
11(a)(2) national parks, defense reservations and state
patented land [43 USCS 1610(a)(1) and (2)].

**EXCERPTS FROM
THE ALASKA NATIVE CLAIMS SETTLEMENT ACT**

(PL 92-203)

WITHDRAWAL OF PUBLIC LANDS

Sec. 11. (a) (1) The following public lands are withdrawn, subject to valid existing rights, from all forms of appropriation under the public land laws, including the mining and mineral leasing laws, and from selection under the Alaska Statehood Act, as amended:

(A) The lands in each township that encloses all or part of any Native village identified pursuant to subsection (b);

(B) The lands in each township that is contiguous to or corners on the township that encloses all or part of such Native village; and

(C) The lands in each township that is contiguous to or corners on a township containing lands withdrawn by paragraph (B) of this subsection.

The following lands are excepted from such withdrawal: lands in the National Park System and lands withdrawn or reserved for national defense purposes other than Naval Petroleum Reserve Numbered 4.

(2) All lands located within the townships described in subsection (a)(1) hereof that have been selected by, or tentatively approved to, but not yet patented to, the State under the Alaska Statehood Act are withdrawn, subject to valid existing rights, from all forms of appropriation under the public land laws, including the mining and mineral leasing laws, and from the creation of third party interests by the State under the Alaska Statehood Act.

* * * *

NATIVE LAND SELECTIONS

Sec. 12(a) (1). During a period of three years from the date of enactment of this Act, the Village Corporation for each Native village identified pursuant to section 11 shall select, in accordance with rules established by the Secretary, all of the township or townships in which any part of the village is located, plus an area that will make the

total selection equal to the acreage to which the village is entitled under section 14. The selection shall be made from lands withdrawn by subsection 11(a): Provided, That no Village Corporation may select more than 69,120 acres from lands withdrawn by subsection 11(a)(2), and not more than 69,120 acres from the National Wildlife Refuge System, and not more than 69,120 acres in a National Forest: Provided further, That when a Village Corporation selects the surface estate to lands within the National Wildlife Refuge System or Naval Petroleum Reserve Numbered 4, the Regional Corporation for that region may select the subsurface estate in an equal acreage from other lands withdrawn by subsection 11(a) within the Region, if possible.

(2) Selections made under this subsection (a) shall be contiguous and in reasonably compact tracts, except as separated by bodies of water or by water or by lands which are unavailable for selection, and shall be in whole sections and, wherever feasible, in units of not less than 1,280 acres. Provided, That the Secretary in his discretion and upon the request of the concerned Village Corporation, may waive the whole section requirement where --

(A)(i) A portion of available public lands of a section is separated from other available public lands in the same section by lands unavailable for selection or by a meanderable body of water;

(ii) such waiver will not result in small isolated parcels of available public land remaining after conveyance of selected lands to Native Corporations; and

(iii) such waiver would result in a better land ownership pattern or improved land or resource management opportunity; or

(B) the remaining available public lands in the section have been selected and will be conveyed to another Native Corporation under this Act.

(b) The difference between twenty-two million acres and the total acreage selected by Village Corporations pursuant to subsection (a) shall be allocated by the Secretary among the eleven Regional Corporations (which excludes the Regional Corporation for southeastern Alaska) on the basis of the number of Natives enrolled in each region. Each Regional Corporation shall reallocate such acreage among the Native villages within the region on an equitable basis after considering historic use, subsistence needs, and population. The action of the Secretary or the Corporation shall not be subject to judicial review. Each Village Corporation shall select the acreage allocated to it from the lands withdrawn by subsection 11(a).

(c) The difference between thirty-eight million acres and the 22 million acres selected by Village Corporations pursuant to subsections (a) and (b) shall be allocated

among the eleven Regional Corporations (which excludes the Regional Corporation for southeastern Alaska) as follows:

* * * *

SURVEYS

Sec. 13. (a) The Secretary shall survey the areas selected or designated for conveyance to Village Corporations pursuant to the provisions of this Act. He shall monument only exterior boundaries of the selected or designated areas at angle points and at intervals of approximately two miles on straight lines. No ground survey or monumentation will be required along meanderable water boundaries. He shall survey within the areas selected or designated land occupied as a primary place of residence, as a primary place of business, and for other purposes, and any other land to be patented under this Act.

(b) All withdrawals, selections, and conveyances pursuant to this Act shall be shown on current plats of survey or protraction diagrams of the Bureau of Land Management, or protraction diagrams of the Bureau of the State where protraction diagrams of the Bureau of Land Management are not available, and shall conform as nearly as practicable to the United States Land Survey System.

CONVEYANCE OF LANDS

Sec. 14 (a) Immediately after selection by a Village Corporation for a Native village listed in section 11 which the Secretary finds is qualified for land benefits under this Act, the Secretary shall issue to the Village Corporation a patent to the surface estate in the number of acres shown in the following table:

If the Village had on the 1970 census enumeration date a Native population between --	It shall be entitled to a patent to an area of public lands equal to --
25 and 99	69,120 acres.
100 and 199	92,160 acres.
200 and 399	115,200 acres.
400 and 599	138,240 acres.
600 and more	161,280 acres.

The lands patented shall be those selected by the Village Corporation pursuant to subsection 12(a). In addition, the Secretary shall issue to the Village Corporation a patent to the surface estate in the lands selected pursuant to subsection 12(b).

(b) Immediately after selection by any Village Corporation for a Native village listed in section 16 which the Secretary finds is qualified for land benefits under this Act, the Secretary shall issue to the Village Corporation a patent to the surface estate to 23,040 acres. The lands patented shall be the lands within the township or townships that enclose the Native village, and any additional lands selected by the Village Corporation from the surrounding townships withdrawn for the Native village by subsection 16(a).

(c) Each patent issued pursuant to subsections (a) and (b) shall be subject to the requirements of this subsection. Upon receipt of a patent or patents:

(1) the Village Corporation shall first convey to any Native or non-Native occupant, without consideration, title to the surface estate in the tract occupied as of December 18, 1971 (except that occupancy of tracts located in the Pribilof Islands shall be determined as of the date of initial conveyance of such tracts to the appropriate Village Corporation) as a primary place of residence, or as a primary place of business, or as a subsistence campsite, or as headquarters for reindeer husbandry;

(2) the Village Corporation shall then convey to the occupant, either without consideration or upon payment of an amount not in excess of fair market value, determined as of the date of initial occupancy and without regard to any improvements thereon, title to the surface estate in any tract occupied as of December 18, 1971 by a nonprofit organization;

(3) the Village Corporation shall then convey to any Municipal Corporation in the Native village or to the State in trust for any Municipal Corporation established in the Native village in the future, title to the remaining surface estate of the improved land on which the Native village is located and as much additional land as is necessary for community expansion, an appropriate rights-of-way for public use, and other foreseeable community needs: Provided That the amount of lands to be transferred to the Municipal Corporation or in trust shall be no less than 1,280 acres unless the Village Corporation and the Municipal Corporation or the State in trust can agree in writing on an amount which is less than one thousand two hundred and eighty acres; Provided further, That any net revenues derived from the sale of surface resources harvested or extracted from lands reconveyed pursuant to this subsection shall be paid to the Village Corporation by the Municipal Corporation or the State in trust: Provided, however, That the word "sale", as used in the preceding sentence, shall not include the utilization of surface resources for governmental purposes by the Municipal Corporation or the State in trust, nor shall it include the issuance of free use permits or other authorization for such purposes;

(4) the Village Corporation shall convey to the Federal Government, State, or to the appropriate Municipal Corporation, title to the surface estate for airport sites, airway beacons, and other navigation aids as such existed on December 18, 1971, together with such additional acreage and/or easements as are necessary to provide related governmental services and to insure safe approaches to airport runways as such airport sites, runways, and other facilities existed as of December 18, 1971.

* * * *

(d) The Secretary may apply the rule of approximation with respect to the acreage limitations contained in this section.

(e) Immediately after selection by a Regional Corporation, the Secretary shall convey to the Regional Corporation title to the surface and/or the subsurface estates, as is appropriate, in the lands selected.

(f) When the Secretary issues a patent to a Village Corporation for the surface estate in lands pursuant to subsections (a) and (b), he shall issue to the Regional Corporation for the region in which the lands are located a patent to the subsurface estate in such lands, except lands located in the National Wildlife Refuge System and lands withdrawn or reserved for national defense purposes, including Naval Petroleum Reserve Numbered 4, for which in lieu rights are provided for in subsection 12(a)(1): Provided, That the right to explore, develop, or remove minerals from the subsurface estate in the lands within the boundaries of any Native village shall be subject to the consent of the Village Corporation.

(g) All conveyances made pursuant to this Act shall be subject to valid existing rights. Where, prior to patent of any land or minerals under this Act, a lease, contract, permit, right-of-way, or easement (including a lease issued under section 6(g) of the Alaska Statehood Act) has been issued for the surface or minerals covered under such patents, the patent shall contain provisions making it subject to the lease, contract, permit, right-of-way, or easement, and the right of the lessee, contractee, permittee, or grantee to the complete enjoyment of all rights, privileges, and benefits thereby granted to him. Upon issuance of the patent, the patentee shall succeed and become entitled to any and all interests of the State or the United States as lessor, contractor, permitter, or grantor, in any such leases, contracts, permits, rights-of-way, or easements covering the estate patented, and a lease issued under section 6(g) of the Alaska Statehood Act shall be treated for all purposes as though the patent had been issued to the State. The administration of such lease, contract, permit, right-of-way, or easement shall continue to be by the State or the United States, unless the agency responsible for administration waives administration. In the event that the patent does not cover all of the land embraced within any such lease, contract, permit, right-of-way, or easement, the patentee shall only be entitled to the proportionate amount of the revenues reserved

under such lease, contract, permit, right-of-way, or easement by the State or the United States which results from multiplying the total of such revenues by a fraction in which the numerator is the acreage of such lease, contract, permit, right-of-way, or easement which is included in the patent and the denominator is the total acreage contained in such lease, contract, permit, right-of-way, or easement.

(h) The Secretary is authorized to withdraw and convey 2 million acres of unreserved and unappropriated public lands located outside the areas withdrawn by sections 11 and 16 and [as] follows:

(1) The Secretary may withdraw and convey to the appropriate Regional Corporation fee title to existing cemetery sites and historical places. Only title to the surface estate shall be conveyed for lands located in a Wildlife Refuge, when the cemetery or historical site is greater than 640 acres.

(2) The Secretary may withdraw and convey to a Native group that does not qualify as a Native village, if it incorporates under the laws of Alaska, title to the surface estate in not more than 23,040 acres surrounding the Native group's locality. The subsurface estate in such land shall be conveyed to the appropriate Regional Corporation unless the lands are located in a Wildlife Refuge;

(3) The Secretary may withdraw and convey to the Natives residing in Sitka, Kenai, Juneau, and Kodiak, if they incorporate under the laws of Alaska, the surface estate of lands of a similar character in not more than 23,040 acres of land, which shall be located in reasonable proximity to the municipalities. The subsurface estate in such lands shall be conveyed to the appropriate Regional Corporation unless the lands are located in a Wildlife Refuge;

(4) The Secretary shall withdraw only such lands surrounding the villages and municipalities as are necessary to permit the conveyance authorized by paragraphs (2) and (3) to be planned and affected;

(5) The Secretary may convey to a Native, upon application within two years from the date of enactment of this Act, the surface estate in not to exceed 160 acres of land occupied by the Native as a primary place of residence on August 31, 1971. Determination of occupancy shall be made by the Secretary, whose decision shall be final. The subsurface estate in such lands shall be conveyed to the appropriate Regional Corporations unless the lands are located in a Wildlife Refuge;

(6) The Secretary shall charge against the 2 million acres authorized to be conveyed by this section all allotments approved pursuant to section 18 during the four years following the date of enactment of this Act. Any minerals reserved by the United States pursuant to the Act of March 8, 1922 (42 Stat. 415), as amended, in a Native

Allotment approved pursuant to section 18 of this Act during the period December 18, 1971, through December 18, 1975, shall be conveyed to the appropriate Regional Corporation, unless such lands are located in a Wildlife Refuge or in the Lake Clark areas as provided in section 12 of the Act of January 2, 1976 (Public Law 94-204), as amended.

(7) The Secretary may withdraw and convey lands out of the National Wildlife Refuge System and out of the National Forests, for the purposes set forth in subsections (h) (1), (2), (3), and (5); and

(8)(A) Any portion of the 2 million acres not conveyed by this subsection shall be allocated and conveyed to the Regional Corporations on the basis of population.

* * * *

11(a)(3) - Deficiency lands were withdrawn elsewhere from "vacant, unappropriated and unreserved" public lands if the lands around particular villages were insufficient [43 USCS 1610(a)(3)].

- Southeast Alaska villages limited to withdrawal of core township and 8 surrounding townships [43 USCS 1615(a)].

3. Land selections [12(a), (b) and (c)] (FIGURE 5)

12(a) - Villages had to select 3 to 7 townships (69,120 to 161,200 acres) based on population [43 USCS 1611(a)(1)].

- Selections had to be "compact and contiguous" and in whole sections [1611(a)(2)]. SEE DIAGRAM.

- Villages could not select more than 3 townships from national wildlife refuges, national forests or state TA'd lands [43 USCS 1611(a)].

12(b) - Each regional corporation (except Sealaska) allocates lands left after village selections among its villages "on an equitable basis" [43 USCS 1611(b)].

12(c) - Six regions with large land claims and small populations were entitled to select 16 million acres from the lands withdrawn for but not selected by the villages, but the selections had to be "checkerboarded" [43 USCS 1611(c)].

- Southeast villages could only select one township, no matter what their population, because of the previous Tlingit and Haida settlement of aboriginal claims [43 USCS 1615(b)].

4. Land Conveyances [14(a) through (h)]

14(a) - Villages conveyed between 3 and 7 townships based on population [43 USCS 1613(a)].

ANCSA WITHDRAWAL/SELECTION

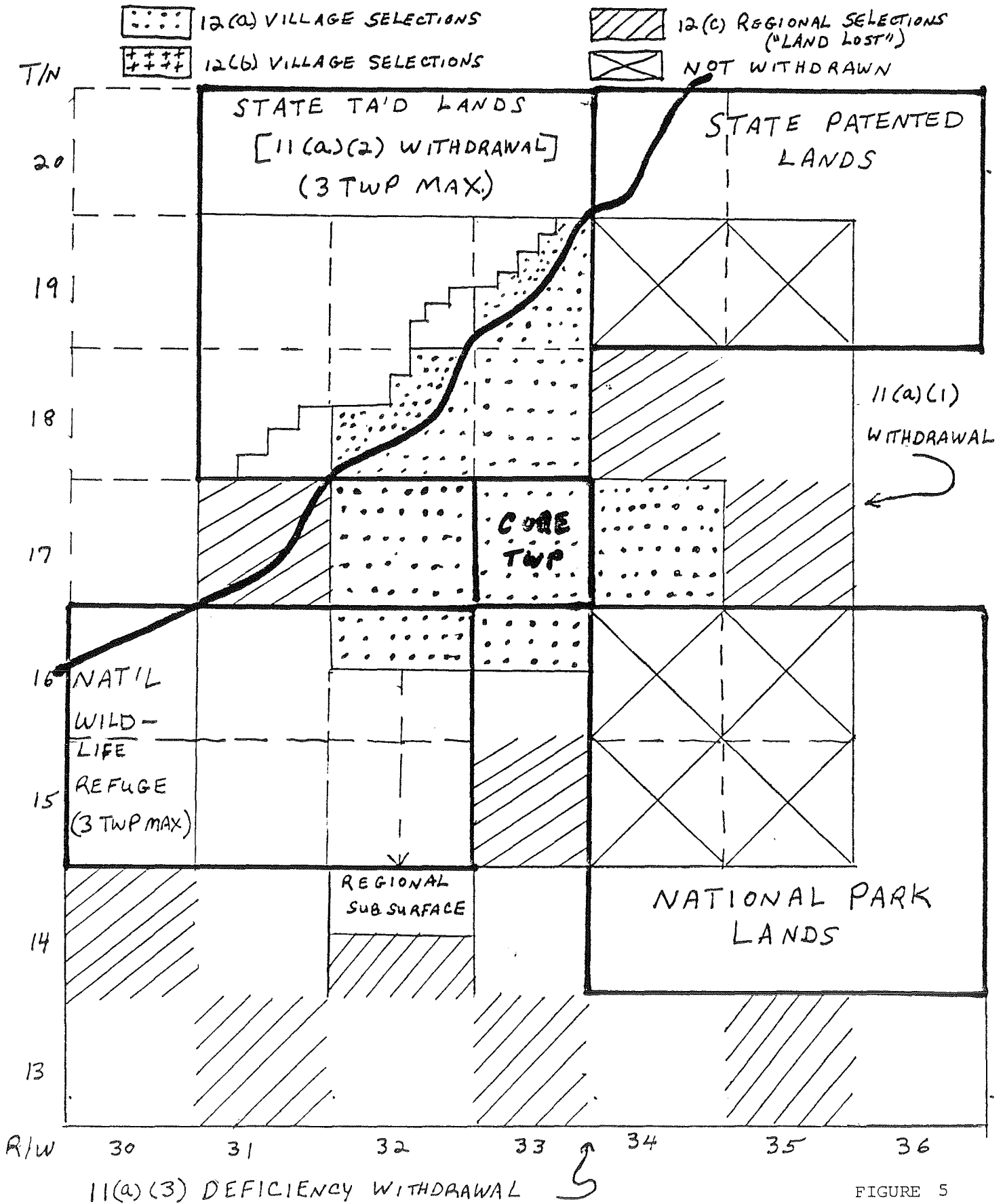


FIGURE 5

- 14(b) - Southeast villages conveyed only 1 township regardless of population [43 USCS 1613(b)].
- 14(c) - Village conveyances subject to reconveyance requirements of section 14(c)(1), (2), (3) and (4) [43 USCS 1613(c)(1), (2), (3) and (4)].
- 14(f) - Regional corporations are conveyed subsurface lands when village surface lands are conveyed, but the right to "explore, develop, or remove minerals from the subsurface . . . within the boundaries of a Native village shall be subject to the consent of the Village Corporation." (Emphasis added). [43 USCS 1613(f)].
- 14(h) - Miscellaneous conveyances for cemeteries and historical sites, Native groups, urban corporations, Native primary places of residence are authorized under section 14(h) [43 USCS 1613(h)].
- 14(g) - All conveyances are subject to "valid existing rights" under section 14(g) [43 USCS 1613(g)].
- Conveyances of unsurveyed lands made by "Interior Conveyance" ("IC")

5. Reservation of public easements under section 17(b)

- All conveyances were subject to "periodic" easements along waterways and other easements across Native lands to guarantee public access to adjacent state and federal lands [43 USCS 1616(b)].

6. Alaska Native reservations revoked under section 19(b)

- Section 19 of ANCSA revoked all Alaskan Native reservations, except Metlakatla [43 USCS 1618].
- Village corporations on the revoked reservations could elect to participate in ANCSA or take the former reservation lands instead under section 19(b).

- If they made the 19(b) election, they got the surface and subsurface of the revoked reserve, but gave up all the monetary and other benefits of ANCSA.
- Lands conveyed under 19(b) were subject to "valid existing rights" under 14(g), but were not subject to the reconveyance requirements of 14(c) and had few 17(b) easements imposed on them.
- Seven village corporations on 5 reservations made the 19(b) election and received among them a total of 3.7 million acres, ranging in size from 800 acres. to 1.4 million acres.

D. The "1991" ANCSA Land Protections

1. Alaska Native Claims Settlement Act Amendments of 1987 (P.L. 100-241, Feb. 3, 1988).

- Comprehensive (and complex) amendments to many aspects of ANCSA.
- Protects ANCSA lands by:
 - (a) Continuing stock restrictions indefinitely, and
 - (b) Preventing involuntary alienation of "undeveloped" ANCSA lands.

2. Section 11 of P.L. 100-241 amends section 907 of ANILCA (43 USCS 1636) to provide automatic protection for ANCSA lands.

- So long as ANCSA lands are not "developed, leased or sold to third parties" they are exempt from:
 - (a) adverse possession or similar claims based on estoppel;
 - (b) real property taxes;
 - (c) judgements arising under the Bankruptcy Code or similar laws affecting creditors' rights;
 - (d) any other types of judgements, and
 - (e) loss due to the involuntary corporate dissolution.

- The protections can be lost if:
 - (a) the land is developed, leased or sold;
 - (b) a majority of the corporation's stock either in equity or voting power is no longer restricted under ANCSA, or
 - (c) the land is pledged as security or "expressly committed to any commercial transaction in a valid agreement".

- When Worlds Collide: Alaska Native Corporations and the Bankruptcy Code, 6 Ak L. Rev. 73 (June 1989)

III. TRIBAL LANDS

A. Comparison Between ANCSA and Tribal Settlements.

- Tribal settlement
 - Tribe cedes land → U.S.
 - Tribe ← pays money U.S.
 - Tribe keeps some land as reservation.



- ANCSA settlement
Villages (Tribes) ceded 320 million acres → U.S.
Corporations ← paid \$962.4 million U.S.
Corporations kept 44 million acres in fee simple.

B. Tribal Land Transfers

- Have occurred on two revoked reserves and some other villages.
- State law obstacles.
- Alegnaqik III means that traditional and IRA councils in unincorporated communities will get some land under the Alaska Native Townsite Act.

C. Tribal Land Issues

- Villages organized under section 16 of the Indian Reorganization Act (25 USCS 476) have the power under federal law to "prevent the sale, disposition, lease, or encumbrance of tribal lands, interests in lands, or other tribal assets without the consent of the tribe". See Nome Tax Case (Alaska Supreme Court 1989).
- Appears to apply to both developed and undeveloped land.
- Applies only to villages organized under the IRA, and traditional councils would not have similar protection in Alaska State courts until the question of tribal status is finally resolved in Alaska.
- Tribal ownership of land raises questions of tribal political jurisdiction over the land, some of which are now being litigated in federal courts.

SELECTED NATIVE LANDS CASES

ALLOTMENTS

Aguilar v. U.S. (Aguilar II), 474 F. Supp. 840 (D.C., Ak. 1979)

Use and occupancy of land gives Native allotment applicant "preference right" that defeats subsequent state selection and patent. U.S. has responsibility to recover land for Native if mistakenly conveyed to State.

Heffle et al. v. Alaska, 633 P.2d 264 (Ak. 1981);
cert. denied 455 U.S. 1000 (1982).

State courts have no jurisdiction over Alaska Native allotments, therefore injunction against barricading of disputed right-of-way cross allotment held improper.

Olympic v U.S., 615 F. Supp. 990, (D. Ak. 1985)

Heir of allotment applicant may amend allotment land description under 905(c) of ANILCA. § 905(a) provides for legislative approval of allotments even though application finally rejected prior to passage of ANCSA. ANILCA and 1906 Allotment Acts construed for the benefit of Natives.

Pence v. Kleppe (Pence I), 529 F.2d 135 (9th Cir. 1976).

Native allotments: due process requires opportunity for hearing prior to denial of allotment.

Shields v. U.S., 504 F. Supp. 1216 (D.C. Ak. 1981); aff'd.
Shields v. U.S., 698 F.2d 987 (9th Cir., 1983).

Requires personal Native use and occupancy on national forest lands; cert. pending.

State of Alaska, 45 IBLA 318 (Feb. 6, 1980).

Title to allotments under the 1906 Alaska Allotment Act (as amended) is held in restricted fee, overruling Charlie George, 44 L.D. 113 (1915).

U.S. v. Clarke (Bertha Mae Tabbytite), 445 U.S. 253 (1980).

25 U.S.C. 357 requires formal condemnation proceedings on Indian allotments; inverse condemnation not permitted. On remand, 529 F.2d 984 and 590 F.2d 765.

ABORIGINAL TITLE

Tribal Village of Akutan v. Hodel, 792 F.2d 1376, (1986)

Upholding injunction on North Aleutian Basin oil lease sale under §810 of ANILCA on basis of decision in Gambell II, *infra*.

Amoco Production Co. v. Village of Gambell, 480 U.S. 531, 107 S.Ct. 1396, 94 LEd 2d 542. (1987)

Subsistence is "a" public interest under §810 of ANILCA. Invalidates 9th Cir. automatic injunction rule for violation of environmental statute.

Also holds that "in Alaska" in both ANILCA and ANCSA do not include water beyond the 7 mile limit. Revives issue of extinguishment of aboriginal title under ANCSA. Reversing Gambell I & II and, by implication, Tribal Village of Akutan v. Hodel. *supra*. On remand, Village of Gambell v. Hodel (Gambell III); 869 F.2d 12k73 (9th Cir. 1989)

Edwardsen v. Morton, 369 F. Supp. 1359 (D.D.C. 1973).

Extinguishment of aboriginal claims, ANCSA did not extinguish claims for trespass to aboriginal title. *Contra*, U.S. ARCO, *infra*.

Village of Gambell v. Clark, (Gambell I) 746 F.2d 572 (9th Cir. 1984)

Holding that "in Alaska" in Sec. 810 of ANILCA required subsistence impact studies for oil leasing on the Alaska outer continental shelf; rev's Amoco production Co. v. Village of Gambell, 476 U.S. 1157, 479 U.S. 807, 480 U.S. 531, 55 U.S.L.W. 4355 (Mar. 24, 1987), See also ICAS v. U.S., 746 F.2d 570 (9th Cir. 1984) *infra* re: extinguishment of aboriginal title "in Alaska" under ANCSA.

Village of Gambell v. Clark, (Gambell II) 746 F. 2d 572 (9th Cir. 1984).

Holding that section 810 of ANILCA (16 USC 3120) requires the Interior department to give proper weight to the subsistence needs and culture" of Alaska Natives prior to OCS leasing and characterizing the plaintiff's as "Alaskan tribal villages;" rev'd. Amoco Production Co. v. Village of Gambell, 480 U.S. 531.

Village of Gambell v. Hodel, (Gambell III), 869 F.2d 1973 (9th Cir. 1989).

Rejecting argument that U.S. paramount sovereignty defeats aboriginal subsistence rights and remanding to District Court for determination of: (1) whether OCS held by aboriginal title, (2) whether OCS leasing is inconsistent with such title, and (3) whether OCSRA extinguished aboriginal title.

Inupiat Community of the Arctic Slope v. U.S. (ICAS I), 680 F.2d 122 (Ct. Cls. 1982); cert. den. 58 USLW 3339 (1982)

Claims for trespass to aboriginal title denied, but ICAS characterized as a "recognized tribe."

Inupiat Community of the Arctic Slope v. U.S. (ICAS II), 548 F. Supp. 185 (D.C. Alas., 1982); aff'd 746 F.2d 570 (9th Cir. 1984).

ICAS has no aboriginal claim beyond the 3-mile limit, because U.S. has superior sovereignty.

Paug-Vik, Inc. v. Wards Cove Packing Co., 633 P.2d 1015 (Ak. 1981)

Appropriation of water prior to ANCSA under 43 U.S.C. 661 constitutes a conveyance of an "interest in public land and water areas" to which aboriginal title was extinguished under Sec. 4(c) of ANCSA [43 USC 1603(c)].

U.S. v. ARCO, 435 F. Supp. 1009 (D. Ak. 1977); aff'd 612 F.2d 1132 (9th Cir. 1980); cert. denied 499 U.S. 888 (1980).

ANCSA GENERALLY

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

Easement authority; ANCSA permits neither floating nor linear, recreational easements. ANCSA to be liberally construed to benefit Natives.

Cape Fox Corp. v. U.S., 456 F. Supp. 784 (D. Ak. 1978).

No trust relationship as to ANCSA lands; rev'd on jurisdictional grounds 646 F.2d 399 (9th Cir., 1981).

McIntyre v. U.S., 490 F. Supp. 830 (D. Ak. 1980).

APA is independent jurisdictional basis for review of legality of patent issued pursuant to ANCAB decision even though under other authority the Department of the Interior loses jurisdiction of land once patented.

Tyonek Native Corp. v. Secretary of Interior, 836 F.2d 1237 (9th Cir. 1988)

State lands selected under the Mental Health Act are subject to Native selection under ANCSA.

Ukpeagvik Inupiat Corporation v. Arctic Slope Regional Corporation, 517 F. Supp. 1255 (D. Ak. 1981).

Regional Corporation not required under § 7(i,j), 43 U.S.C.A. § 1606(i,j) to distribute any net income to Village Corporations and at large shareholders. Regional Corporation is required to distribute 70% share of all net revenues received from timber and subsurface estate but not, in the case of resource holding Regional Corporations, its 30% retained share.

Wisnak, Inc. v. Andrus, 471 F. Supp. 1004 (D. Ak. 1979).

Native Corporation's selection of lands under 43 U.S.C. § 1613(h) was limited to unreserved and unappropriated lands. Corporation's selection of lands previously reserved as utility and transportation corridor for the Alaska oil pipe line validly denied by the Secretary. But, Secretary's decision that Native Corporation get no land was inconsistent with purpose of ANCSA. Court refused Secretary's motion for summary judgment and remanded for reconsideration of group's application.

TOWNSITES

Alegnagik Natives, Ltd. v. U.S., (Alegnagik II), 635 F. Supp. 1477, (D.C. Ak. 1985)

Holding that municipalities and individuals had "valid existing rights" to townsite lands under 11(c)(1) of ANCSA, but that FLPMA's repeal of ANTA barred individual occupancy after October 21, 1976. Upholds Secretary's interpretation of ANCSA and FLPMA as "reasonable" and not barred by APA. See also Alegnagik III, infra.

Klawock v. Gustafson, 585 F.2d 428 (9th Cir., 1978).

Attorney fee decision. Alaska townsite lands held to be a "common fund" for payment of attorney fees owed City of Klawock's attorneys.

People of South Naknek v. Bristol Bay Borough, 446 F. Supp. 870 (D. Ak 1979)

Political subdivision of State has no jurisdiction to tax restricted townsite lands but does have jurisdiction to tax personal property located on such lands.

SURFACE AND SUBSURFACE

Aleut Corp. v. Arctic Slope Regional Corp. (Aleut III), 421 F. Supp. 862 (D. Ak. 1976)

Sand and gravel is part of the subsurface estate on lands owned solely by regional corporations, but is part of the surface estate for village corporation lands; rev'd sub nom., Chugach Natives, Inc. et al. v. Doyon Ltd. et al., 588 F.2d 723 (9th Cir. 1978).

Sand and gravel part of the subsurface estate for all purposes.

Aleut Corp v. Arctic Slope Regional Corp. (Aleut IV) 484 F. Supp. 482 (D. Ak. 1980).

Revenues from resources: 7(i) broadly construed to effect equitable distribution of "subsurface" revenues.

Chugach Natives, Inc. v. Doyon Ltd., 588 F.2d 723 (9th Cir. 1978)

Sand and gravel part of the subsurface estate on both regional and village lands for all purposes. Accord Tyonek Native Corp. v. CIRI, 853 F.2d 727 (9th Cir. 1988).

Tyonek Native Corp. v. Cook Inlet Region, Inc., 853 F.2d 727 (9th Cir. 1988)

Gravel is subsurface estate on village/region "dual" lands.

TRIBAL LANDS

Alegnagik Natives, Ltd. v. U.S., (Alegnagik III), _____ F.2d _____ Slip Op. No. 87-4188 (9th Cir. Sept. 22, 1989).

Traditional and IRA Village Councils entitled to conveyance of unsubdivided townsite lands under Alaska Native Townsite Act.

Board of Equalization of Ketchikan Borough v. Alaska Native Brotherhood, Camp No. 16, 666 P.2d 1015 (Ak. 1983).

IRA organized tribe presumed to be a "tribe" but held subject to local property tax. See also Rabinowitz concurrence stating that IRA tribe was "not clearly recognized." But see also Nome Tax case, infra.

In the Matter of 1981, 1982, 1983, 1984 and 1985 Delinquent Property Taxes Owed the City of Nome Alaska, _____ P.2d _____ Slip Op. No. 3507 (Alaska, September 22, 1989).

Real property owned by an IRA tribal council cannot be foreclosed upon without consent of tribe under 25 USCS 476.

14(C)

Buettner, et. al. v. Kavilco, Inc., 860 F.2d 341 (1988)

Forest Service permittee held entitled to 14(c) for occupancy on or before December 18, 1971 and not limited to valid existing rights under 14(g).

Donnelly, et. al. v. U.S., et. al. 841 F.2d 968 (9th Cir., 1988).

14(c) rights denied to homesteaders who unlawfully occupied federally withdrawn lands in 1971 even though lands were later conveyed to Native corporation.

GLOSSARY OF NATIVE LAND TERMS

Aboriginal Title

An American common law principle which recognizes an exclusive right of Native use and occupancy of lands historically used and occupied by a Native American tribe and to which the United States now claims the ultimate dominion and naked fee title. Aboriginal title can be extinguished by voluntary abandonment of the land, a "just war" or by congressional action. Other than by abandonment or war, only the Congress of the United States can extinguish aboriginal title. Aboriginal title is not a fifth amendment property right, but federal purchase is the usual method used to legally extinguish these claims. If the claims are not extinguished, any third party using the lands (even if they are there with federal permission) is subject to a suit for trespass by or on behalf of the Natives who claim aboriginal title.

Allotment

A grant of up to 160 acres of land to a Native American where the land is either held in trust by the federal government or is subject to federal statutory restrictions against alienation and taxation. Alaska Native allotments are not held in trust, but are subject to federal restrictions against alienation and taxation so long as they are in Native ownership. Native owners can, however, apply to the Bureau of Indian Affairs to remove the restrictions without actually disposing of the land. The Alaska Native Allotment Act was enacted in 1906 (70 Stat. 954, 43 USC 270-1 to 270-3 (1970), revoked December 18, 1971 by sec. 18 of ANCSA (43 USCS 1617)).

ANCSA

The Alaska Native Claims Settlement Act (P.L. 96-487, Dec. 18, 1971, 85 stat. 691, as amended, 43 USCS 1601 et seq.) Together with the Statehood Act and ANILCA, it is the second major piece of federal legislation dividing Alaska lands. ANCSA extinguished aboriginal title to about 365 million acres and granted about 44 million acres to Alaska Native village and regional corporations and paid the corporations about \$1 billion.

ANILCA

Alaska National Interest Lands Conservation Act (P.L. 96-487, Dec. 2, 1980, 94 Stat. 2371, codified at scattered parts of 16 and 43 USC). Together with the Statehood Act and ANCSA it is the third major piece of legislation dividing up Alaska's lands among federal, state and Native interests. Its main purpose was to set aside the "national interest lands" withdrawn under section 17(d)(2) of ANCSA for conservation purposes. Title VIII also

established a subsistence preference for "rural residents" on federal lands and waters. Other provisions of ANILCA amended provisions of ANCSA relating to interim conveyances, shareholder homesites and individual Native corporation land selection problems.

BLM

The Bureau of Land Management within the Department of the Interior. The primary agency responsible for adjudicating and conveying entitlements to public lands.

FLPMA

Federal Land Policy and Management Act of 1976 (P.L. 94-579, Oct. 21, 1976, 90 Stat. 2745, 43 USCS 1701 et seq.) Also known as the "BLM Organic Act", it provides much of the statutory authority for BLM's activities. It also repealed numerous outdated public land laws, the 1926 Alaska Native Townsite Act among them.

IBLA

The Interior Board of Land Appeals. The board within the Department of the Interior to which you appeal unfavorable decisions of the BLM. You have to file the notice of appeal within the strict time limits set by the IBLA regulations (43 CFR Part 4) and in the proper manner. If you do not do so, your appeal will be summarily dismissed, and you will not be able to exhaust your administrative remedies. If you don't exhaust administrative remedies, no court will have jurisdiction to hear your claim.

TA'd

"Tentatively Approved" lands under section 6(c) of the Statehood Act. The state could lease TA'd lands even though title had not been patented. Native villages could select up to 3 townships of TA'd lands each if it was within their selection area under 11(a)(2) of ANCSA.

ANCSA RELATED TERMS

Interim Conveyance

Document used to convey unsurveyed ANCSA lands to Native corporations. After the lands are surveyed, BLM issues a confirming patent, which can change the property boundaries as described in the IC. Title companies may still give you trouble insuring IC'd land, but the usual solution is to make the title policy subject to the confirming patent.

Native

A citizen of the United States who is 1/4 or more Alaska Native blood and not a member of the Metlakatla Indian community. In the "absence of proof" of blood quantum, a person could qualify as a "Native" if they and their father or mother were "regarded" as being Native in their community. [43 USCS 1602(b)]

7(i) Revenue Sharing

Requires 70% of the "revenue" received from the timber or subsurface resources patented to the regional corporations to be shared among all 12 regional corporations in Alaska.

7(j) Revenue Sharing

Requires the regions to split 50% of the money received under 7(i) with the village corporations and the at large shareholders. In good economic times, it has been a continuing source of capital for the village corporations. [43 USCS 1606(j)]

11(a)(1) Withdrawals

The basic ANCSA land withdrawal provision which withdrew about 117 million acres for Native selection, mainly around Native villages. Unlike most public land laws, these withdrawals were from all federal lands, with certain limited exceptions (i.e. parks, military reservations and federal installations). Many federal lands withdrawn for other purposes were thus opened up for Native selection. [43 USCS 1610(a)(1)]

11(a)(2) Withdrawals

This provision of ANCSA permitted the federal government to withdraw state selected lands for Native corporations as long as the land had not actually been patented to the state. This was a compromise between the state and the Natives which resulted in the state giving up some of the land it had selected under the Statehood Act. [43 USCS 1610(a)(2)]

11(a)(3) Withdrawals

Authorized the withdrawal of "deficiency lands" for village and regional corporation selection if necessary. [43 USCS 1610(a)(3)]

12(a) Selections

Basic village selection provision, but limits village selections to no more than three townships each from national forests, federal wildlife refuges or the 11(a)(2) withdrawals of state selected

lands. Regions get the subsurface of these selections except in wildlife refuges and in Petroleum Reserve No. 4 (now the National Petroleum Reserve Alaska-- "NPRA"). [43 USCS 1611(a)]

12(b) Selections

Allocates 22 million acres for village selection, and authorizes the regions to allocate land left over from the 12(a) selections among the villages on an "equitable" basis. [43 USCS 1611(b)]

12(c) Selections

Allocates 16 million acres on the "land lost" formula among regions with small populations and large land claims. [43 USCS 1611(c)]

14(c) Reconveyances

Requires village corporations to reconvey property to people who occupied the land as of December 18, 1971 as a primary residence, place of business, subsistence campsite or reindeer husbandry headquarters. Under 14(c)(3), the village corporations can be required to reconvey up to 2 square miles (1,280 acres) to a city or to the state in trust for a future city.

Under 14(c)(4), the village corporation is required to convey land to the state for "existing airport sites". [43 USCS 1613(c)(1)-(4)]

14(f) Consent Requirements

Authority for issuing patents to regional corporations, but makes the "right to explore, develop, or remove minerals from the subsurface estate in the lands within the boundaries of any Native village . . . subject to the consent of the Village Corporation." It is not clear whether the "boundaries of the Native village" are confined to the area where the village is located or includes all the village corporation lands. [43 USCS 1613)(f)]

14(g) Valid Existing Rights

Makes all ANCSA conveyances subject to "valid existing rights" and requires ANCSA corporations to manage lands they receive under ANCSA consistent with any existing leases, permits, etc. [43 USCS 1613(g)]

17(b) Easements

Permits the BLM to impose periodic easements along water bodies and access routes to federal or state lands on ANCSA conveyances prior to IC. [43 USCS 1616(b)]

19(b) Election

Option available to village corporations on former Native reservations to take the surface and subsurface of their former reserves and forego other monetary benefits under ANCSA. The shareholders of these corporations are not shareholders in any regional corporation. [43 USCS 1618(b)]

22(f) Exchanges

Authorizes the Secretaries of Interior, Defense and Agriculture to exchange lands with Native corporations, the state or any individual "for the purpose of effecting land consolidations or to facilitate the management or development of the land." This has been a useful method to adjust some of the anomalies created by the ANCSA land selection process and changing circumstances.