

From: [Haffner, Poke \(LAW\)](#)
To: [John Bennett](#)
Subject: RE: Native Allotments
Date: Wednesday, July 30, 2014 3:16:41 PM

John,

An update:

Judge Beistline dismissed the Purdys (allotment holders) from both the QTA (counts 1-5) and the condemnation (count 6) aspects of the Chicken (AK v. US) litigation. Most of his decision was devoted to explaining why he dismissed the QTA counts; his treatment of the condemnation count was not thorough. He entered a final judgment of dismissal, allowing the state to appeal immediately to the 9th Circuit. The state's opening brief in that appeal is due on August 29 with a reply brief if any due in late December; in the meantime, further activity in the trial court case is stayed until the 9th Circuit rules on the appeal. The only parties left active in the case are the State and the U.S., as the holder of the restrictions on the allotment deeds. The other defendants, miners in the 40-Mile country, disclaimed interest and are willing to have the RS 2477 trails across their claims recognized.

The 9th Circuit decision will probably not be quick. I would be surprised if the state elected not to file a reply brief, and oral argument is likely. By the time the 9th Circuit rules, Ralph Beistline may well be retired. He seemed unhappy with the case as it proceeded, and I doubt he'd be in a rush to keep it as a senior judge after he retires.

Poke

From: John Bennett [mailto:JBennett@rmconsult.com]
Sent: Tuesday, July 29, 2014 3:43 PM
To: Haffner, Poke (LAW)
Subject: Native Allotments

Hi Poke! Some time back I mentioned that I was attempting to distill some of my random thoughts relating to rights-of-way that I never seemed to have enough time to put into writing. Our R&M ROW folks had been discussing the effect of "use & occupancy" of a native allotments with regard to how we would handle them on a set of ROW plans we might develop for DOT. So I finally dealt with my last review comments and sent this out to the DOT ROW folks today. I warned them that this may or may not receive approval from the powers that be who sign their paychecks and that they might want to request AGO review before they adopt it. So it may end up on yours or someone else's desk eventually. Most of it I'm just quoting from John Athens law review article or the GAO report on utilities and native allotments and I'm just trying to tie it all together. Next stop, "use and occupancy" on homesteads, T&M sites, Homesites and Small Tracts! Oh, by the way, we will be moving to your end of town in the next month or so. We have taken up a lease in CB Bettisworth's ground floor office space right on the river. Now if the river would just go

down that just might be fun. Hope all is well with you. JohnB

John F. Bennett, PLS, SR/WA *Senior Land Surveyor – Right of Way Services*

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