Summary Of The Settlement Act --

Invalid Mining Claims, Surface Rights Vs. Mineral Rights, Minerals Under Navigable Waters

(Part Five: The fifth installment of the "Summary and Analysis of the Alaska Native Claims Settlement Act, a booklet prepared by the Rural Alaska Community Action Program, deals with land ownership, surface rights, title to navigable waters, and unpatented mining claims.)

LAND OWNERSHIP

There are three major types of land ownership in Alaska at the present time – federal, State, and private. Land selected under the Alaska Native Claims Settlement will fall into the class of privately owned lands.

After Alaska was purchased from Russia, land ownership passed from the federal government to private persons under a great variety of laws – homesteads, trade and manufacturing sites, small tracts, headquarter sites, mining claims, etc.

Many towns in Alaska were established on townsites deeded by the government to a trustee who sold individual lots to residents.

In spite of all these ways of changing ownership from the government to private persons, less than three per cent of the total acreage in Alaska had been patented by the time of statehood.

UNPATENTED MINING CLAIMS

More often than not, mining claims are not patented. The owner of the claim has the right to possession as long as he maintains it. Once abandoned, the claim reverts back to government ownership. Of the tens of thousands of mining claims located in Alaska, the great majority are no longer valid, since they have been abandoned.

A mining claim is acquired by placing stakes in the ground which mark the boundaries of the claim, by posting a notice asserting the claim is on one of the stakes, and recording it with the local District Recorder.

Nothing is required to be filed with the BLM. unless he wishes to.

The difficulty with this system is that public land managers are not made aware of the locations of thousands upon thousands of unpatented mining claims in the State. It is very difficult to challenge the validity of the claim, and as long as the locator has established his claim and maintains it, he has the right to possession.

This fact leads to the question of whether or not the provisions of the Land Claims Act can be established, which say that mining claims on lands conveyed to village and regional corporations will not be valid after five years if they are unpatented.

STATEHOOD GRANT

Small amounts of land were given over to State or municipal ownership over the years. With Statehood, 103 million acres were granted for selection by

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lic land. The State had 25 years in which to select.

As of Jan. 1, 1972, the State had filed selections for approximately 25 million acres, 8 million of which had been approved, and 6 million patented.

MINERAL LEASES

During the first ten years of the 25 year period set aside for State selections, the State could select lands subject to mineral leases issued by the federal government and to select mineral rights alone.

If the federal government had patented a homestead to an individual but reserved the minerals and leased them to a third party, the State could take over the leasing of the minerals, and when the federal lease expired, issue its own.

"BLANKET SELECTIONS"

The State developed the practice of making "blanket selections" – that is, it selects a large area "subject to existing rights." Then if the rights of the third party, such as a homesteader or miner, are terminated by abandonment, the land immediately becomes subject to State selection.

MINERAL AND SURFACE RIGHTS

The State disposes separately of two kinds of rights on this land – mineral rights or surface rights. Mineral rights are for oil and gas, coal, and other minerals. The State sells leases on these either to the highest bidder on a first-come, first-served basis.

All minerals which are not leased are available by locating a mining claim.

Surface rights to the land are made available by the State by means of a permit, lease, or outright sale. A permit is given for rights-of-way and temporary use.

Leases are either negotiated or sold by bidding on the amount of annual rent. Land which is sold outright must be put up for competitive bid.

NAVIGABLE WATERS

At the time of Statehood, the state of Alaska acquired, along with the 103 million acres, title to lands beneath inland navigable waters and lands beneath territorial seas.

Because the term "navigable waters" was not clearly defined, the question of ownership has been a chronic problem. The general tendency of the law has been to find bodies of water "navigable" only if they were actually used for commercial activity.

However, this definition is by no means rigid, and in Alaska, it has never been tested in the courts. Alaska has thousands of bodies of water, rivers, streams, and creeks which have never been developed.

Now, how does the definition of navigable waters affect Native selections? First of all, it would be impossible to take to court every body of water in the State. Other than the obviously large rivers, such as the Yukon and Kuskokwim, it would be simple to consider all those not used commercially as non-navigable.

This may be to the advantage of the Native corporations in some cases. In others it may not. They may wish to increase their dry-land ownership by having the State own some lakes and streams near village and regional selections. This would mean strips and patches of State ownership around Native lands.

The question of navigable waters has been a headache ever since Statehood. It appears that it will continue to be under the present selections. The problem is presently under study by the Joint Land Use Planning Commission. If it is determined the State owns the land under certain waters, it can then lease mineral rights just as on lands.

NEXT WEEK: How the withdrawals were made, land set aside for public interest and inclusion in parks, wildlife refuges, national forests, or wild and scenic rivers, forests, or state selections.