

'Arctic John' beats state, pipeline

By Bill Hess
Tundra Times

Ninety-two year old Arctic John Etalook speaks or reads no English but last month he beat the law departments of the State of Alaska and the Alyeska Pipeline Company in his lawsuit contending they illegally took his land to build the Trans-Alaska Pipeline.

U.S. District Judge James von der Heydt has ruled that the State of Alaska and Alyeska Pipeline Service Co. did not follow proper legal procedure when they crossed the 92-year-old Inupiat's Native Allot-

ment with the Trans-Alaska Pipeline and the North Slope Haul road.

Etalook's attorney, Clem Stephenson, said the elderly Inupiat will seek monetary compensation. Assistant attorney general John Athens said the state has not made a final decision on what to do, but will probably "proceed with condemnations proceedings" to obtain clear title to the land.

Alyeska spokesperson Kay Herring said that company does not wish to discuss any detail. "We may have some-

thing to say later on," Herring said.

"What we have is basically a trespass on Arctic John's Native allotment," said Stephenson this week. "Arctic John had lived on the land since 1937. His parents had lived there before he had. He was clearly entitled to the land under the Native Allotment Act of 1906."

Land owned by Natives under the enrollment fall under the federal trust responsibility to American Indians and Alaska Natives and cannot be sold or mortgaged or in any other

way be "alienated" into non-Native hands without the consent of the U.S. Secretary of the Interior.

Although Etalook reluctantly accepted a payment of \$28,500 for the land because he felt he had little other choice, Stephenson said, Interior permission never was received and the right-of-way which Alyeska and the State had was void.

Athens, who represented the state in the issue, argued that federal protection might not apply in Etalook's case. "The legal issues are really

quite complicated," Athens contended. He said that the rights of way across the land had been obtained before Etalook received legal patent to the land, and argued that there are no regulations in the Department of the Interior covering that situation.

Athens said the judge did not address that issue. "Even if the state proceeds with the condemnation and the court makes an award to Etalook for whatever it feels the lands are worth," said Athens, "we would still be entitled to

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Company, state illegally took Arctic John's land

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appeal the court's recent decision about whether or not we own the property."

Athens said if the award to Etalook is considered by the state to be "reasonable," it would be cheaper and easier to pay it than to continue the court fight. If the award is considered by the state to be too high, Athens said, Alaska can appeal.

Stephenson, however, argued that Etalook's land was clearly protected.

"He had filed the application in the proper time," said Stephenson, noting that Etalook turned in his papers in 1971. The land had been surveyed by the Bureau of Indian Affairs for Etalook, Stephenson said, and all the proper papers and work had been filed.

"It would take five or six months for the government to issue patent to him under the best procedures," said Stephenson, adding that when the area director for the BIA was brought into the matter, he determined there had been no authority to issue the right of way, and his superiors agreed.

The problem arose, said Stephenson, because Alyeska and the oil companies which own the pipeline had a schedule to keep, and every day's delay cost them money.

When pipeline workers came to Etalook's property in 1975, Stephenson said, they discovered what they thought was the elderly man's abandoned cabin, complete with unopened

mail. Etalook was in Fairbanks for medical treatment at the time. His mail was unopened because Etalook could not read English.

"This does not mean he was ignorant," said Stephenson. "In fact, John taught himself to read and write Eskimo, and today he reads and writes his own language better than anyone in Fairbanks. It's just that he was in his 80's before he came into regular contact with white men."

An account of the story in the Anchorage Times said that although the pipeline workers thought the cabin was abandoned, pipeline officials contacted Etalook and he agreed to the \$28,500 payment.

Stephenson said that what actually happened was that John Heffle, president of Interior Eskimos in Fairbanks and a friend of Etalook's, found out what had happened and informed the elder man. By the time they contacted oil and state officials, Stephenson said, the haul road had already been constructed across his land.

"They told him they couldn't stop; they wouldn't stop!" said Stephenson. Etalook, who Stephenson said would have preferred to keep the land in a natural state, went ahead and agreed to the purchase, Stephenson said, with a written agreement that several conditions would be met.

The provisions stated that a private road would be built for Etalook from the haul road to his cabin, that a "wide place" where Etalook could

park cars or put a building would be cleared for him, and that a sign saying "Arctic John's Native Allotment" would be erected.

In addition, Stephenson said Arctic John was assured he would be able to drive the haul road at any time. He was also told that the \$28,500 would not interfere with the monthly subsistence checks of just under \$300 Etalook was getting from the federal government.

In every case, Stephenson said, the agreements were violated. None of the improvements were ever made. The state refused to grant him a permit to drive the haul road, and his subsistence checks were cut off until he used up the \$28,500. Etalook spent the money very conservatively, Stephenson argued, and it lasted until about last year.

Then the subsistence checks started up again. "Arctic John didn't profit one penny from that \$28,500!" exclaimed Stephenson. He also said that federal trust responsibility aside, the failure of Alyeska and the state to live up to the agreement voided it.

Athens argued that the state never denied Etalook access to his property through the haul road. "The problem was with the incident when Mr. Heffle blocked the road, and set up a barricade," said Athens. "The state told Mr. Etalook that he would have to agree not to block the haul road if he wanted a permit."

Stephenson described the circumstances somewhat differ-

ently. Etalook and some of his friends had set up a toll-gate, he said, and were charging cars \$1 and trucks \$2 to cross his land. The issue went to court, and Alaska Judge James R. Blair issued a restraining order against the tollgate. The Alaska Supreme Court reversed

the ruling. The state tried to take the case to the U.S. Supreme Court, Stephenson said, but it was turned back into the lower federal courts.

The state refused to grant Etalook the permit, Stephenson said, because it feared

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Favorable ruling may mean much money for Arctic John

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what he could do with a toll-gate.

Etalook now spend his time in Fairbanks because he has difficulties walking and moving about in his old age, according to Stephenson. One of his two adopted daughters would

like to open a restaurant on the property, but they do not have the money to do it, he added.

Depending on how the next stage of the battle turns out, that could all change. Stephenson argued that the pipeline

was a trespass on Etalook's land for the purpose of making a profit. He feels the matter of compensation will almost surely be determined by the courts.

Stephenson cited legal precedents which he said pave the

way for Etalook to make a claim for the profits derived from transporting the oil across his land. "I think it'll run into money after a while," said Stephenson, noting that three billion barrels of oil have so far been pumped across Etalook's

land.

At even just a fraction of a cent per barrel, that would make Etalook and his heirs quite well off. Stephenson, who has handled the case so far at his own expense, would receive a fee which would be approved by the BIA.