Lawyer Says--

No Public Land Till Extinguishment

1521 16th Ave. E
Seattle, Wash.
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Bureau of Indian Affairs
Juneau, Alaska

Gentlemen:

It is my turn to apologize for my late response to your favor of Jan. 16th last, and my reason is the same as yours, towit, the pressure of current demands. However, the subject is worthy of consideration, towit, which has priority the public law statutes or the aboriginal claims of the natives of Alaska.

I discussed that subject carefully in my letter to the Tundra Times in its issue of July 22nd. And there you will find the citations towit, that there is no public land till the aboriginal title has been extinguished. The evidence of extinguishment is by express language in a statute or by its necessary implication (and I use the word "implication" in its legal definition); by treaty, abandonment or purchase. In Alaska, none of this has occurred, not even in the proclamation establishing the Tongass National Forest notwithstanding the pronouncement of the Court of Claims since its judgment is not a final one.

There is no question about who holds the Indian title. Both the British and the American courts whose origins are identical in British Common Law, towit, the inhabitants who were in possession and occupation when the Europeans "discovered" America. We can summarize the relation thus--the Indians hold the equitable title with this limitation, towit, they can sell only with the sovereign's permission. And by "sovereign," the law means ALL agents of the sovereign. In the Chateau case 16 How 203 (1853), the plaintiff's grant was not invalid because it lacked government's consent, but because it lacked Indian's consent.

And I hold that when our cases come to issue, the selections of the State of Alaska which have been approved by the Bureau of Land Management (which of course is the agent of the United States and created by it) will be set aside and the State of Alaska will be held liable to indemnify the Indian owners. There is a disposition of the BLM to hold that when the Indian claimants fail to make an appearance in opposition to these selections of State and others, these aboriginal owners are foreclosed thereafter to upset the BLM's approval. There are two good reasons for denying the BLM's position, 1st, the courts of both the United States and Canada have declared that for many generations the native aborigines were the SOLE occupants of ALL of Alaska. Our Court of Claims has said so and now I find that the Canadian Courts have done the same in the case of Regina v. Clifford White and David Bob (March 4, 1964) and for the same reasons, "they were here first" (to use a common expression).

None of the parties can deny the validity of what the courts are wont to call "original Indian title" meaning that when the white man came, the land, all of it, was owned by the people generally described as "aborigines," and the law has said repeatedly that their possession and ownership persists until it is extinguished in clear and unambiguous language per the Walapai case 314 U.S. 339 or as the Supreme Court said in Elk v. Wilkins 112 U.S. 94 (1884):

"General Acts did not apply to Indians unless expressed as clearly to manifest an intention to include them."

(Incidentally the grant of power to the President of the United States to create National Forests was a general act dated March 3, 1891 just like the homestead and mining laws.)

The Bureau of Public Lands has been on notice always.

A second reason is the fact that the government admits that it carries the burden of recognition. In its decision of May 31, 1887 (6 L.D. 341) relative to lands occupied by Indians, the Department said to its field agents; You are enjoined and commanded to strictly obey and follow the instructions . . . to permit no entry upon lands in the possession, occupation, and use of Indian inhabitants. . . . You will make it your duty to do so, and will avail yourselves of all information furnished by officers of the Indian Service. When the fact of Indian occupancy is denied or adverse, a property investigation will be ordered prior to allowance of adverse claims."

The fact that title from the BLM is of long standing, is not a safe criteria because the title of the United States is burdened with a trust, namely, that of its Indian wards, and so the statute of limitations never runs against the U.S.

I will rest my case on the declaration of the U.S. Supreme Court in the case of Holden v. Joy 17 Wall 211, when Mr. Joy was holding his land by authority of public land laws whereas Holden under Indian title. Joy lost and the principle was laid down that there is no public land until the Indian title has been extinguished. Here we should page Sen. Gruening and Congressman Rivers to face up to what our Supreme Court long ago decided. I wish to thank you for the fine record your department is making herein.

Wm. L. Paul, Sr.
Grand Pres., Emeritus
Alaska Native Brotherhood