

LEGAL NOTICE

DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
JUNEAU AREA OFFICE
JUNEAU, ALASKA

FINAL DECISION
CONCERNING THE
ELIGIBILITY OF EYAK AS A
NATIVE VILLAGE FOR
PURPOSES OF ANCSA 1971
ACTION UPON PROTEST)

ADMINISTRATIVE
DETERMINATION

This is a written decision on protests filed pursuant to 43 CFR, Part 2650 by the Alaska Chapter of the Sierra Club, by Jack Hession, Alaska Representative, 2400 Barrow St., Anchorage, Alaska 99501; by the Alaska Wildlife Federation and Sportsman Council, Inc., and Mr. Philip Holdsworth by and through their counsel, James F. Clark of the law firm of Robertson, Monagle, East-augh and Bradley, P.O. Box 1211, Juneau, Alaska 99801; and by the Forest Service, U.S. Department of Agriculture, by C.A. Yates, Regional Forester, P.O. Box 1628, Juneau, Alaska 99801, hereinafter referred to as Protestants.

The protest of the Alaska Chapter of the Sierra Club was dated January 18, 1974, and was received on January 18, 1974, by the Director, Juneau Area Office, Bureau of Indian Affairs.

The protest of the Alaska Wildlife Federation and Sportsman Council, Inc., and Philip Holdsworth was dated January 21, 1974, and was received on January 21, 1974, by the Director, Juneau Area Office, Bureau of Indian Affairs.

The protest of the Forest Service, U.S. Department of Agriculture, was dated January 18, 1974, and was received on January 18, 1974, by the Director, Juneau Area Office, Bureau of Indian Affairs.

Protestant Alaska Chapter of the Sierra Club states, in part, as follows: "1970 census data showed that 25 Natives were not resident of these villages as of the date of the census." Protestant Alaska Wildlife Federation and Sportsman Council, Inc., and Philip Holdsworth state, in part as follows: "Eyak - The Bureau of Indian Affairs printout run November 8, 1973 shows 313 persons enrolled to Eyak, but none presently living there. Moreover, Eyak is not listed as a village in the 1970 census."

Protestant Forest Service, U.S. Department of Agriculture, states in part as follows: "1. The BIA Director has made no finding of fact as to the eligibility of the village as required by Sec. 3(c) of the ANCSA and 43 CFR 2651.2 (a)(1) and (2).

a. Finding must show that 25 Natives lived in the village on April 1, 1970.

b. The Finding of Fact must show that these 25 Natives were eligible for enrollment in the BIA case file.

c. The Finding must be made that the village had a majority of Natives. The Forest Service, in its review of information made available by the BIA, was unable to determine the best light (favorable to eligibility) that would support a finding of eligibility.

2. There is some question about whether the proposed village is the "Old Town Eyak," a part of Cordova or Eyak on the Copper River Flats. The application for determination of eligibility with map sites "Old Town Eyak" in T. 15 N., R. 3 W. The BIA field examiner took photos of and described this same location. The Bureau of Land Management has withdrawn order specified T. 15 N., R. 2 W. as the core township; there is no sign of a village at this location. The village was located in the flats at one time, but once Cordova was established the Natives adopted this as their home, and the amenities of life were more available.

* * *. The village, although not within the declared city limits of Cordova is in fact part and parcel of Cordova. The people of Eyak and Cordova enjoy the same services, their children go to the same school, and shop in the same store.

The Forest Service, therefore, submits that there is no village on the Copper River Flats and that the location described at T. 15 N., R. 2 W. is not the one actually photographed and reported as visited by the BIA field examiner.

3. The present village of Eyak is actually a part of Cordova which had a population of 1,167 people by the 1970 census. The 1970 census did not list Eyak as a separate village. * * *. In order for Eyak to qualify as a village, it must not be connected with a part of a city, town or other settlement.

The determination that must be made concerning majority of Natives must be based on the total population of, if not Cordova, at least Eyak. There is no finding in the BIA case file either to the number of Natives actually living there or to the total population that must be considered. Eyak is a part of Cordova, which is modern in character and has (Sec. 43 CFR 2651.2(c) 1) over 600 population, 2) a centralized water and sewer system, 3) 5 or more business establishments, 4) organized police and fire protection, 5) resident medical and dental service, 6) improved streets, and 7) daily jet passenger service."

The Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688-716), and 43 CFR, Part 2650 provides for the settlement of certain land claims of Alaska Natives and for other purposes.

Section 11(b)(3) of the Act is quoted as follows: "Native villages not listed in subsection (b)(1) hereof shall be eligible for land and benefits under this Act and lands shall be withdrawn pursuant to this section if the Secretary within two and one-half years from the date of enactment of this Act, determines that - (A) twenty-five or more Natives

were residents of an established village on the 1970 Census enumeration date as shown by the census or other evidence satisfactory to the Secretary, who shall make findings of fact in each instance; and

(B) the village is not of a modern and urban character, and a majority of the residents are Natives."

The 1970 Census is not, therefore, the exclusive source of information for the determination of residency. Part 43h of Title 25 of the Code of Federal Regulations provides for the enrollment of the Native Village of Eyak, considered as an unlisted village under said Act since it was not within the corporate limits of the City of Cordova when the above Act became law.

304 Natives have been approved for enrollment to the Native Village of Eyak. On August 17, 1973, a field investigation was completed of Eyak and at that time 13 Natives who used the village for a period of time in 1970 had been certified for enrollment to this village and such enrollment was approved on December 17, 1973. The 304 Natives who have been approved for enrollment to Eyak, represent a majority of the residents in 1970 in the Native Village of Eyak, also known as the Eyak Add-on to the City of Cordova. Only the population in the Native Village of Eyak in 1970 will be considered in determining that a majority of the residents of Eyak are Natives.

The Native Village of Eyak is not modern and urban in character. The proximity of Eyak to Cordova and its recent annexation to that City has not altered the Native character of the Native Village of Eyak. Although the number of non-Natives in Eyak is not known, it is known, that there are considerably more Natives on the approved enrollment to this village than the number of non-Native, residing in this village. The Bureau of Land Management, 555 Cordova St., Anchorage, Alaska 99501 has been notified by the Bureau of Indian Affairs that the Native Village of Eyak is not located in Township 15 South, Range 2 West, Copper River Meridian. Eyak is located in Township 15 South, Range 3 West, Copper River Meridian. The Native Village of Eyak had on April 1, 1970, an identifiable population, evidenced by occupancy consistent with the Natives' own cultural patterns and life style and thirteen Natives enrolled thereto have used the village during 1970 as a place where they actually lived for a period of time.

The voting and licensing records of the State of Alaska have no bearing on the determination of the eligibility of the enrolled Natives of Eyak. The Director, Juneau Area Office, Bureau of Indian Affairs, has examined and evaluated the protests together with his record of findings of fact and decision, and does hereby render a final decision determining that the Native Village of Eyak is eligible for land benefits under said Act.

The final decision of the Director, Juneau Area Office, Bureau of Indian Affairs, shall be published in the Federal Register and in one or more newspapers of general circulation in the State of Alaska and a copy of the final decision and decision of fact upon which the final decision is based shall be mailed to the affected village, all villages located in the region in which the affected village is located, all regional corporations within the State of Alaska, the State of Alaska, and any other party of record. Such decision shall become final unless appealed to the Secretary of the Interior by a notice filed with the Ad Hoc Board as established in Section 2651.2 (1)(5) of Title 43 CFR, within thirty days of its publication in the Federal Register. Appellants shall have not more than 15 days from the date of receipt of their notices of appeal within which to file an appeal brief, and the opposing parties shall have not more than 15 days from the date of receipt of the appellant's brief within which to file an answering brief. No more than 15 days shall be allowed for the filing of additional briefs in connection with such appeals. All hearings held in connection with such appeals shall be conducted in the State of Alaska. The decision of the Ad Hoc Board shall be submitted to the Secretary of the Interior for his personal approval. The Ad Hoc Board is now known as the Alaska Native Claims Appeal Board and is addressed to P.O. Box 2433, Anchorage, Alaska 99510.

Clarence Antioquia
Acting Director
February 19, 1974
Published in the Federal Register on February 26, 1974
Pub.: March 6, 1974

LEGAL NOTICE

DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
JUNEAU AREA OFFICE
JUNEAU, ALASKA

FINAL DECISION
CONCERNING THE
ELIGIBILITY OF KASLOF AS A
NATIVE VILLAGE FOR
PURPOSES OF ANCSA 1971

ACTION UPON PROTEST
ADMINISTRATIVE
DETERMINATION

This is a written decision on protests filed pursuant to 43 CFR, Part 2650 by the State of Alaska, by Charles F. Herbert, Commissioner, Department of Natural Resources, Pouch M, Juneau, Alaska 99801; by the Kenai Peninsula Conservation Society by and through John Hakala, President, P.O. Box 563, Soldotna, Alaska 99669; by the Alaska Wildlife Federation and Sportsman Council, Inc. and Mr. Philip Holdsworth by and through James F. Clark of Robertson, Monagle, Eastaugh and Bradley, Attorneys at Law, P.O. Box 1211, Juneau, Alaska 99801; by the Alaska Chapter of the Sierra Club by Jack Hession, Alaska Representative, 2400 Barrow, Anchorage, Alaska 99501; and by the Bureau of Sport Fisheries and Wildlife, Department of the Interior by and through Area Director Gordon W. Watson, 813 D. Street, Anchorage, Alaska 99501, hereinafter referred to as protestants.

The protest of the State of Alaska was dated January 18, 1974 and received on January 21, 1974 by the Director, Juneau Area Office, Bureau of Indian Affairs.

The protest of the Kenai Peninsula Conservation Society was dated December 21, 1973 and received December 27, 1973 by the Director, Juneau Area Office, Bureau of Indian Affairs.

The protest of the Alaska Wildlife Federation and Sportsman Council, Inc., and Philip Holdsworth was dated January 21, 1974 and received on January 21, 1974 by the Director, Juneau Area Office, Bureau of Indian Affairs.

The protest of the Bureau of Sport Fisheries and Wildlife was dated January 18, 1974, and was received on January 21, 1974 by the Director, Juneau Area Office, Bureau of Indian Affairs.

Protestant Commissioner, Department of Natural Resources, State of Alaska, states in part as follows: "The findings of fact are defective in that no reasonable effort was made to determine if the persons enrolled to the villages were in fact residents of the villages as required by Sec. 5(b) of the Alaska Native Claims Settlement Act, 85 Stat. 690. The findings are further defective in that an examination of the Alaska Native Roll Family list for these villages indicates on its face that less than twenty-five enrolled to each village have had adequate residence in their respective villages to be considered domiciled therein on April 1, 1970. To the contrary, the data on the Family List, developed from application forms upon which the enrollees themselves furnished the information, indicates a different place of residency for almost all of the enrollees to each of these villages. The findings are further defective in that they do not include an examination of voting and licensing records of the enrollees to determine their legal residence."

Protestant Kenai Peninsula Conservation Society states: "The village does not meet the qualifications for a vil-

lage as set forth in the Alaska Land Claims Settlement Act of 1971." Protestants Alaska Wildlife Federation and Sportsman Council, Inc., and Philip Holdsworth state in part as follows: "Kaslof - The inclusion of Kaslof as a village under the Act is protested for the reasons set forth in the body of the protest with respect to the illegality of the entire enrollment as it has thus far been conducted under the Alaska Native Claims Settlement Act."

Protestant Alaska Chapter of the Sierra Club states in part: "1970 census data showed that 25 Natives were not resident of these villages as of the date of the census."

Protestant Area Director, Bureau of Sport Fisheries and Wildlife, Department of the Interior states: "We contend that neither the identifiable physical locations of Point Possession or Kaslof, nor the minimum residence requirement in relation to identifiable physical village location has been established."

The Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688-716), and 43 CFR, Part 2650 provides for the settlement of certain land claims of Alaska Natives and for other purposes. Section 11(b)(3) of the Act is quoted as follows: "Native villages not listed in subsection (b)(1) hereof shall be eligible for land and benefits under this Act and lands shall be withdrawn pursuant to this section if the Secretary within two and one-half years from the date of enactment of this Act, determines that -

(A) twenty-five or more Natives were residents of an established village on the 1970 census enumeration date as shown by the census or other evidence satisfactory to the Secretary, who shall make findings of fact in each instance; and

(B) the village is not of a modern and urban character, and a majority of the residents are Natives."

The 1970 census is not, therefore, the exclusive source of information for the determination of residency. Part 43h of Title 25 of the Code of Federal Regulations provides for the enrollment of the Natives. A main source of "other evidence satisfactory to the Secretary of the Interior" is the official enrollment which not only contains evidence of race but of residence (on the 1970 census date) as well.

Subpart 2651.2 of Title 43 CFR contains the authority for the Director, Juneau Area Office, Bureau of Indian Affairs, to act for the Secretary of the Interior in the determination of the eligibility of Natives for land benefits under the Act. As of January 21, 1974, 41 Natives had been approved for enrollment in the Native Village of Kaslof. On August 27, 1973, a field investigation was completed of Kaslof and at that time 13 Natives who used the village for a period of time in 1970 had been certified for enroll-

ment to this village and such enrollment to Kaslof, represents a majority of the residents of the village in 1970. It had on April 1, 1970, an identifiable physical location evidenced by occupancy consistent with the Natives' own cultural patterns and life style and more than thirteen Natives enrolled thereto have used the village during 1970 as a place where they actually lived for a period of time. The voting and licensing records of the State of Alaska have no bearing on the determination of the eligibility of the enrolled Natives. The Director, Juneau Area Office, Bureau of Indian Affairs, has examined and evaluated the protests together with his record of findings of fact and decision, and does hereby render a final decision determining that the Native Village of Kaslof is eligible for land benefits under said Act.

The final decision of the Director, Juneau Area Office, Bureau of Indian Affairs, shall be published in the Federal Register and in one or more newspapers of general circulation in the State of Alaska and a copy of the decision and findings of fact upon which the decision is based shall be mailed to the affected village, all villages located in the region in which the affected village is located, all regional corporations within the State of Alaska, the State of Alaska, and any other party of record. Such decision shall become final unless appealed to the Secretary of the Interior by a notice filed with the Ad Hoc Board as established in Section 2651.2(a)(5) of Title 43 CFR, within thirty days of its publication in the Federal Register. Appellants shall have not more than 15 days from the date of receipt of the notice of appeal within which to file an appeal brief, and the opposing parties shall have not more than 15 days from the date of receipt of the appellant's brief within which to file an answering brief. No more than 15 days shall be allowed for the filing of additional briefs in connection with such appeals. All hearings held in connection with such appeals shall be conducted in the State of Alaska. The decision of the Ad Hoc Board shall be submitted to the Secretary of the Interior for his personal approval. The Ad Hoc Board is now known as the Alaska Native Claims Appeal Board and its address is P.O. Box 2433, Anchorage, Alaska 99510.

Clarence Antioquia
Acting Director
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