

LEGAL NOTICE

DEPARTMENT OF THE INTERIOR BUREAU OF INDIAN AFFAIRS JUNEAU AREA OFFICE JUNEAU, ALASKA FINAL DECISION CONCERNING THE ELIGIBILITY OF CHENEGA 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 Forest Service, U.S. Department of Agriculture by and through the Alaska Regional Forester, C.A. Yates, P.O. Box 1628, Juneau, Alaska 99801; by the Alaska Wildlife Federation and Sportsman's 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, and by the Alaska Chapter of the Sierra Club, Inc., c/o Alaska Representative, 2400 Barrow St., Anchorage, Alaska 99501, hereinafter referred to as Protestants.

The protest of the U.S. Forest Service was dated January 17, 1974, and received on January 21, 1974, by the Director, Juneau Area Office, Bureau of Indian Affairs. The protest of the Alaska Wildlife Federation and Sportsman's 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 Alaska Chapter of the Sierra Club was dated January 18, 1974, and received on January 21, 1974, by the Director, Juneau Area Office, Bureau of Indian Affairs.

Protestant Regional Forester, Forest Service, U.S. Department of Agriculture states in part as follows: "The 1970 census did not report Chenega as a village. * * * The inhabitants of Chenega moved to Tatitlek after the 1963 earthquake and tidal wave which destroyed the village. * * * Chenega had an occupied village on December 18, 1971. * * * The Cordova Times, dated July 18, 1973, states that on July 17, 1973, the former residents of Chenega voted to return to the old townsite and that it was the first time they had met since 1964. (Exhibit 4.)"

No evidence, to our knowledge, was submitted by applicants concerning use in 1970. The case file reveals two affidavits that in effect say that the two people signing the affidavits knew and agreed that they would have lived there in 1970 if it were not for the earthquake and tidal wave.

No one certified that they had used the village in 1970 as a place where they actually lived. Therefore, Chenega, if eligible, must meet the requirements of Section 11 (b)(2) of the ANCSA. If less than twenty-five Natives were residents of the village on the 1970 census enumeration as shown by the census or other evidence, the official enrollment which not only contains evidence of race but of residence (on the 1970 Census date) as well.

Subpart 2651.2(b) of Title 43 of CFR is quoted in part as follows: "Except as provided in subparagraph (4), hereinafter, a village must meet each of the following criteria to be eligible for benefits under sections 14(a) and (b) of the Act: (a) There must be 25 or more Native residents of the village on April 1, 1970, as identified by physical location and occupancy consistent with the Natives' own cultural patterns and life style and at least thirteen persons who enrolled thereto must have used the village during 1970 as a place where they actually lived. * * * (b)(2) It would have been included in the 1970 Census as a village." (Emphasis added.)

Chenega was not a village on April 1, 1970. The village had been abandoned. Afognak was also a village destroyed by the 1964 tidal wave and abandoned. The village of Afognak was discussed in Congress yet the final Act had no such exception. If Congress had intended that except for similar to 43 CFR, Part 2651.2 (b)(2) it would have been included. Congress would not have eliminated considerations of acts of God if it did not intend to. It is conceivable that any location which is a likely spot for a village could be claimed as an ancestral village abandoned by acts of God, and that registration to that spot would qualify it under the Act. We do not believe that Congress intended non-existing villages to qualify as ancestral villages as a whole, the intent was to give Natives living as a village at an identifiable location a land base. It was not intended as a method of resettling or redistributing the Native population. * * *

The BIA rests its case on the clause "for other evidence satisfactory to the Secretary"; however, the Area Director has neglected to establish any characteristic which could be used as a test to establish a village. Section 31(c) says "Native village" means any tribe, band, clan, group, village, community, or association in Alaska listed in Section 11 and 18 of this Act, or which meets the requirements of this Act, and which the Secretary determines was, on the 1970 census, a village. The evidence known by the census or other evidence satisfactory to the Secretary, who shall make findings of fact in each instance, composed of twenty-five or more Natives."

Protestants Alaska Wildlife Federation and Sportsman's Council, Inc., and Philip Holdsworth state in part as follows: "Chenega The Bureau of Indian Affairs printout run November 8, 1973 shows none of those enrolled to Chenega as presently living there. Nor is Chenega listed as a village in the 1970 Census. According to the Cordova Times, dated July 18, 1973 states that on July 17, 1973 the former residents of Chenega voted to return to the old townsite and that it was the first time they had met since 1964. In this respect it is important to note that the Act of God clause included in regulation 43 CFR 2651.2(b)(2) goes beyond the authority of the Act. That is to say, Congress did not intend for aban-

doned villages to be resurrected by the Act. As is stated in the body of the argument above Congress clearly did not intend for the Act to cause population redistribution or village creation. The intent was to provide land to actual villages. Congress' intent is even more clear with respect to the Act of God situation. During the course of the debate on the various proposed bills Congress considered to set aside the village of Afognak, which likewise had been destroyed by the 1964 earthquake was discussed. Significantly, Congress did not include an Act of God clause in the Act nor did it list Afognak as a village in 11(b)(1). Congress' deliberate rejection of Afognak as a village after discussing it on the floor points out with particular clarity Congress' intent not to resurrect abandoned villages. (See 82 C.J.S. Statutes Section 1000.) By the same token, Chenega should not be resurrected as a village and to the extent that regulation 43 CFR 2651.2(b)(2) permits this to be done it is in derogation of the Act is unlawful and thus protested. For the foregoing reasons the inclusion of the Act of God clause in the regulation under the Act is protested."

Protestant Alaska Chapter Sierra Club states in part as follows: "With the exception of Haines (AA-8645), none of the unlisted villages counted 25 Natives resident on the date of the 1970 Census."

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-two 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" is the official enrollment which not only contains evidence of race but of residence (on the 1970 Census date) as well.

Subpart 2651.2(b) of Title 43 of CFR is quoted in part as follows: "Except as provided in subparagraph (4), hereinafter, a village must meet each of the following criteria to be eligible for benefits under sections 14(a) and (b) of the Act: (a) There must be 25 or more Native residents of the village on April 1, 1970, as identified by physical location and occupancy consistent with the Natives' own cultural patterns and life style and at least thirteen persons who enrolled thereto must have used the village during 1970 as a place where they actually lived. * * * (b)(2) It would have been included in the 1970 Census as a village." (Emphasis added.)

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of Chenega by the tidal wave caused by the earthquake on March 27, 1964, which was an Act of God, these Natives were not required to meet the other requirements of this subpart because such destruction took place during the ten years preceding 1970; (3) Chenega was not a modern and urban village at the time of its destruction by the tidal wave and its residents were not required to be eligible as an unlisted village; and (4) Chenega meets the requirements of this part since 59 Natives have been approved for enrollment to this village pursuant to Part 43h of Title 25 of CFR, and no non-natives reside in Chenega.

A study of the Alaska Native Claims Settlement Act and the regulations under 43 CFR 2650 and 25 CFR 43h indicates that there is no reason why Chenega should not be determined an eligible unlisted Native village.

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.

The Director, Juneau Area Office, Bureau of Indian Affairs, has examined and evaluated the protests, the evidence, and the findings of fact of the protestants, and does hereby render a final decision determining that the Native Village of Chenega 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 findings 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 to the protest. 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 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 its address is P.O. Box 2433, Anchorage, Alaska 99501.

Clarence Antioquia
Acting Director
February 15, 1974
Published in the Federal Register on February 26, 1974
Pub.: March 6, 1974

Protestants Alaska Wildlife Federation and Sportsman's Council, Inc., and Philip Holdsworth state in part as follows: "Chenega The Bureau of Indian Affairs printout run November 8, 1973, shows none of the enrollees to Point Possession as presently living there. Moreover, the 1970 census does not list it as a village."

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-two 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, 34 Natives had been approved for enrollment in the Native Village of Point Possession. On August 23, 1973, a field investigation was completed of Point Possession and in 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 to Anton Larsen Bay, represents a majority of the residents of the village in 1970. It had been established in 1970, an identifiable physical location evidenced by occupancy consistent with the Natives' own cultural patterns and life style and more than thirteen persons enrolled thereto have used the village during 1970 as a place where they actually lived. 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 Point Possession.

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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 Point Possession 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 to the protest. 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 99501.

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