

SUPREME COURT REFUSES WRIT

Calif. Court's Ruling Final as U.S. Highest Court Refuses Review

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A decision of a San Francisco appellate court that, in effect halted the State's efforts to lift the Department of Interior land freeze, became final last week when the United States Supreme Court refused to review the ruling.

Made by the U.S. Court of Appeals in December of 1969, the ruling ordered the case of Alaska v. Udall back to the U.S. District Court in Anchorage for a rehearing on the basis that the district court should not have ordered the land freeze to be lifted without first considering native claims to the land based on prior use and occupancy.

The decision of the Supreme Court, an attorney with the Ramsey Clark law firm said, should have a favorable effect on the settlement of the land claims issue.

Clark, the former U.S. attorney general has been working with the Alaska Federation of Natives in its efforts to obtain a just land claims settlement.

The Supreme Court's decision, the attorney continued from his Washington office, makes the ruling of the San Francisco court final.

"We see the effect of that ruling," he added, "as preventing the lifting of the land freeze."

The action should make it clear to Congress that there will be a terrific land mess in Alaska if it does not pass a land claims bill this year, he stressed.

An attorney who had worked with Nenana, the native village involved in the case, also expressed a favorable reaction to the high court's decision.

The decision was very good for Nenana, Fred Brown said, because it makes the ruling of the San Francisco court final. Brown is a lawyer with the firm of Barry Jackson in Fairbanks who helped to represent the natives in the suit.

Jackson, a State representative, was in Juneau for the legislature and could not be reached. However, in an earlier statement, he said that the San Francisco court, in effect, ruled that when natives object to state selection

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of lands, their claim to the land, based on the extent of use and occupancy, must be considered by the court before a determination is made.

The case originated in the U.S. District Court in Anchorage where the State of Alaska brought action against the U.S. Secretary of the Interior, at the time Steward Udall, to compel him to lift the land freeze on certain lands desired by the state.

The land freeze, which was instituted by the Secretary to hasten a Congressional settlement of the native land claims, placed millions of acres of land on a status quo basis thus preventing the State from obtaining the land under the Statehood Act.

In this particular case, the lands desired by the State were claimed by the village of Nenana—located about 60 miles southwest of Fairbanks. Therefore, attorneys for the village joined with the U.S. attorneys in opposing the State.

The village asserted its claim on the basis of aboriginal use, occupancy, and continued possession.

The district court ruled in favor of the State and ordered Udall to give the State title to the land. Disposing of the case in a summary trial, the court felt that facts relating to the extent of use and occupancy were immaterial and need not be considered.

Udall appealed the case to the Ninth Circuit court in San Francisco. There the court ordered the case back to the District Court for a rehearing.

The decision stated that there were "genuine issues of material fact" which should have been

heard and the case should not have been disposed of on the State's motion for a summary judgment.

The court also ruled that the District Court might postpone the rehearing in view of pending land claims legislation which might settle many of the issues involved in the case.

For this reason, the Nenana natives have not pushed for a rehearing.

Meanwhile the State, seeking to appeal the San Francisco decision, petitioned the Supreme Court for a writ of certiorari on the basis that the ruling was in conflict with the State's right to select certain lands under the Statehood Act and with an earlier Supreme Court ruling. It was this petition that was denied on May 4.

In discussing the Supreme Court decision, Fred Brown stressed that the action is not legal approval of the San Francisco court's decision. The Court merely said that it did not want to decide the issue and it could be for any number of reasons.

A likely reason, he added, is because Congress is currently trying to settle the land claims issue.