

# Andrus affirms state right to approved lands

Secretary of the Interior Cecil D. Andrus has ruled that the State of Alaska created "valid existing rights" when it leased or conveyed land tentatively approved for its selection under the Alaska Statehood Act and that the Department of the Interior will recognize those rights in its implementation of the Alaska Native Claims Settlement Act (ANCSA).

Andrus announced December 13 he has signed an order to that effect and that the order is in force immediately.

Andrus said questions about the validity of such rights have arisen when Native corporations select land which Interior tentatively approved for State selec-

tion before passage of ANCSA in 1971.

"During the 13 years between passage of the Statehood Act and ANCSA, the State received patent-government title to about 4.8 million acres and 'tentative approval' to another 7.7 million acres," Andrus said. "The only thing tentative about that approval, however, was the lack of surveys which would take an estimated 75 years to complete.

"Congressional intent on this point is clear, both in the Statehood Act and in ANCSA and in the debates preceding their passage. The Congress intended no 75-year delay in allowing Alaska to make beneficial use of its land. And Congress intended 'tentative approval' to be tantamount to a transfer of title—subject only to patent when surveys were completed—giving the State sufficient control to convey and commit the land to a variety of third parties."

Among the interests the State created, Andrus said, were leases under its "open to entry program," transfers to local governments, mineral leases, timber sales contracts and others.

Raising questions about the Department's position were conflicting decisions on the validity of existing rights by two Interior appeal panels. In 1974, the Interior Board of Land Appeals (IBLA) decided such existing rights were valid. In two more recent decisions, the Alaska Native Claims Appeal Board (ANCAB) ruled otherwise.

Andrus stressed that his order is not meant to disturb any of those decisions but to clearly define future Interior policy.

Under his order, Interior will consider valid rights to exist for tentatively approved lands:

- the State has conveyed to municipalities or boroughs;
- the State has leased to individuals under Alaska's "open to entry" program;

--patented to individuals by the State under that program.

The Secretary said land covered by an "open to entry" lease should be conveyed, if selected, to a Native corporation which would then replace the State as lessor. The corporation would have to honor options to buy, would receive proceeds from such sales and would receive land for which options are not exercised.

Also in the order the Secretary

directs the Bureau of Land Management to identify any original third party interests created by the State so the parties can be put on notice that their interests are involved in a Native land selection. The BLM will not adjudicate the interests.