RULINGS HURT PENDING ALLOTMENENTS

New Guidelines May Ax Most Claims

The Department of Interior's new and extremely restrictive guidelines on adjudicating Native Allotment applications puts the vast majority of 9,000 applications in severe jeopardy of being lost, according to the executive director of RurAL CAP, Mike Harper.

Previously, if the allotment applicant could show use and occupancy of the land prior to it being withdrawn as a reserve (an example - Rampart Power Site Classification in 1963, or State Selection 1900-1960) he could obtain the allotment if he had filed prior to passage of the Land Claims Act on December 18, 1971.

Only 200 allotments had been processed prior to 1968; virtually all of the 9,000 applications derived by a major coordinated drive of the Alaska Federation of Natives, RurAL CAP, the Bureau of Indian Affairs and Alaska Legal Services in 1970 and 1971 will be lost.

It is a tragedy that throughout the years, Native people have berry picked, hunted and built fish camps over lands that could have easily been theirs, but due to an unbelievable lack of knowledge, few took advantage of the Allotment Act. The frenzied effort in 1970 and 1971 could well be in vain merely because of technicalities that the Department has seen fit to place on the applicants.

The case of Bertha Trefon et al, based on an earlier decision of the Yakutat Railroad vs Setuck Harry, forced a change in the Department of the Interior policy to one of allowing Native allotments to be filed despite the super land freeze of 1968.

This tightening of the regulations with regard to use and occupancy goes against the broad intent of the 1906 Allotment Act and prior policy dealing with the Act. Although the Allotment Act has been called the Native Homestead Act, there is a distinct difference over the use and occupancy in the Allotment Act which has meant a TRADITIONAL use of the land.

Those policy guidelines to implement the existing 1906 Act have such a drastic effect that they essentially become new regulations. As with any new federal regulation, they should be adopted through the procedures of the Administration Procedures Act., i.e., draft of regulations appear in the Code of Federal Regulations, allowance for 30 days for public comment, etc.

It is clear that the effort to have 9,000 Native applications filed in 1970 and 1971 was done under a different set of rules than are now being followed to actually process the applications. Those 9,000 people completed the bureaucratic red tape to the best of their knowledge and in good faith that the Department of the Interior would handle their applications justly.

Harper reported that he was writing the Congressional Delegation for their support to relieve the extreme limitations placed upon applications by virtue of this recent action.