Poses Tanacross Land Situation—

Chief Isaac Writes to Nixon

Tanacross, Alaska
December 16, 1969

Mr. Richard M. Nixon
President of the United States
The White House
Washington, D.C.

Dear Mr. President:

Please excuse the length of this letter, but it must be done this way to tell the whole story.

Many dozens of Native allotment applications have been rejected by the Fairbanks office of the Bureau of Land Management during 1969. The majority were rejected on the basis that Public Land Order 4582 (the Super Freeze) allegedly precluded filing of applications. (It should be noted that on the basis of BLM's interpretation, the Bureau of Indian Affairs personnel were instructed to not actively assist the Natives in the allotment program.) All of the allotment applications rejected by the Bureau of Land Management claimed use and occupancy prior to the effective date of PLO 4582.

A second reason given by the BLM is that some of the allotments were within a tentatively approved state selection. In these cases, the allotment applicants claimed use and occupancy prior to the state selection.

The actions of the Bureau of Land Management are wrong and are an unconscionable deprivation of the rights of individual Alaska Natives. That they are wrong is proven by the wording of the laws and regulations. That their action is unconscionable is indicated by their obvious intentional disregard of the weight of continued, long standing, reaffirmed, clear decisions of the Secretary of the Interior and the courts.

Public Land Order 4582 was promulgated under the authority of the Act of June 25, 1910. This act states that public land may be withdrawn from settlement, location, sale or entry. As to interpretation of this act the courts, in Mason V. U.S., La. 1923, said that the words "settlement and entry" include all forms of appropriation. It was held in U.S. v. State of Minnesota, Minn. 1926, that lands already appropriated are excepted from subsequent actions. In Northern Pacific Railway Co., v. Mitchell, Wyo. 1921, the court held that authority under the act is limited to lands which are public lands. As far back as Newhall v. Sangor, 92 U.S. 761, 763 (1875), we find our highest court stating clearly and unequivocally, "Whenever a tract of land shall have once been legally appropriated for any purpose, from that moment the land thus appropriated becomes severed from the mass of public lands, and no subsequent law or proclamation or sale would be construed to embrace it."

These six court decisions should establish for the Bureau of Land Management that appropriated lands are not subject to a withdrawal promulgated under the act of June 25, 1910. However, has the Secretary of the Interior's decisions paralleled the thinking of the courts as regards withdrawals under the act of June 25, 1910?

In 1925, in William v. Brening 51 L.D. 225, 226, the Secretary held that the withdrawal in question "saved any valid existing rights in and to the lands so withdrawn, and a preferred right which had been earned, although not actually awarded, prior to the withdrawal is entitled to protection." The Secretary further held that "the withdrawal was designed to prevent the initiation of new claims and not the destruction of rights theretofore fairly earned." In a 1935 Solicitor's Opinion, 55 I.D. 205, the Department of the Interior upheld the term "subject to valid existing rights" which was contained in EO 6910 which was promulgated under the act of June 25, 1910. In a 1950 decision, Wilber Martin, Sr., A-25862, the Secretary held that the right to an allotment is saved from a subsequent withdrawal even though actual application was not filed until 11 years after the withdrawal order. In 1959, in Edward G. Harrington, A-27823, it was stated, "the Department has held that a preference right to an allotment based upon occupancy and continuous use is not affected by a later withdrawal of land." In 1962, John David Smith, et al, A-28829, the Secretary held that "If . . . he established residence on the land prior to the withdrawals . . . he acquired a right to an allotment."

The Native allotment act states that a Native shall have the preference right to secure an allotment. PLO 4582 states clearly of itself that it is subject to valid existing rights.

The Bureau of Land Management, in bold deriliction of its duty, ignores the clear statements of law, clear disclaimers in the withdrawal orders, clear interpretations of the Courts, and clear Decisions of the Secretary of the Interior.

To keep from being overly boring, the many citations available will not be cited as to the right of the Natives to their allotment where a subsequent State selection is involved. However, the laws, the court decisions and Secretarial decisons parallel closely those cited above. The prior rights were upheld against in place land grants. (The State of Alaska was only granted the right to select and gain title to public lands which are vacant, unappropriated and unreserved. Native occupied land is not "unappropriated public lands (30 L.D. 125). The right has been upheld by the Court even when the State had sold the land to a third party.

In derrogation of individual rights upheld by the Courts and by the Secretary of the Interior, the Bureau of Land Management not only ignores legal precedent, it won't even follow its own regulations. 43 CFR 2013.9-3 states that Native-occupied land "is not subject to entry or appropriation by others." 43 CRF 2013.6 requires the Bureau of Land Management to ascertain by any means in its power what lands are occupied by Indians and to suspend all other applications on land occupied by Indians who have made improvements of any value whatever thereon.

In the cases now in question, the Bureau of Land Management in Alaska has not made any effort to give any consideration to the duty clearly required of it. The practical problem is that individual Natives cannot obtain title which they have a clear right to have granted to them. Without title, it has been proven exceedingly difficult to obtain court protection against trespass and physical appropriation by others. In at least one case, the State of Alaska has selected and received tentative approval to Native-occupied land and has permitted the land and buildings to a third party.

Your assistance is needed and is respectfully requested. All that is wanted is for the laws and regulations, as interpreted by the courts and by the Secretary of the Interior, to be followed. Then, each case can stand or fall on its merits.

Thank you for your valuable time and for any help you can give us.

Sincerely yours,
Andrew Isaac
Chief, United Crow Bands