On Allotments—

Twenty-Three Recommendations (Part Three)

The decision issued by the Administrative Law Judge appealable to the Interior Board of Land Appeals. In the case of Native allotments, the Native Allotment Act does not require formal evidentiary hearings. Furthermore the discretionary nature of the Act gives the department authority to process the allotment applications on the basis of all the facts and evidence presented by the applicant or disclosed from information and data obtained by departmental personnel who have examined the land being claimed. For those applications where the field examination does not disclose sufficient evidence for allowance, the department is allowing the applicant to furnish additional evidence of use and occupancy. In addition, in considering evidence of use and occupancy, sworn statements by witnesses who have firsthand knowledge of the facts will be given substantial weight on the matters to which they testify.

Under these procedures, the allotment applicant is afforded the opportunity to be heard and present his evidence without going through a formalized hearing and incurring the expenses and inconvenience of he, his attorney, and his witnesses having to travel to the place of the hearing on a particular date, and to appear before an Administrative Judge. Under present procedures, the BLM will issue a decision on the application, taking into consideration information received during the 60-day period. This decision is appealable to the Interior Board of Land Appeals. The Interior Board of Land Appeals is empowered to send the case to an Administrative Law Judge for a hearing to determine disputed questions of fact not clear in the case record.

We feel that the procedures now being followed by this department give the Native applicant a full and fair opportunity to present his evidence of compliance with the Native Allotment Act. To change these procedures to provide additional hearings would be needlessly cumbersome and expensive to the applicant.

20. Applications for allotments which have been filed with a responsible Government agency by eligible Alaska Natives, but which were not filed prior to Dec. 18, 1971, with BIA, BLM, shall be considered as legitimate applications.

The Department is bound by law to process only those applications timely filed with the Department.

21. Allotment applications which have been rejected, or reduced, previous to the implementation of any, or all of the above recommendations shall be reviewed by BLM and BIA, and any allotments which would have been approved by the new guidelines were in effect shall then be approved.

The Solicitor is still studying this question.

22. The determination as to whether patented allotment lands are "mineral lands" shall be made using the same criteria as used for determining the validity of mineral claim under the 1872 mining act, as amended.

It should be noted that the test for determining if land in an allotment application is mineral land is distinctly different from that for determining the validity of a mining claim under the mining law. For land to be mineral in character it is not essential that there be an actual discovery of minerals on the land. But for a mining claim to be valid under the mining law it is essential that there be an actual discovery of minerals.

(More in two weeks)