

"I may not agree with a word you say but I will defend unto death your right to say it." - Voltaire

Article Written Two Years Ago Timely

By ARTHUR LAZARUS, JR.

"TANACROSS PROTESTING Charge s State Attempting Sale of Ancestral Lands At New York World's Fair"
(Tundra Times, Fairbanks, Monday, May 24, 1965)

(EDITOR'S NOTE: This article was prepared for publication two years ago, but still seems timely in light of current events. The author is a practicing attorney in Washington, D.C. who serves as general counsel to the Association on American Indian Affairs and a number of Indian tribes. Neither the Interior Department nor the Alaska Federation of Natives have included in their proposed land claims bills Mr. Lazarus's suggestion. He proposes creation of an entirely separate native lands board to investigate and determine native land ownership and use.)

Alaska's campaign to dispose of property around George Lake, 125 miles from Fairbanks and accessible only by air, ended in hasty withdrawal.

Less than a month after the filing of a written protest by native leaders, and in the wake of widespread publicity, the State abandoned its previously announced plans to promote the sale of "wilderness estates" to wealthy investors attending the World's Fair.

Like the Sioux at Little Big Horn, though, the Indians of the remote Tanacross area may have gained only a brief respite from the ultimate loss of their homeland.

Tanacross is not alone in facing that peril.

For the 43,000 natives of Alaska—Indians, Eskimos and Aleuts—who comprise almost 20% of the State's population, land still is the basis of existence. From the subsistence hunter at Barrow, far north of the Arctic circle, to the commercial salmon fishermen at Metlakatla, well over a thousand miles to the southeast, most natives to this day gain their livelihood directly from natural products.

At least equally significant in terms of future human development, the use and possession of land, solidly rooted in tradition and culture, give to the individual native a sense of security which he has not yet been able to find elsewhere in our society, with all its material benefits and all its welfare programs.

Although the time schedule will vary from village to village, and the process of change last for generations, no one expects, realistically, that a native hunting and fishing economy in the long run can endure in Alaska. The game is becoming more scarce, children learn new skills at school, and burgeoning industrial or commercial enterprises offer increased opportunity for wage work.

The key question then is whether, in making the transition to a money economy, the natives of Alaska will have as their own capital asset a fair share of the natural resources which their ancestors enjoyed unchallenged for centuries.

The Federal Government, which alone can answer that question, for almost 100 years has refused to decide. Indeed, beginning with the 1867 Treaty between Russia and the United States, under which jurisdiction over Alaska was acquired, this country's policy towards the original inhabitants of the area consistently has been marked by uncertainty, inaction and no little confusion.

As a consequence, and, ironically, while national concern is focussed upon the needs of minority groups, we find that native land rights in Alaska are today more seriously threatened than at any other time in history.

THE LEGAL BACKGROUND

The Act of May 17, 1884, providing a civil government for the Territory of Alaska, declared that the natives "shall not be disturbed in the possession of any lands actually in their use and occupation or now claimed by them, but the terms under which such persons may acquire title to such lands is

reserved for future legislation by Congress." This language, according to its proponents, was intended "to protect to the fullest extent all the rights of the Indians in Alaska."

The record of the United States in carrying out that promise is notably undistinguished. Native rights have been safeguarded in a few instances, such as the setting apart of the Annette Islands for the Metlakatla Indians (originally from Canada) under a special statute in 1891, and the establishment of six scattered reservations by the Secretary of the Interior under the Act of May 1, 1936.

In addition, since 1900 the Federal Government has made more than 150 separate withdrawals of small tracts from the public domain in Alaska for native use and occupancy, for "Indian purposes," or for programs, such as schools and hospitals, beneficial to the natives.

As pointed out two years ago in a report to the Secretary of the Interior by a three-man Task Force on Alaska Native Affairs, the extent of the natives' land rights in the latter reserves "may differ with the language of the various orders and proclamations, but in no case does it appear to be as great as the Indians' interest in lands reserved by treaty or statute, or by Executive Order in the lower 48 States."

More important, Congress still has failed to enact general legislation to settle native land titles so for every acre protected and every right preserved, a host either have been or are in the process of being irretrievably lost.

In theory, therefore, possessory rights in Alaska remain today as they were 80 years ago, unconfirmed, yet unextinguished. In reality, however, native rights have become increasingly vulnerable with the passage of time—a trend which the grant of Statehood has sharply accentuated.

STATEHOOD

Traditionally, the policy of the United States has been to respect native land rights and to treat the original inhabitants of this country as the owners of the territory which they used and occupied from time immemorial.

This policy first found expression in the Northwest Ordinance of 1787 which declared that the "utmost good faith shall always be observed toward the Indians" and that "their land and property shall never be taken without their consent," and subsequently was confirmed in various Enabling Acts as new States petitioned to join the Union.

Under this policy, the States disclaimed any right or title to real property "owned or held" or which "may be held" by Indians, i.e., all lands, including areas possessed under original Indian title, not ceded by the natives or otherwise obtained by the United States.

Over a period of years, the Federal Government would formally extinguish the bulk of the Indian claims through treaties and agreements, and the lands so released became part of the public domain—open to settlement or entry under the public land laws and subject to the jurisdiction of the State.

Section 4 of the Alaska Statehood Act of July 7, 1958, contains a comparable disclaimer over any lands or property, "including fishing rights," which "may be held by any Indians, Eskimos, or Aleuts...or is held by the United States in trust for said natives."

The section further provides that nothing in the Statehood legislation shall be construed to "recognize, deny, enlarge, impair, or otherwise affect any claim against the United States," because, to paraphrase the words of the committee report in the House of Representatives, Congress did not here intend to deal with the legal merits of indigenous rights, but rather left the matter in status quo for either future legislative action or judicial determination.

Superficially, the foregoing disclaimer is unexceptionable, since it seems to follow past precedents and also seems to carry forward the promise of fair treatment made in the 1884 Territorial Act.

The fact is, however, that the 1958 Statehood Act does not leave native possessory rights untouched, but instead opens the door for Alaska to acquire exactly those lands which the natives may claim.

The result is achieved in Section 6, under which the new State, unlike any of its predecessors, over a period of 25 years may select 102,550,000 acres from the public domain for its own use.

Generally excluded from State selection at this time are the northern and northwestern parts of Alaska, including most of the areas used and occupied by the Eskimos.

Nothing in the law clearly prevents Alaska from selecting lands subject to original Indian title and, under a decision of the Supreme Court in 1955 involving the Tee-Hit-Ton Indians, the natives apparently would not even be entitled to compensation for the loss of such property.

EXECUTIVE FRUSTRATION

The threat to native rights posed by the Alaska Statehood Act would be mitigated if the law now in force provided a meaningful way for preserving at least some portion of the natives' historic land use and occupancy. The Interior Department

Pollock Favors Alternatives After Dam Block

Though the Department of the Interior has succeeded in blocking construction of the Rampart Dam, other roads to development are open, U.S. Rep. Howard W. Pollock said last week.

Alaska could have a multi-million dollar mineral extraction industry in areas other than oil and gas, Pollock reported.

"The Rampart Report has suggested a \$50 million dollar mineral exploration and development program over a five year period," he said. "This would include establishment of an Institute of Arctic Mineral Resources at the University of Alaska."

Pollock said he thought the idea was excellent.

"Another \$26 million is proposed over a 15-year period to develop Alaska's vast fisheries potential," Pollock said. An Alaska Institute for Fisheries Development has been proposed.

Also a study of extending the Alaska Railroad into remote areas has been proposed.

Pollock indicated that he favored these suggestions and had written to Secretary of Interior Stewart L. Udall, urging their fast implementation.

Red Salmon

Season May Be Shorter This Yr.

The red salmon season may be shorter than usual, Charles Meacham, Alaska Fish and Game regional supervisor for its Division of Commercial Fisheries said last week.

Japanese fishermen have been fishing American bred salmon areas and are expected to cut deeply into the allowable 1967 catch of 5.5 million reds.

Meacham, speaking from Bristol Bay headquarters at King Salmon, said the run may be three to four days earlier than its normal July 4 peak. It may have to be terminated abruptly, causing large financial losses to the canning industry.

Rains Help to Bring Fires Under Control

Cloudy weather and scattered rain showers have helped BLM fire fighters bring all forest fires under control.

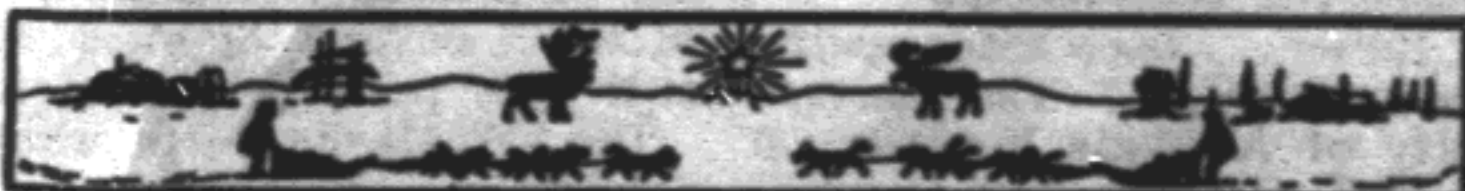
The 9 acre sand creek fire which started two weeks ago is out. Another 15 acre blaze 25 miles north west of Livengood, is under control and in the mop-up stage. The 1 acre beaver creek fire is also in the mop-up stage.

Four smokejumpers have controlled a one acre blaze on the Yukon River west of Fort Yukon.

BLM patrol flights are keeping a close watch on the 5 acre White River fire 25 miles inside the Canada border. No action has been taken on the fire. Scattered showers in that area are expected to put out that fire also.

GOLF: A lot like taxes - you drive hard to get to the green and then wind up in the hole.

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