Article Timely . . .

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ment has made a sincere effort during recent years to knock down administrative barriers to the grant land titles. Nevertheless existing statutes remain too narrow in scope to offer real protection.

Under an act passed in 1906, for example, the Secretary of the Interior is authorized to allot not more than 160 acres of non–mineral land as a homestead to any Indian or Eskimo, who is either the head of a family or over 21. According to the 1962 Task Force report, in the early years of administering this law, the Federal Bureau of Land Management (BLM) interpreted its provisions generously so as to pass to the natives ownership of their fish camp sites, their hunting cabins and trap lines, reindeer headquarters and corrals, and tracts regularly used for berry–picking, plant–gathering or other similar purposes.

Beginning in 1930, on the other hand, BLM progressively tightened its regulations to a point where allotments essentially were limited to homesites or a single piece of cultivated land. Small wonder that the number of native homestead titles granted since 1906 averaged just two per year.

In September of 1964, the Interior Department Solicitor ruled that the Secretary is empowered to allot non–contiguous tracts under the 1966 Act, where all the land together constitutes the actual home of the applicant, and that, in determining whether the statutory test of use and occupancy has been met., the Secretary again may consider the native's mode of life, the climate and the character of the land.

Unfortunately, the Department has not requested, and Congress has not appropriated, the funds necessary to process the ever–increasing number of homestead applications (now approaching 1000) which this opinion encouraged.

Moreover, even if the newly liberalized regulations were fully implemented, 160 acres of non–mineral land in Alaska ordinarily is insufficient to furnish its owner a satisfactory livelihood.

The Townsite Acts applicable to Alaska further illustrate the inadequacies of existing law. In short, while the establishment of townsites in Alaska was authorized generally under an 1891 statute, the Act of May 25, 1926, contains provisions for the creation of native townsites, with special protections being given to native landholders therein.

Notwithstanding, as the law was administered by BLM until recently, virtually every native village has been organized under the 1891 Act.

Moreover, even if the more appropriate 1926 Act were invoked, that law would not permit the setting aside of sufficient land outside a village to support the entire community at present levels of human and resource development.

In the absence of statutory authority for granting comprehensive land titles, and under prodding from the Association on American Indian Affairs, BLM and the Federal Bureau of Indian Affairs (BIA) recently inaugurated special intra-departmental procedures for giving the natives actual notice when the State of Alaska selects property in their neighborhood, and BIA further assists the natives in filling formal written objections where–as in the previously cited Tanacross case–the land so designated is used or occupied by them.

Earlier native protests against State selections, however, uniformly have been rejected by the Alaska Director of BLM on the grounds that his agency lacks jurisdiction to determine "the validity of aboriginal title," and, accordingly, that the natives' unrecognized claims are subordinate to the State's clearcut right of selection.

According to information furnished by the Department, the natives have delineated nine claimed areas, ranging in size from 300,000 to 3 million acres, and totalling 12 million acres. Out of the 16.1 million acres selected by the State, 3.2 million overlap the native use areas and are the subject of protests.

BIA, siding with the objector Indian villages, asserts that the real issue involved is the extent to which the 1958–Statehood Act safeguards native use and occupancy, and the cases now are on appeal within the Interior Department....

MONEY SETTLEMENTS

Although not before Congress at this time, one feequently suggested method for handling the issue of native titles in Alaska is the creation of a special tribunal, similar to the Indian Claims Commission now in operation, which would be authorized (1) to hear and determine aboriginal land claims, and(2) if use and occupancy were proved, to award the natives compensation for the loss of their property.

Unlike the Indian Claims Commission, however, which can decide only causes of action arising before 1946 (mostly due to wrongs committed in the Nineteenth Century), the proposed Native Claims Commission would have jurisdiction over future as well as past takings. In the case of Alaska, therefore, where alternatives still are available, the question of whether money settlements are a fair and desirable substitute for land is far from academic.

Our country's history of persuading native peoples to exchange land for cash hasdly is evidence that such transactions ultimately benefit the sellers. Unversed in the wisdom of capital investment and, in any event, unprepared within a brief period to modify the basic structure of their society, the Indians usually found that the money soon followed the property, with abject proverty their only replacement.

As the 1962 Alaska Task Force reported to the Secretary of the Interior, if the lands selected or certain to be selected by the State were completely removed from Indian use, "the natives would be trading their present way of life for...money payments which, while compensation them for the worth of the land, might not compensate them for the destruction of their economy."

Secondly, experience under the Indian Claims Commission Act, where the bulk of the cases filed still are not decided, shows that money judgments often come too little and always come too late. Appropriately, one of the most flagrant examples in modern legal annals of justice delayed involves the Tlingit & Haida Indians, who were allowed by Congress in 1935 to sue the United States over ownership of some 18,000,000 acres in southeastern Alaska and who, although an order determining the Government's liability has long since been entered, have yet to see an award of damages. Indeed, the Tlingit & Haida case is so old that an entire new generation has been born, the Indian community has partially dispersed...

Finally, and perhaps most important, cash settlements based upon land values only accidentally will reflect the natives' true needs. As an illustration, on May 13, 1964, the Secretary of the Interior announced that the Tyonek Indians of Alaska, numbering about 200, had accepted bonus bids of almost $11 million for oil and gas leases covering about 8,500 acres within their reservation. Quite obviously, the Tyonek Indians have far less need for more money than, say, the natives of Minto, also numbering about 200, who have no reservation and, according to a BIA report just released, an average disposable personal income, including welfare, of around $800 per family per year. Nonetheless, because of the potential subsurface values. Tyonek undoubtedly would receive greater compensation than remote Minto out of claims litigation over the transfer of aboriginal lands to the State.

A PROPOSED SOLUTION

While cash awards for lost real property offer little hope to the natives of Alaska, the theoretical possibility that Congress may recognize all aboriginal land rights seems even more unpromising.

Regardless of whether the argument is correct that native ownership of relatively large areas will impede development of the State, the currency of that feeling is sufficient for all practical purposes to rule out the alternative.

Moreover, the establishment of a "reservation system" in Alaska was, at least before Statehood, as politically unpalatable to many natives as the permanent settlement of land claims on the basis of subsistence use and occupancy

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ELDERLY CITIZEN OF MINTO–Lucy Charlie, one of several old women of the village of Minto, is a skilled birch bark basket maker as are many other women. The women make baskets to supplement their subsistance economy.

–DIGNA JOHNSON Photo

Congresswoman

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the Bureau of Land Management and the U.S. Forest Service.

Although she was on something of a vacation during the recess of Congress for the 4th of July, she decided to make "purely a business trip" to Alaska to see the functions of the bureaus she helps to fund.

The Congresswoman made a side trip to Tyonek, a wealthy Indian village in Cook Inlet near Anchorage.

"Tyonek is immaculate and clean which points out that if the Indian has the means, he will take care of himself accordingly," Mrs. Hansen said.

She noted that in the other villages she visited, sanitation and health facilities were badly needed. She also took particular notice of the mosquitoes at Minto.

"When I was in Minto, a little girl warned me, 'Look out Mrs., those mosquitoes will bite hard.' There is a need to do something about that."

Obviously interested in what she had seen on her trip, Rep. Hansen plans to "make a newsletter of the trip and distribute it to my constituents."

"They also should know what is going on up here," she said.

Mrs. Hansen was accompanied on her trip by Clarence Pautzke who heads the Fish and Wildlife Service in Washington, D.C. Bob Carroll of the Fairbanks District Office of the BIA escorted them to the villages.

Mrs. Hansen's home is at Cathlamet, Washington. She has worked with the Indians in her state along educational lines.

She is also interested in the Pribilof Islands "to see what progress has been made there."

"I want to come back next year," she said, "and I will visit Eskimo villages on that trip."

Research . . .

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"We have already held preliminary meetings with leaders of native associations and council representatives," Fischer said. "This has seldom been done in Alaska. The standard approach has been to do things 'for' the natives."

The Northwest Study will take in communities from Unalakleet to Barrow, including Nome and Kotzebue.

The second grant was made by the Bureau of Commercial Fisheries for a study of the St. Paul community in the Pribiloff Islands. The community is now governed by the federal government.

Under the Fur Seal Act, residents can set up their own townsite provided "the Secretary of the Interior is satisfied that a viable self–governing community, which is capable of providing adequate municipal services, is established or will be established."

"The purpose of the St. Paul study is to provide the secretary with a factual basis for making a decision," Fischer explained and he added:

"Both of these studies will help set a pattern for the rest of the state in regards to economic development potentials and the best means by which these potentials can be realized."