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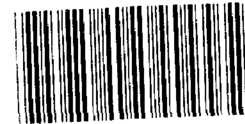
Report to the Chairman, Committee on Interior and Insular Affairs, House of Representatives

July 1988

INDIAN AFFAIRS

Alaska Native Allotment Eligibility Process Can Be Improved



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Resources, Community, and
Economic Development Division

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July 8, 1988

The Honorable Morris K. Udall
Chairman, Committee on Interior
and Insular Affairs
House of Representatives

Dear Mr. Chairman:

This report responds to your request asking us to review the Department of the Interior's administration of the Native Allotment Program. Specifically, this report discusses the extent to which Interior's Bureau of Land Management has ensured that certain requirements have been met in its eligibility determinations under the program and the progress the Bureau has made in completing the program.

As agreed, unless you publicly announce its contents earlier, we plan no further distribution of this report until 10 days from its issue date. At that time, we will send copies to the Secretary of the Interior and other interested parties and make copies available to others upon request.

This report was performed under the direction of James Duffus III, Associate Director. Other major contributors are listed in appendix V.

Sincerely yours,

J. Dexter Peach

J. Dexter Peach
Assistant Comptroller General

Executive Summary

Purpose

Under the Alaska Native Allotment Act of 1906, Alaskan Natives—Aleuts, Eskimos, and Indians—were allowed to apply for ownership of up to 160 acres of land they had used. Despite the law's repeal in 1971, however, the federal government has not yet made eligibility decisions on many applications, and for many cases that have been approved, legal title has not been transferred to the Natives.

On one hand, some have expressed concern that the Department of the Interior's Bureau of Land Management was too slow in completing the allotment process. On the other hand, others have asserted that the Bureau was not thoroughly reviewing applications prior to approval. As a result, the Chairman, House Committee on Interior and Insular Affairs, requested that GAO evaluate the Bureau's management of the Native Allotment Program. Specifically, GAO addressed

- how well the Bureau has ensured that certain requirements have been met in its eligibility determinations (see ch. 3) and
- the progress the Bureau has made in completing the program (see ch. 4).

Background

Under the Alaska Native Allotment Act of 1906, as amended, Alaskan Natives were allowed to obtain legal title to up to four parcels of land not exceeding 160 acres in total. However, the act was little used by the Alaskan Natives; fewer than 900 total applications had been filed through 1969. Anticipating the act's repeal, several organizations assisted the Natives in filing applications for Native allotments. By the time the act was repealed on December 18, 1971, a total of about 10,000 applications had been filed. All applications filed before the date of repeal remained eligible for consideration.

In 1980 the Congress legislatively approved all applications that were filed on or before December 18, 1971, regardless of whether they met certain eligibility requirements. However, this legislative approval did not apply to lands that were claimed or protested by other parties (or in certain other cases that were exempt from legislative approval). Rather, the Bureau was required to review each application for these contested lands to determine whether the applicant met the eligibility requirements.

For those lands requiring the Bureau's review, the primary eligibility requirements are that the Alaskan Native used and occupied the land applied for in a substantially continuous manner for a 5-year period and that the use was at least potentially exclusive of others (e.g., the site

was not usually used by others). Eligibility determinations are complicated by the fact that the land uses upon which many applications are based—hunting, fishing, and berry picking—often leave little or no physical evidence of use on the ground.

Results in Brief

On the basis of a statistical sample, GAO estimates that for about 45 percent of the Native allotment parcels approved by the Bureau, the case files did not contain sufficient information to demonstrate that eligibility requirements had been met. Moreover, in some of the cases GAO reviewed, the case files actually contained information suggesting that the requirements may not have been met. While this does not necessarily mean that ineligible applicants received allotments, it does indicate that the Bureau has not always followed up on questionable cases to ensure that only eligible applicants receive Native allotments.

Although the Native Allotment Act was repealed over 15 years ago, the program is far from complete. The Bureau estimates that it will not complete the process of making eligibility determinations and transferring legal title to all eligible applicants until about the turn of the century. Many of the factors resulting in this lengthy time period (e.g., the difficulty of surveying land in an inclement environment) are not within the Bureau's control.

Principal Findings

The Bureau's Native allotment tracking system does not contain current information on the status of allotment parcels applied for. Consequently, GAO selected and analyzed a statistical sample of 400 Native allotment applications, involving 654 distinct parcels of land, to estimate the current status of the lands applied for under the program. On the basis of this sample, GAO estimates that 15,019 parcels of land had been applied for under the program. Of these, GAO estimates that 5,236 parcels had been legislatively approved without regard to the eligibility requirements. Of the remaining parcels, GAO estimates that 4,685 were approved by the Bureau as having met the eligibility requirements; 1,424 were denied by the Bureau or withdrawn by the applicant; and 3,674 were still pending the Bureau's review. (See ch. 1.)

Eligibility Determinations Often Not Fully Documented

Of the estimated 4,685 parcels the Bureau had approved on the basis of the eligibility requirements, GAO estimates that at the 95-percent confidence level, between 30 and 292 were based on files that contained information suggesting that the requirements may not have been met.

Nevertheless, the Bureau awarded these parcels to the applicants without obtaining additional information to substantiate the applicants' claims. In one case reviewed by GAO, for example, the Bureau's field examiner did not believe the applicant had used the land or met the eligibility requirements. The Bureau then requested additional information from the applicant, but the application was subsequently approved even though the case file contained no additional information.

In other cases, while such negative information was not found, the case files supporting the approvals did not contain sufficient information to demonstrate that the eligibility requirements had been met. GAO estimates that there were between 1,543 and 2,361 such cases among the Bureau-approved parcels (95-percent confidence level).

The Bureau's approval of parcels based on negative or insufficient information does not necessarily mean that ineligible applicants received land but does indicate that the Bureau has not always taken the steps necessary to ensure that only eligible applicants received land. According to the Bureau's procedures, such actions may include requiring the applicant to provide additional information such as witness statements.

Bureau officials in charge of the Native allotment eligibility process told GAO that, in practice, eligibility determinations for allotments have, in some cases, been limited to determining the presence of natural resources consistent with the claimed uses and an absence of conflicting claims for the land. This helps to explain—but not justify—the approvals that were based on case files that contained unresolved negative or insufficient information. BLM officials acknowledged that, given GAO's findings, BLM needs to strengthen its Native allotment review process. (See ch. 3.)

Program Implementation Has Been Slow

Over 15 years after the Native Allotment Act was repealed, the program is far from complete. The Bureau has yet to make eligibility determinations for an estimated 3,674 allotment parcels. Beyond this, the Bureau must survey an estimated 7,372 already approved parcels, as well as those that will be approved in the future, before all eligible applicants receive legal title to their allotments.

The Bureau had experienced delays in implementing the program because of administrative difficulties, low program priority, policy changes, and litigation and appeals. For example, the Bureau made several policy changes on the processing of Native allotment claims in the

early 1970s. As a result of the changes, the Bureau had to reopen cases that had been previously closed.

Although most of these difficulties are in the past, the Bureau is still estimating that it will not complete all aspects of the Native Allotment Program until the end of this century. The major reasons it will take this long include resource constraints; the climatic conditions and access constraints of Alaska, which complicate the Bureau's land surveys; and the demands of other Bureau land conveyance responsibilities. (See ch. 4.)

Recommendation

GAO recommends that the Secretary of the Interior instruct the Director of the Bureau of Land Management to strengthen Native allotment review and approval practices. Specifically, the Bureau's Director should ensure that existing procedures are followed so that applications are approved only after the Bureau has obtained sufficient information to confirm that applicants have met the eligibility requirements.

Agency Comments

The Department of the Interior said that it accepts GAO's recommendation and has already taken action to implement it. Specifically, Interior said that it has adopted an additional checklist for use in reviewing Native allotment case files that requires its adjudicators to be certain of the sufficiency of the case files. Interior disagrees, however, with GAO's estimate that 45 percent of all files for approved allotments did not contain sufficient information to demonstrate that eligibility requirements had been met. As explained in chapter 3, GAO continues to believe that within the confidence intervals discussed in the report, the 45-percent figure accurately reflects the situation. Interior also provided GAO with additional comments which are presented and evaluated in the report and in appendix II.

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Abbreviations

ANCSA	Alaska Native Claims Settlement Act
ANILCA	Alaska National Interest Lands Conservation Act
BIA	Bureau of Indian Affairs
BLM	Bureau of Land Management
FWS	Fish and Wildlife Service
GAO	General Accounting Office
IBLA	Interior Board of Land Appeals
NPS	National Park Service

Introduction

Alaska encompasses an area of about 365 million acres, more than the combined area of the next three largest states—Texas, California, and Montana. Although Alaska is by far the largest state, it is one of the least populated, with about 500,000 people. Most of Alaska's physical expanse is undeveloped.

For generations, Alaskan Natives—Aleuts, Eskimos, and Indians—have used the land to hunt, fish, and gather wild plants for food. Land use was seasonal, and its intensity depended on the availability of these subsistence resources. For example, Alaskan Natives may have used one location as a fishing camp, another location as a hunting camp, and a third as a berry-picking site.

Under the 1867 Treaty of Cession, which transferred Alaska from Russia to the United States, all of Alaska's lands and waters became public domain. The Treaty did not clearly define the status of the Natives, their rights, or their land ownership.

The purpose of the Alaska Native Allotment Act of 1906 (34 Stat. 197) was to enable Alaskan Natives to legally own the lands they had used and occupied for generations. Under the act, Alaskan Natives were allowed to apply for up to 160 acres of land. In 1964 the Department of the Interior (Interior) issued regulations that allowed Alaskan Natives to apply for up to four parcels of land as long as the total acreage did not exceed 160 acres.

The Native Allotment Act, however, was little used by the Alaskan Natives. By the time Alaska became a state in 1959, only about 50 applications had been filed for Native allotments. Although the number of applications increased after statehood, fewer than 900 total applications had been filed through 1969—about 2 years before the repeal of the act.

However, just before the Congress passed the Alaska Native Claims Settlement Act (ANCSA) in 1971, many more Alaskan Natives filed Native allotment applications. ANCSA repealed the Native Allotment Act but preserved any Native allotment application pending before Interior on December 18, 1971. When various groups in Alaska realized that the Congress planned to repeal the Native Allotment Act, they assisted the Natives in filing allotment applications. As a result, Alaskan Natives had filed a total of about 10,000 applications by the December 18, 1971, deadline. The influx created a large backlog of Native allotment applications, many of which have yet to be resolved.

The Congress reduced the backlog of unprocessed applications in 1980 by legislatively approving all those that were not in conflict with another claim for the same land, were not protested, or otherwise exempt. Applications that were not eligible for legislative approval must continue to meet certain eligibility standards to be approved.

Status of Native Allotment Applications

Over the life of the Native Allotment Program, the Bureau of Land Management (BLM) has received about 10,000 applications. During our review, however, we found a number of instances in which different applications were from the same individual. BLM's practice in such cases is to consolidate applications from the same individual into one case file and treat it as one application. On the basis of the results of our work, we estimate that the 10,000 applications BLM has received will be reduced to about 9,186 (8,909 to 9,463)[1] individual applications after all applications from the same individuals are consolidated.

BLM keeps track of the status of Native allotments on an application basis. However, each Native allotment application may involve up to four parcels of land, each of which may be at a different processing stage. For example, an application for four parcels may have (1) one parcel approved by BLM, (2) one approved legislatively, (3) one disapproved, and (4) one still pending. Thus, we conducted our analysis of the program on the basis of parcels rather than applications. However, BLM's Native allotment tracking system does not provide an accurate count of the status of Native allotments on a parcel basis. Consequently, we selected and analyzed a statistical sample of 400 Native allotment applications involving 654 distinct parcels of land. The results of this work allowed us to estimate the number of parcels in each of the four categories listed above.

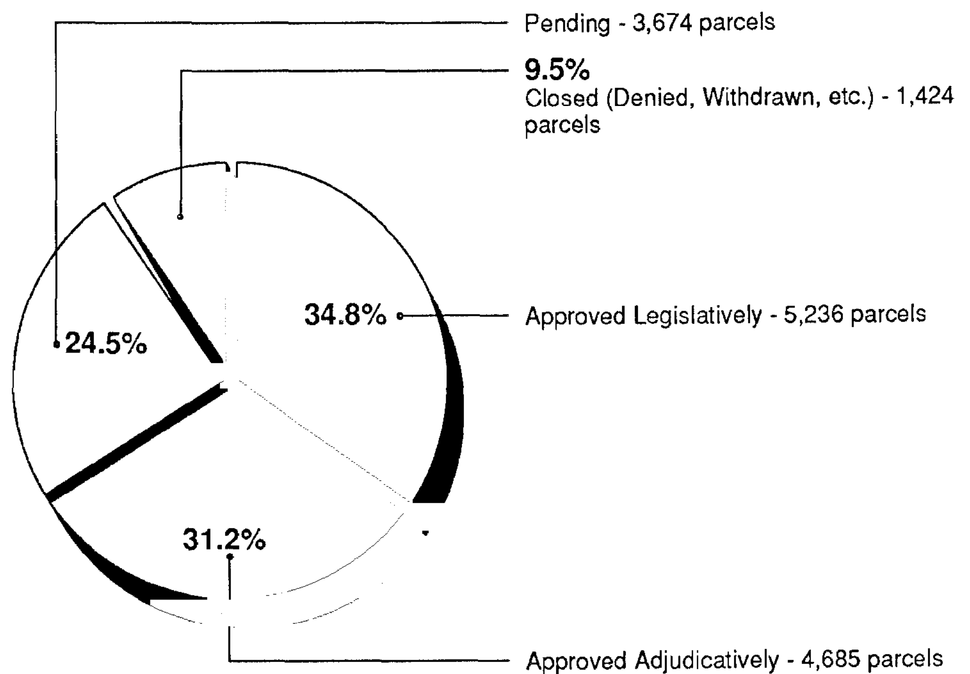
On the basis of our sample we found that, on average, each applicant applied for 1.63 (1.54 to 1.72) parcels of land. On this basis, we estimate that the 9,186 applications from individual applicants involve 15,019 (14,184 to 15,854) parcels of land.

Figure 1.1 shows the status of land parcels in the Native Allotment Program as of July 1987. An estimated 5,236 (4,498 to 5,974) parcels were legislatively approved and an estimated 4,685 (4,001 to 5,369) parcels

[1] When numbers in parentheses appear in this report, they are the lower and upper bounds of a 95-percent confidence interval. (Our objectives, scope, and methodology section contains a discussion of confidence intervals.)

have been adjudicatively approved by BLM under the eligibility requirements. Of the remaining parcels, an estimated 1,424 (1,039 to 1,808) have been closed without a land conveyance by BLM and an estimated 3,674 (2,995 to 4,354) are still awaiting a decision.

Figure 1.1: Status of Land Parcels in the Native Allotment Program



Note: Estimates were projected from GAO's sample.

Administration of the Native Allotment Program

Interior has overall responsibility for the Native Allotment Program. Several agencies within Interior play a role in or have been involved with the program. BLM has primary responsibility for the program. BLM evaluates the validity of the claim, surveys the land to locate the claim's position, and conveys title for the approved allotment to the applicant. Until it has surveyed an allotment, BLM cannot transfer legal title to the applicant.

Several other agencies are also involved with the program, as follows:

- The Bureau of Indian Affairs (BIA) is responsible for certifying that the applicant is a Native and is qualified to make an application under the act.
- The Interior Board of Land Appeals (IBLA), among other things, makes decisions for Interior on appeals related to actions taken by Interior officials relating to the use and disposition of public lands. IBLA has been heavily involved in the Native Allotment Program, including dealing with appeals by Natives whose allotment claims have been denied.
- The National Park Service (NPS) has been extensively involved in the Native Allotment Program, primarily through its review of Native allotment applications that claim lands within the boundaries of national parks.
- The Fish and Wildlife Service (FWS) and the Forest Service which is in the Department of Agriculture, also review applications that make claims for allotments within the boundaries of lands they manage.

Objectives, Scope, and Methodology

The Chairman, House Committee on Interior and Insular Affairs, asked us to evaluate BLM's administration of the Alaska Native Allotment Program. To evaluate BLM's effectiveness, we selected and reviewed a statistically random sample of 400 Native allotment applications. We reviewed the cases selected in this sample to make several different kinds of determinations, including the following:

- We used our sample of 400 applications, which involved 654 distinct parcels of land, to project an estimate of the total number of parcels applied for in the program.
- Within our sample, we analyzed the actions BLM had taken on each parcel, and categorized each parcel as legislatively approved, approved by BLM after going through the eligibility determination process, still pending, or closed with no land conveyance. We used our results to estimate the total number of allotment parcels in each of the four categories.
- We examined those parcels that BLM had adjudicatively approved to determine the extent to which information in the case file supported the decision that had been made. We used this information to estimate the number of parcels that BLM approved on the basis of negative or incomplete case files.

The results presented in this report are statistical estimates based on our analysis of the sampled applications. The precision of the statistical estimates was developed at the 95-percent confidence level and is shown

as the lower and upper bounds of the 95-percent confidence interval. This means that 95 times out of 100, the true universe value of the estimate is covered by the lower and upper bounds of the confidence interval. The estimates are shown in the report with the bounds of the confidence intervals shown in parentheses following the estimates. The bounds of the confidence intervals for the estimates are shown the first time the estimates appear. All subsequent discussion of the estimates appears without the confidence intervals. (App. III contains a complete discussion of our sampling methodology.)

In addition to analyzing our sample of applications, we reviewed applicable legislation, regulations, policy papers, procedure manuals, judicial decisions, and other materials relating to BLM's Alaska Native Allotment Program. We also reviewed and analyzed periodic progress reports on the various activities of BLM's Native Allotment Program, correspondence between federal and state agencies, and Native entities and individuals, as well as budgetary, staffing, and cost records and information. We interviewed federal and state officials, and officials at the Alaska Legal Services Corporation and Native corporations. We conducted our review at Interior's headquarters in Washington, D.C., and at various Interior agencies including BLM, BIA, FWS, NPS, and IBLA. We conducted our review between March and December 1987 and performed our work in accordance with generally accepted government auditing standards.

During our review, the staff of the House Committee on Interior and Insular Affairs also asked us to review certain aspects of the NPS' review of Native allotments in national parks. The results of this work are discussed in appendix IV.

Native Allotment Program Eligibility Requirements and Process

Only Alaskan Natives—Aleuts, Eskimos, and Indians—are eligible to receive Native allotments. For allotments to be approved, most applicants must meet certain eligibility requirements. The regulations governing the program require that the applicant must have used and occupied the land in a substantially continuous manner for 5 years and that the applicant's use of the land must have been at least potentially exclusive of use by anyone else.

To determine whether an applicant meets eligibility requirements, BLM considers a number of factors, such as the applicant's knowledge of the land claimed, the presence of natural resources consistent with the claimed use, and physical evidence of use of the land. In those cases in which insufficient information is available on which to base an approval, BLM's procedures call for requesting additional information from the applicant and ultimately offering the applicant an opportunity for a hearing on the matter before BLM can deny an application.

However, some applicants did not have to demonstrate that they met the use and occupancy requirements. The Congress granted legislative approval, effective June 1, 1981, to all applications that were pending on or before December 18, 1971, with certain exceptions. We estimate that 5,236 parcels were approved in this manner.

Major Eligibility Requirements

The primary eligibility criteria for receiving an Alaska Native allotment are that the applicant used and occupied the land for at least 5 years in a manner that was substantially continuous and that such use was potentially exclusive of use by others. In the 80 years since Interior initiated the Native Allotment Program, the eligibility requirements for receiving an allotment have changed a number of times. Some of the changes have made it more difficult to qualify for an allotment, while others have made it easier to qualify.

Use and Occupancy

Occupancy of the site claimed as a Native allotment was not a requirement in the Native Allotment Act. Amendments to the Native Allotment Act enacted in 1956, however, required substantially continuous use and occupancy for 5 years as a condition for obtaining an allotment. Interior initially implemented this requirement by limiting the amount of land allotted to that which an applicant actually occupied and by approving only one parcel of land per application. It also reduced the size of an applicant's allotment or disapproved the application if there was a lack of proof of substantial use and occupancy.

During the 1960s, Interior liberalized its interpretation of the use and occupancy requirement. For example, in 1965 BLM revised its use and occupancy requirements to recognize the Natives' customary seasonal use of the land. Such use was often based on a subsistence lifestyle, and the claimed uses of the land—hunting, fishing, and berry picking—often left little, if any, physical evidence of use on the land. Interior also changed its rules to allow an Alaskan Native to apply for up to four noncontiguous parcels of land not to exceed 160 acres in total.

Exclusive Use

The requirement that use and occupancy of the land must have been at least potentially exclusive of others was added in 1965. It established the basis for denial of allotment claims that are in conflict with areas of prior Native community use or if substantial use of the land by others is without the applicant's permission. IBLA has interpreted this regulation as meaning that when the lands applied for are more in the nature of a common use or community use area, such use is inconsistent with the personal claim of possession at least potentially to the exclusion of others. For example, IBLA has ruled that an applicant's seasonal use for fishing, hunting, and trapping within an area used by others for similar purposes, without the consent of the applicant, does not satisfy the exclusive use requirement.

BLM's current policy provides that this requirement will be a basis for denial only if it is proved that an allotment application is in conflict with areas of prior Native community use, or if others make substantial use of the parcel (e.g., by means of improvements) without the applicant's permission.

Determining Eligibility for Allotments

The allotment application process began when an Alaskan Native filed an application with BIA or BLM. This stage of the process is over now because all applications had to be submitted by December 18, 1971. The application required the applicants to designate the land's location, state their age or head of household status, and specify how and when the land was used. BIA then certified that the applicant was an Alaskan Native.

After being certified by BIA, the application was assigned to BLM, which is responsible for the remainder of the application review process. BLM's basic responsibilities are to (1) determine whether the lands were available for selection at the time use and occupancy began; (2) perform a field examination to locate the claimed land and collect information to

determine whether the applicant meets the eligibility requirements; (3) approve or disapprove the application; (4) survey the land, if the application is approved; and (5) issue a certificate of allotment.

The statutes and published regulations governing allotments to Alaskan Natives are very general. The substantive criteria BLM applies to evaluate applications derive largely from legislation, regulations, departmental policy memoranda, and IBLA and court decisions. In January 1987 BLM consolidated its guidance for processing Native allotment applications into the Native Allotment Handbook.

Factors Considered in Eligibility Determinations

BLM considers several factors in evaluating an applicant's eligibility. These factors include whether (1) the applicant is familiar with the parcel, (2) the natural resources associated with the parcel are consistent with the applicant's claimed uses, and (3) any physical evidence of use exists on the parcel.

Applicant's Knowledge of Land Claimed

BLM's policy emphasizes that the field examiner should determine the extent of the applicant's personal knowledge about the land. A key means of making this determination is having the applicant accompany the field examiner during the visit to the claimed parcel. This is not always possible, because the applicant may not be available to accompany the field examiner. If the applicant is unavailable, BLM asks someone knowledgeable of the applicant's use of the parcel to accompany the field examiner.

Natural Resources

BLM's procedures call for the field examiner to evaluate whether natural resources (e.g., fish, animals, or berries) consistent with the applicant's claimed uses are present on the land claimed. The uses claimed most frequently are fishing, hunting, berry picking, and trapping.

Physical Evidence of Use

BLM's procedures call for the field examiner to consider physical evidence of use, such as cabins or other evidence of human use. The procedures recognize that such evidence may not be present because of the subsistence nature of the claimed uses (e.g., berry picking seldom leaves any physical evidence) and because the claimed uses may have occurred many years ago and any evidence may have disappeared. As a result, BLM's procedures state that this factor is to be evaluated in combination with other field examination results.

Making Eligibility Determinations

In making eligibility decisions on Native allotment applications, BLM considers the evidence presented in the application as well as the information and data obtained during the field examination. In those cases in which a conclusion is reached that sufficient information exists on which to approve the application, BLM approves the application and notifies the applicant. In those instances in which the field examination does not disclose sufficient evidence, BLM procedures call for asking the applicant to submit additional evidence, such as affidavits and witness statements. A decision to approve or disapprove the allotment claim is then based on the field examination and any additional evidence obtained.

If BLM proposes to reject an application on the basis of factual evidence, or if the total of all evidence obtained is still insufficient to resolve questions about conflicting evidence, BLM must offer the applicant the opportunity for a hearing before an administrative law judge. This requirement was the result of a lawsuit, filed in 1974 and decided in 1976, that challenged Interior's procedures for disapproving Native allotment applications (Sara Pence v. Kleppe, 529 F.2d 135 (9th Cir. 1976)).

Many Applicants Were Exempt From Eligibility Requirements

Section 905 of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA) (Public Law 96-487) legislatively approved all Native allotment applications (with certain exceptions) that were pending before Interior on or before December 18, 1971, without regard for whether the applicants met the use and occupancy requirements. We estimate that 34.9 percent (30 to 39.8 percent) of all allotment parcels, or 5,236 parcels, were legislatively approved without regard to the use and occupancy requirements. Applications that were not exempt from eligibility requirements were those for lands within national parks; lands conveyed to or selected by Alaska as part of statehood; and certain lands protested by other parties, such as the state of Alaska, Native corporations, or other individuals who claim to have improved the land. (A more complete list of the exemptions to legislative approval is discussed in ch. 4.)

Eligibility Determinations Often Not Fully Documented

We found that BLM has awarded many Native allotment parcels without fully determining that the applicant was eligible for the land. Since 1965, the regulations governing the Native Allotment Program have required the applicant to demonstrate substantially continuous use and occupancy of the land, at least potentially exclusive of others, for a 5-year period. We reviewed the allotment parcels in our sample that BLM had approved, and on the basis of that sample, estimated that

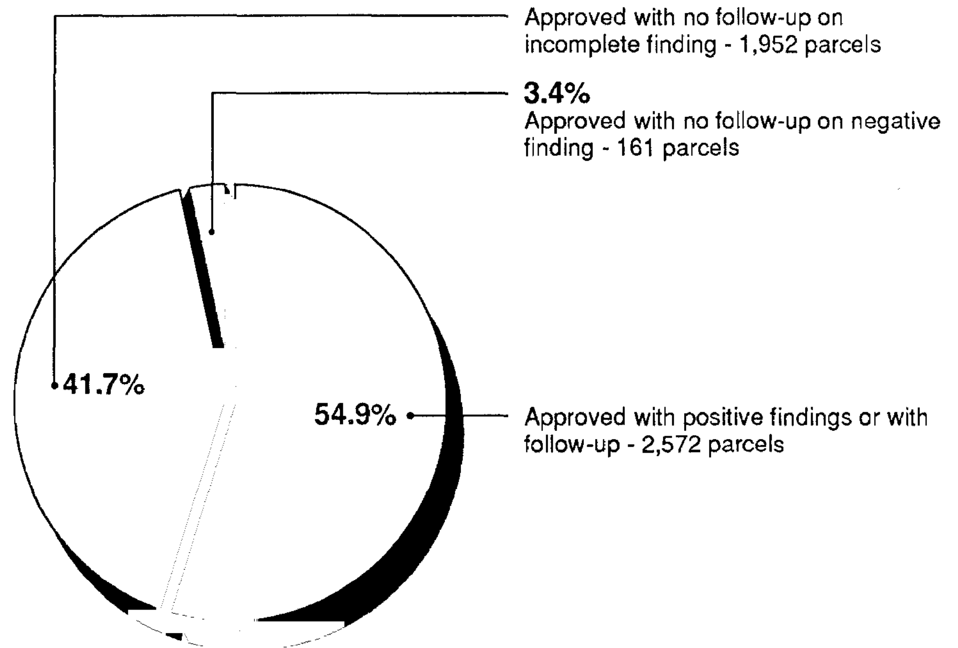
- BLM approved 3.4 percent (0.6 to 6.2 percent) of the parcels without gathering additional information when the field examination stated that the applicant had not met the requirements and
- BLM approved 41.7 percent (33.0 to 50.4 percent) of the parcels without gathering additional information when the field examination either stated no conclusion or was otherwise incomplete on whether eligibility requirements had been met.

Figure 3.1 shows the results of projecting our findings from our sample to the estimated universe of all 4,685 parcels approved by BLM. We estimate that BLM has approved 161 (30 to 292) parcels that had negative field examinations and 1,952 (1,543 to 2,361) parcels that had incomplete field examinations without following up to obtain additional information needed to either countermand the negative findings or fill the information gaps on those that were incomplete.

Negative or incomplete case files do not necessarily mean that the applicants were ineligible. They do mean, however, that BLM has approved Native allotments without taking all necessary steps to ensure that only eligible applicants receive Native allotments.

BLM officials in charge of the Native allotment eligibility process told us that, in practice, since about 1975, eligibility for an allotment in some cases has been limited to determining that natural resources consistent with the uses claimed for the land are present and that no conflicting claim for the land exists. This helps to explain the high level of incomplete case files on which approvals were based. However, the practice of approving applications on the basis of these abbreviated criteria is a less rigorous evidentiary standard than that which is called for in BLM's own Native Allotment Handbook and other written guidance that preceded it. For example, the guidance states that it is necessary to collect and use all relevant information and that additional evidence is to be obtained when available evidence is insufficient for an informed decision.

Figure 3.1: Extent to Which Parcels Were Adjudicatively Approved With Negative or Incomplete Findings



Note: Estimates were projected from GAO's sample.

Allotments Approved With Negative Findings on Field Examinations

We analyzed field examinations conducted on the parcels in our sample that BLM reviewed and subsequently approved for conveyance. If the field examiner reported that the applicant had not met the substantial use and occupancy requirement, we counted this as a negative finding. Similarly, if the field examiner reported that the applicant's use of the land was not potentially exclusive, we also counted this as a negative finding. We estimate that 872 (587 to 1,157) parcels had initial negative findings for one or both of the requirements.

We determined whether BLM had obtained additional evidence to countermand the initial negative finding before approving the allotment. In most cases, BLM had done so, but we estimate that BLM had approved 161 allotments when the field examination results were negative, without obtaining additional evidence to countermand the negative finding.

The following case examples illustrate BLM's approval of Native allotment parcels when the field examinations were negative and no follow-up was done.

- On a 1971 application, the applicant claimed berry picking, hunting, collecting firewood, and camping as uses of the land. The BLM field examiner stated that the applicant had "been on the parcel only a few times at best" and did not meet the substantial use and occupancy requirement. BLM sent a letter to the applicant in 1979 requesting more information. In 1983 BLM approved the application even though the case file contained no information indicating that the applicant had responded.
- In a 1970 application, the applicant claimed uses of fishing, berry picking, and hunting. The BLM field examiner stated that he did not believe the applicant had used the parcel or met the eligibility requirements. However, the examiner recommended approval since the applicant had lived in the village in the past for several years and could have used the parcel. In 1976 BLM requested additional evidence from the applicant, including witness statements. The case file contained no additional evidence, but BLM approved the allotment in 1977.

Allotments Approved With Incomplete Findings on Eligibility

If the BLM field examiner did not state a conclusion regarding the substantial use and occupancy or exclusive use requirements, or did not otherwise address these requirements, we counted this as an "incomplete finding." In all, field examinations for an estimated 2,894 (2,478 to 3,310) BLM-approved Native allotment parcels were incomplete with regard to one or both of these requirements.

We then analyzed whether BLM had obtained additional evidence to fill the information gaps before approving the allotments. Again projecting our findings to the total of about 4,685 parcels approved after BLM's review, we estimate that 1,952 parcels were approved when the field examination results were incomplete regarding the substantial use and occupancy and exclusive use requirements, and the case file contained no additional evidence to fill the information gaps.

The following are examples in which BLM approved allotments without following up on incomplete findings.

- A 1971 application involved claimed uses of hunting and berry picking. In the 1973 field examination, the examiner found that the natural resources were consistent with the claimed uses. The examiner did not,

however, address substantial use and occupancy. BLM did not obtain any additional information and approved the application in 1974.

- In a January 1971 application, the claimed uses were hunting, fishing, and camping. The 1972 field examination report did not include sufficient evidence to determine whether the applicant met the use and occupancy requirements. The field examiner concluded that no physical evidence of use was found. He said that the applicant was knowledgeable about the parcel and "could have used" it in the past. The application was approved, and the parcel was conveyed to the applicant in 1975.
- A 1970 application claimed berry picking and fishing as uses. In the 1977 field examination, the examiner concluded that use did not appear to be exclusive and that there were few signs of recent use by the applicant. However, the examiner concluded that since the applicant and family had lived about 2.5 miles away, she "undoubtedly visited the parcel" and therefore "complied with the spirit" of the 1906 act. In 1979 BLM concluded that this was a favorable report and approved the claim.

While the foregoing examples do not indicate that the applicants were ineligible for the allotments, they do illustrate that BLM has, in some instances, accepted speculative evidence that applicants may have been eligible for the allotments, rather than taking the additional steps necessary to confirm that the applicants were, in fact, eligible.

BLM Explanation for Not Following Up on Negative and Incomplete Findings

We asked BLM officials in charge of the Native allotment eligibility determination process why follow-up was not always conducted on the applications with negative or incomplete findings. They responded as follows:

- The supervisor in charge of Native allotment adjudication from 1975-83 for BLM's Anchorage district office said that BLM's practices evolved during this period to a point at which some applications were questioned only if conflicting uses of the land were discovered—for example, two persons claiming the same parcel.
- The supervisor in charge of Native allotment adjudication from 1983-87 said that BLM's practice during this period generally was to approve applications if the natural resources were present on the parcel and if no conflicts with others claiming ownership of the land existed. He said that additional evidence would not necessarily have been sought even if natural resources consistent with the claimed uses were not present. According to the supervisor, if a reasonable doubt occurred about which way to adjudicate a claim, the Native's side was to be favored.

- BLM's Deputy State Director for Conveyance Management in the Alaska state office told us that BLM will approve an application if natural resources consistent with the claimed use are present and if no conflicts with the allotment claim exist. He said, however, that if conflicting evidence is found—such as negative field examination information—BLM should always obtain additional evidence, such as witness statements, to resolve the questions raised. The deputy state director said that some applications in the past might have been approved without doing this.

Essentially, the practices described above mean that in some cases, BLM has not ensured that the eligibility requirements were met before approving Native allotments. Instead BLM approved Native allotments based on the presence of natural resources consistent with the claimed use and the absence of a conflicting claim for the land. While this helps to explain the relatively high rate of Native allotments approved with negative or incomplete information, it does not justify such an approach.

The practice described by BLM officials is at variance with BLM's written guidance for field examination and adjudication of Native allotment claims. This guidance, both in its earlier forms and now in the Native Allotment Handbook issued in January 1987, does not limit the evidence-gathering effort to identifying the presence of natural resources consistent with the claimed use and the lack of land ownership conflicts, nor does it state that the presence of these two factors alone means that the applicant meets the eligibility requirements. The guidance states that it is necessary to collect and correctly consider, analyze, and use all relevant and available data whether it be on-the-ground evidence or oral or written statements provided by the applicant or others. In fact, in many cases we reviewed, BLM did obtain additional information prior to approval.

Follow-Up Needed on Both Negative and Incomplete Findings

The negative and incomplete findings we identified with regard to the substantial use and occupancy or exclusive use requirements do not necessarily mean that the applicants were ineligible. However, by approving applications when the case files were either negative or incomplete, BLM has cut short the evidence-gathering process.

Although the applicants may qualify for the land, BLM did not obtain all the evidence needed. In this respect, negative examinations are, according to BLM's 1987 handbook, to be followed up on by gathering additional evidence, such as witness statements. BLM's procedures also require that

if the field examiner was unable to reach a conclusion, additional evidence should be requested from the applicant. If BLM proposes to reject an application on the basis of factual evidence or if conflicting evidence is not resolved, the applicant is to be offered an opportunity for a hearing. Subsequently, the applicant can appeal unfavorable decisions to IBLA and the federal court system.

Conclusions

We estimate that 45.1 percent (36.3 to 53.9 percent) of the BLM-approved Native allotments were based on case files that contained unresolved negative or incomplete information on the substantial use and occupancy and/or exclusive use requirements. While this does not necessarily mean that ineligible applicants received allotments, it does indicate that BLM has not always taken the steps necessary to ensure that only eligible applicants receive Native allotments.

BLM's practice of, in some instances, limiting eligibility review factors to the presence of natural resources and the absence of land ownership conflicts helps to explain—but not justify—cases in which allotments were approved on the basis of case files that were negative or incomplete. We believe that Native allotment approvals based on negative and incomplete case files and on abbreviated eligibility determinations indicate that BLM needs to ensure that its existing procedures are followed so that applications are approved only after BLM has sufficient evidence that eligibility requirements are met. BLM officials acknowledged that, given our findings, BLM needs to strengthen its Native allotment review process.

Recommendation

We recommend that the Secretary of the Interior instruct the Director, BLM, to strengthen Native allotment review and approval practices to ensure that existing procedures are followed so that applications are approved only after BLM has obtained sufficient information to confirm that applicants have met the eligibility requirements.

Agency Comments and Our Evaluation

In commenting on a draft of this report, the Department of the Interior said that it accepted our recommendation and has already taken action to implement it. Specifically, Interior said that it has adopted an additional checklist for use in reviewing Native allotment case files. The checklist requires BLM's adjudicators to be certain of the sufficiency of the case files. We believe that if properly implemented, this checklist approach will help BLM to better assure that it has obtained sufficient

information to confirm that applicants have met eligibility requirements.

Interior said it disagreed with GAO's estimates that 45.1 percent of all files for approved allotments did not contain sufficient information to demonstrate that eligibility requirements had been met. Interior's disagreement with the 45.1 percent figure is based on its statement that field examiners were for a period of time directed not to draw conclusions or make recommendations, and that field examiners' failure to draw conclusions or make recommendations is not an incomplete field examination, nor does it create an incomplete file.

This statement is in conflict with BLM's own Native Allotment Handbook which provides that if a field report is unfavorable, or the examiner was unable to reach a conclusion, additional evidence should be requested from the applicant. In our review of the case files, if a field examination report failed to reach a conclusion or make a recommendation but contained sufficient information addressing the eligibility requirements, we counted the case as having met the requirements. Also, in those cases where the field examination report was negative or incomplete and BLM had obtained additional evidence, we also counted the case as having met the requirements. For example, we found that about 80 percent of the field examination reports for approved allotments were either negative or incomplete. In each case, however, we analyzed the remainder of the case file to determine whether BLM had obtained additional evidence to either countermand negative field reports or to fill the information gaps on the incomplete reports. We modified language in this chapter to clarify that the 45.1 percent of the cases we are reporting as being based on negative or incomplete files involve only cases files that (1) had negative or incomplete field examination reports and (2) did not contain additional information to address the shortcomings in the field examination report. Consequently, we believe that within the confidence intervals discussed in the report, the 45.1 percent figure accurately and fairly reflects the situation. Interior also provided us with additional comments on this report which are presented and evaluated in appendix II.

Program Implementation Has Been Slow and Much Remains to Be Done

Over 15 years after the Native Allotment Act was repealed, the program is far from complete. Actions that remain to be completed fall into two main areas: adjudicating claims that are still pending and surveying approved claims so that the land can be legally conveyed. With regard to adjudication, we estimate that 3,674 allotment parcels remain to be decided upon by BLM. The parcels involved are not only numerous but, according to BLM, also difficult to evaluate because they conflict with other claims for the land.

Even after being approved by BLM, allottees do not have legal title to their lands until the land has been surveyed and BLM issues a final certificate of allotment. We estimate that 7,372 (6,624 to 8,150) applicants whose parcels have already been approved either legislatively or through the BLM review process have not yet received legal title because their land has not yet been surveyed. Furthermore, because of the unique physical characteristics of Alaska, surveying approved lands remains a costly and time-consuming matter. BLM officials at the Alaska state office estimate that if funding remains constant, processing of Native allotment claims (including those not yet decided upon) will not be completed until about the end of this century.

The length of time between program repeal and final allotment conveyance—in some cases almost 30 years—may work a hardship on some applicants since they are unable to enjoy the benefits that legal title to their allotments would provide. For example, applicants might be skeptical of building a house on an allotment until they have legal title to the land. BLM officials told us that the average applicant was 47 years old at the time the program was repealed in 1971 and that the applicant mortality rate is now approaching 40 percent. Thus, in many cases it is not the applicant, but his or her heirs, who will actually receive the allotment.

Delays in Implementing the Native Allotment Program

Although ANCSA repealed the Native Allotment Act in 1971, it preserved all applications that were filed on or before December 18, 1971. Several factors—administrative difficulties, the low priority BLM gave the Native Allotment Program, policy changes, and litigation and appeals—have delayed completion of the program.

Administrative Difficulties

The large number of Native allotment applications filed just before the repeal of the program placed a strain on the government resources

available to handle them. BIA in Alaska was not staffed to handle the large volume of applications. To fulfill its responsibilities, BIA established a Native allotment project office in Sacramento staffed with personnel from BIA offices all over the country. This group tried to provide legal descriptions of the allotments based on the original applications gathered in Alaska, but because of inaccurate or insufficient information, the effort resulted in inaccurate land descriptions that had to be redone later.

Another problem developed when the Rural Alaska Community Action Program office, which had assisted Natives in preparing applications, misplaced hundreds of applications and failed to file them with BIA or BLM. In a 1982 litigation settlement, BLM agreed to accept approximately 500 of those misplaced applications as though they had been filed before the December 18, 1971, deadline.

Low Priority

After the repeal of the Native Allotment Act, the program received low priority within BLM's Alaska office until 1982, according to the former Native Allotment Program section chief. The program received low priority because BLM concentrated its efforts on conveying lands to the Alaskan Native corporations and the state of Alaska. ANCSA, the law that repealed the Native Allotment Act, also granted Alaskan Native corporations the right to select 44 million acres of land. Previously, the Alaska Statehood Act (P.L. 85-508) had given the state the right to select about 103 million acres of land by January 1994. In contrast, Native allotments had the potential to involve no more than 1.5 million acres, even if every application were approved for the full 160 acres. The low priority afforded Native allotments did not change until 1982, when BLM placed a higher priority on processing Native allotment claims, because the allotment claims were conflicting with Native corporation and state land conveyances and would have to be addressed before corporation and state land selections could be finalized.

Policy Changes

Interior's policy guidance for processing Native allotment claims changed numerous times in the first few years after the program was repealed. From 1972 through 1974, several major policy changes at Interior resulted in the reprocessing of cases. For example, Interior policy required proof of substantially continuous use and occupancy for 5 years. To implement this requirement, BLM policy required visual confirmation of a cabin, camp site, or other evidence that the Native applicant had actually used the land. During 1972, the Assistant Secretary for

Land and Water Resources relaxed that requirement. As a result, BLM reopened applications that had been adjudicated during this period on the basis of the stricter criteria.

Litigation and Appeals

Since the 1970s, numerous legal challenges have arisen to BLM's handling of Native allotment cases. Not only were the cases time-consuming themselves, the decisions have at times been retroactively applied, causing BLM to reinstate cases it had previously closed. For example, after BLM closed some applications for factual reasons (such as lack of evidence of substantially continuous use and occupancy) applicants challenged the decision on the basis that BLM had not provided them with an opportunity for a hearing. According to the former Native Allotment Program section chief, a court decision reinstated over 1,100 of these applications.

In addition, hundreds of BLM's Native allotment decisions have been appealed before IBLA, and as of January 1987 many remained to be decided.

Many Applications Remain to Be Adjudicated

BLM has not yet adjudicated applications involving an estimated 3,674 parcels of land. The parcels involved are not only numerous but also difficult to evaluate because they conflict with other claims for the land.

Parcels Awaiting Adjudication May Be Controversial

As discussed in chapter 2, ANILCA legislatively approved all Native allotment applications if they were pending on or before December 18, 1971, and were not protested by other parties or otherwise exempt from legislative approval. The intent of legislative approval was to eliminate BLM's adjudication backlog and provide for timely conveyance of allotments to the applicants. Many allotment applications, however, fell into categories that were exempted from legislative approval. The parcels that were not legislatively approved involved allotment applications that

- claimed land valuable for minerals, excluding oil, gas, or coal;
- claimed land within the boundaries of a unit of the National Park System and not withdrawn by Section 11(a)(1) of ANCSA (NPS' own evaluation of claims within national park lands is discussed in app. II);

- claimed land that had been patented or deeded to the state of Alaska, or which on or before December 18, 1971, was validly selected by or tentatively approved or confirmed to the state of Alaska pursuant to the Alaska Statehood Act and was not withdrawn by Section 11(a)(1)(A) of ANCSA;
- claimed land that was reserved on December 13, 1968;
- claimed land that had been previously selected by a Native village;
- were protested by a Native corporation within 180 days of the effective date of ANILCA;
- were protested by the state of Alaska on the basis that the land was needed for access to land owned by the United States, the state of Alaska, or a political subdivision of the state of Alaska;
- were protested by a person or entity stating that the applicant was not entitled to the land and that the land was the site of improvements claimed by the person or entity; or
- were pending before Interior on or before December 18, 1971, but were knowingly and voluntarily relinquished by the applicant thereafter.

Completing Native Allotment Conveyances

Conveying the land on an approved Native allotment claim is not complete, and legal title is not transferred, until BLM has issued a certificate of allotment. BLM cannot issue a certificate of allotment until the land has been surveyed. BLM has an extensive backlog of approved Native allotments that have not yet been surveyed. BLM estimates it will complete the surveys in fiscal year 1998.

Surveying in Alaska is both expensive and time-consuming, for several reasons. The lands to be surveyed are often remote, requiring access by helicopter or boat. The field season for surveying is short; it is essentially limited to the summer months. Further, BLM is responsible for surveying not only Native allotments but also conveyances to the state of Alaska, Native corporations, and others.

We estimate that 7,372 approved parcels (including those legislatively approved) remain to be surveyed. In addition, the parcels that remain to be adjudicated will also have to be surveyed if they are approved.

According to Alaska Federation of Natives officials, an applicant with an approved parcel does not have the full protection that complete land ownership—conveyance of legal title by certification—provides. For example, applicants with parcels that have been approved, but not certificated, have found that others have reserved rights-of-way on their

lands several years after the date of approval. As a result, some applicants have chosen not to use the land fully before certification.

BLM's Alaska survey officials have estimated that it will cost about $550 million to complete the surveys necessary to effect the land transfers authorized by the Native Allotment Act, the Alaska Statehood Act, ANCSA, and ANILCA. BLM estimated in 1985 that at a funding level of $15 million per year, it would complete all the required surveys by the year 2024. However, BLM noted that this projected completion date was premised on 1985 dollars with no factor for inflation and estimated that the anticipated year of completion would likely be pushed back under a fixed funding level of $15 million. For Native allotments, however, BLM now estimates surveys will be completed by the end of fiscal year 1998 and certificates of allotment will be issued to qualified applicants by December 31, 1999.

Because it would have involved a comprehensive analysis of BLM's Alaska land conveyance program, which was beyond the scope of this review, we did not verify the validity of BLM's estimated completion date for the Native Allotment Program.

Conclusions

Although the Alaska Native Allotment Act of 1906 was repealed over 15 years ago, the program is far from complete. An estimated 3,674 allotment parcels remain to be adjudicated. Beyond that, BLM must survey an estimated 7,372 allotment parcels that have been approved, and those that will be approved in the future, before all eligible applicants will receive legal title to their allotments.

BLM has experienced delays in implementing the program because of administrative difficulties, low program priority, policy changes, and litigation and appeals. Most of these difficulties (with the exception of litigation and appeals) are in the past.

BLM now estimates that it will complete all aspects of the Native Allotment Program by about the end of this century. The major reasons it will take this long include resource constraints; the climate conditions and access constraints of Alaska, which complicate the BLM's land surveys; and the demands of other BLM land conveyance responsibilities. The length of time between program repeal and final allotment conveyance—in some cases almost 30 years—may work a hardship on some applicants, who are unable to enjoy the benefits of legal title to their

allotments. Because an analysis of BLM's Alaska land conveyance program (of which Native allotments are only a part) was beyond the scope of this review, we are making no recommendations on this issue.

Request Letter

COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515

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LEE McELVAIN
GENERAL COUNSEL

RICHARD AGNEW
CHIEF MINORITY COUNSEL

October 24, 1986

The Honorable
Charles A. Bowsher, Comptroller General
General Accounting Office
441 G Street, N.W.
Washington, D.C. 20548

Dear General Bowsher:

This is to request the assistance of the General Accounting Office in conducting a preliminary review of the administration by the Department of the Interior of the Native Allotment Program currently being carried out in Alaska.

Because of the complex nature of this program and its sensitivity, I would appreciate your having GAO personnel assigned to work on this request meet with the staff of the Committee on Interior and Insular Affairs prior to their embarking on any work related to this review.

With best wishes, I am

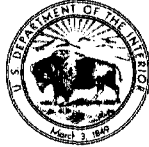
Sincerely,

Mo Udall

MORRIS K. UDALL
Chairman

Comments From the Department of the Interior

Note: GAO comments supplementing those in the report text appear at the end of this appendix.



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

MAY 20 1988

Mr. James Duffus III
Associate Director, Resources, Community,
and Economic Development Division
General Accounting Office
Washington, D.C. 20548

Dear Mr. Duffus:

We have completed our review of the draft report entitled Indian Affairs: Alaska Native Allotment Eligibility Process Can Be Improved, GAO/RCED-88-121, as requested. Enclosure I contains our general and specific comments.

See comment 1.

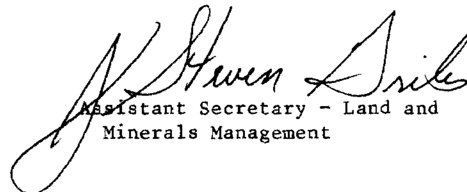
We disagree that 45.1 percent of all files for approved allotments did not contain sufficient information to demonstrate that eligibility requirements had been met. The conclusion that this rate is 45.1 percent is based on your analysis that many field exams lack complete findings (i.e., conclusions and/or recommendations). Inconsistency in field exam format and requirements is the result of judicial decisions and evolving policy and is not an example of incomplete field exams. Policy direction required field examiners to report only the facts found during the field examination and not to make recommendations or reach conclusions.

See comment 2.

We find the recommendation made in the draft report acceptable. The Bureau of Land Management, Alaska State Office, Division of Conveyance Management has already adopted an additional checklist for adjudicator's use in reviewing Native Allotment case files. The checklist specifically requires the adjudicator to be certain of the sufficiency of the file.

We appreciate the opportunity to provide comments on the draft report and hope you will find these comments useful in preparing the final report.

Sincerely,



Assistant Secretary - Land and
Minerals Management

Enclosure

ENCLOSURE I
Specific Comments on Draft GAO Report
GAO/RCED-88-121

Indian Affairs: Alaska Native Allotment Eligibility Process Can Be Improved

We have reviewed the draft GAO report and offer the following comments:

DRAFT RECOMMENDATION:

"GAO recommends that the Secretary of the Interior instruct the Director of the Bureau of Land Management to strengthen Native allotment review and approval practices. Specifically, the Bureau's Director should ensure that existing procedures are followed so that applications are approved only after the Bureau has obtained sufficient information to confirm that applicants have met the eligibility requirements."

See comment 2.

We find the recommendation made in the draft report acceptable. In fact the changes called for in the draft recommendation have already been adopted and implemented by the Bureau of Land Management's (BLM) Alaska State Office.

The adoption of the Native Allotment Handbook in 1987 indicates BLM's commitment to improve adjudication of Native Allotments. Also, a new checklist has been distributed to all adjudicators to use when reviewing a case file that must be adjudicated pursuant to the 1906 Act. This checklist ensures that the issues discussed in the GAO report are considered.

DRAFT FINDINGS:

1. "Eligibility Determinations Often Not Fully Documented"

See comment 1.

The draft report states that a case file was deemed incomplete if no recommendation was made by a field examiner or if the field examiner failed to address whether or not the applicant's use was exclusive or potentially exclusive of others. There was a period of time where field examiners were by policy directed not to make conclusions or recommendations. Their failure to do so is not an incomplete field exam nor does it create an incomplete file. The failure to address exclusive use was an appropriate action on the part of the field examiner in the absence of assertion of claims by others.

See comment 3.

See comment 4.

Section 905 of the Alaska National Interest Lands Conservation Act of December 2, 1980, 43 U.S.C. 1634 (ANILCA), legislatively approved all Alaska Native allotments pending before the Department of the Interior on or before December 18, 1971, except those specifically excepted by the statute or protested pursuant to it. Legislatively approved allotments were no longer required to meet the criteria in the 1906 Native Allotment Act and regulations. Deficiencies (if any) in the pre-ANILCA adjudication of allotments which were subject to legislative approval are now moot.

2

The report fails to point out the evolving policy and judicially mandated changes which caused adjudication of case files done at different times to be quite different one from the other. Unless such policy and judicial mandates were retroactive, there is the appearance of inconsistency in adjudication.

See comment 5.

The draft report does not do justice to the high quality of the adjudicative effort expended in the past.

2. "Program Implementation Has Been Slow and Much Remains To Be Done"

"Over 15 years after the Native Allotment Act was repealed, the program is far from complete." This is true. Several judicially mandated changes caused BLM to recall hundreds of case files from archives, thus adding years to the completion of the Native Allotment program. Not only have we had to reopen cases that had been previously closed, but also new procedures were required by various lawsuits. For example, because of the Ethel Aguilar lawsuit, we have had to institute Aguilar hearing procedures, conduct hearings, and seek title recovery on a large number of potentially valid Native allotments which are on land conveyed to the State of Alaska, Native Corporations, or other parties.

See comment 6.

TECHNICAL COMMENTS:

Page 18 of the draft. There is a statement that the regulations require that the applicant must have used and occupied the land for 5 consecutive years. The regulations in 43 CFR 2561 do not say the use has to be for consecutive years. The use has to be substantially continuous for a period of 5 years and our guidelines provide that we take into cosnideration the customary seasonality and mode of living by the applicant.

See comment 7.

Page 19 of the draft. The first sentence under Use and Occupancy should be changed to begin as follows: "Submission of proof of use and occupancy of the site...."

See comment 8.

Page 21 of the draft. In the first full paragraph of this page it would be helpful if the report noted that BLM also derives its criteria from IBLA and Court decisions.

See comment 7.

Page 37 of the draft. The reasons listed as to why allotments were not legislatively approved are partially in error. Corrections and additions [shown in brackets] are made as follows:

See comment 7.

--claimed land valuable for minerals [ex]cluding oil, gas, or coal;

--claimed land within the boundaries of a unit of the National Park System [and not withdrawn by Section 11(a)(1) of ANCSA] (NPS' own evaluation of claims within national park lands is discussed in app. II);

3

--claimed land that had been patented or deeded to the state of Alaska, or which on or before December 18, 1971, was validly selected by or tentatively approved or confirmed to the state of Alaska pursuant to the Alaska Statehood Act [and was not withdrawn by Section 11(a)(1)(A) of ANCSA:];

--[claimed land that was reserved on December 13, 1968;];

The following are GAO's comments on the Department of the Interior's letter dated May 20, 1988.

GAO Comments

1. In our review of the case files, if a field examination report failed to reach a conclusion or make a recommendation but contained sufficient information addressing the eligibility requirements, we counted the case as having met the requirements. Also, in those cases where the field examination report was negative or incomplete and BLM had obtained additional evidence, we also counted the case as having met the requirements. For example, we found that about 80 percent of the field examination reports for approved allotments were either negative or incomplete. However, we then analyzed the remainder of the case file to determine whether BLM had obtained additional evidence to either countermand negative field reports or to fill the information gaps on the incomplete reports. We added language to chapter 3 to clarify that the 45.1 percent of the cases we are reporting as being based on negative or incomplete files involve only case files that (1) had negative or incomplete field examination reports and (2) did not contain additional information to address the shortcomings in the field examination report. Consequently, we believe that within the confidence intervals discussed in the report, the 45.1 deficiency rate accurately and fairly reflects the situation.

2. We believe that if properly implemented, this checklist approach will help BLM to better assure that it has obtained sufficient information to confirm that applicants have met eligibility requirements.

3. We disagree with Interior's contention that the failure to address exclusive use by its field examiners was appropriate in the absence of assertions of claims by others. The requirement that use and occupancy of the land must have been at least potentially exclusive of others has been a regulatory requirement since 1965, and as such we believe it should be specifically addressed in the field examination report at least to the extent of stating whether any evidence of use by others exists. In fact, both the current and previous versions of the field examination report form specifically provide for the field examiner to address the exclusive use requirement.

4. The report recognizes that about 35 percent of the universe of Native allotment parcels were legislatively approved by Section 905 of ANILCA

without regard to whether the applicants met the eligibility requirements. As Interior's letter notes it is likely that some number of the parcels which were approved before the legislative approval provision of 1980 would have been eligible for legislative approval had they not been previously approved through the adjudicative process.

5. The report discusses policy and judicially mandated changes in chapters 2 and 4. The eligibility requirements against which we measured BLM's adjudication efforts—substantially continuous use and occupancy of the land for a 5-year period, and exclusive use—have remained essentially unchanged since 1965. Our review work focused on how well BLM has assured itself that these longstanding eligibility requirements had been met in the individual case files we reviewed.

6. The reasons for delays in implementing the Native Allotment Program, including the judicially mandated changes referred to in Interior's letter, are discussed in chapter 4 of the report.

7. We have made the suggested technical corrections.

8. The suggested additional language has not been added because our point is that occupancy of the site was not originally a requirement but was added later—in 1956. Thus, since there was no occupancy requirement, we believe it is obvious that there would have been no requirement to submit proof thereof.

Sampling Methodology

This appendix describes the methodology we used to select our sample of Native allotment cases for review.

We used a statistical sampling approach because the time and effort that would be involved in reviewing all Native allotment claims was far greater than we had available. Our sampling approach allowed us to project our results to the universe of all claims with a predetermined degree of precision and certainty.

BLM officials told us that their allotment tracking system could provide a list of Native allotment case file numbers but could not provide the number of individuals that have filed claims or the number of parcels they had claimed. The officials also said that BLM did not keep the information up to date and that the system was, therefore, not reliable for sampling purposes. Because the only reliable information we could obtain from the system was a list of case numbers, we used the list as our sampling framework.

Our random sampling technique was based on two-part random numbers—the first part indicating the page to be selected from the printout and the second part indicating the claim number to be selected from the page. Using this method, we selected a sample of 400 case files.

We found information on some parcels in more than one file. Although the law allowed an individual only one application, many Alaskan Natives filed claims with more than one BIA or BLM office. BIA and BLM should have combined these into one file, but the original application was still part of BLM's management information system. We took steps to ensure that such duplicate files were not affecting the accuracy of our sample.

Each application may contain as many as four parcels. Our 400 case files contained 654 parcels. Because we analyzed each parcel in an application, our sample was a cluster sample and it was analyzed as such.

We took data for each parcel from the actual case files, not from information contained in BLM's computer system. These files—centrally located in Anchorage and Fairbanks—were available for each case in our sample and were considered accurate.

We developed a series of questions concerning rejected and adjudicated claims parcels. Some of the questions were answered by file review and others required interviewing BLM personnel.

National Park Service Review of Applications for Native Allotments in National Parks

A number of Native allotment applicants applied for land within the boundaries of a national park. As provided for in ANILCA, these applications had to be fully reviewed for eligibility by BLM—they could not be legislatively approved, since they were within a national park boundary. They likewise could not have been legislatively approved if they had been protested by a third party.

Park Service Review of Applications

During 1984 and earlier, some park superintendents became concerned that decisions by BLM to grant applications were not supported by the evidence in the field. NPS appointed a task force of about 20 NPS employees, which, during 1984 and early 1985, reviewed all BLM case files for Native allotment applications that claimed land within the national parks in Alaska, and identified the applications that were questionable.

The task force reviewed about 650 Native allotment applications for land within national park boundaries. For each case file, the task force analyzed the information for eligibility and obtained additional information by interviewing applicants and/or other interested persons. That effort identified about 240 applications that the task force believed warranted further review.

On January 15, 1985, the Deputy Under Secretary of the Interior (who later became the Assistant Secretary for Fish and Wildlife and Parks) met with representatives from NPS, BLM, FWS, BIA, the Department of the Interior's Solicitor's Office, the Office of the Assistant Secretary for Fish and Wildlife and Parks, and the NPS Alaska regional director, to discuss the results of the task force review of those applications and issues raised by the review. A key issue discussed at that meeting was whether applications that had been approved by BLM could be reexamined and the approval rescinded if the approval had been improper. The participants decided that any reexamination of approved Native allotment applications by Interior would take place only if fraud or substantial mistake had occurred. The memo noted that a mistake had to be more than "mere inadvertence;" it had to be a mistake of fact that reasonable diligence would not have uncovered.

Appropriateness of Fraud or Substantial Mistake Standard

The staff of the House Committee on Interior and Insular Affairs asked us to evaluate whether the fraud or substantial mistake standard was appropriate. Our review indicated that Interior's application of the fraud or substantial mistake standard was consistent with the Secretary's legal authority to reexamine any previous approval of public land

disposal as long as legal title has not passed, while at the same time recognizing the policy favoring finality of conveyances of title to real estate.

Limitations on the NPS Review of Allotment Cases

The staff of the House Committee on Interior and Insular Affairs also asked us to determine whether the former Deputy Under Secretary had placed a limit on the number of Native allotment cases NPS was allowed to challenge and whether such a limit, if it existed, was set too low, resulting in questionable allotment applications going unchallenged by NPS. We found no documented evidence indicating that a limit had been set.

To analyze this issue, we

- interviewed the former Deputy Under Secretary and the former director of NPS' Alaska regional office to obtain their recollections of any limitations placed on the number of allotment cases NPS was allowed to challenge;
- contacted about half of the members of the NPS case file review team to obtain their recollections about limitations placed on their review;
- reviewed the administrative record of the events surrounding the NPS review to determine whether there was any indication that the former Deputy Under Secretary had limited the number of allotment cases NPS was allowed to challenge; and
- determined the disposition and/or current status of the 109 cases NPS ultimately challenged, on the basis that the NPS challenge success rate would provide an indication of whether the limitation placed on NPS, if any, was appropriate.

The former director of NPS' Alaska regional office told us that the former Deputy Under Secretary instructed him to limit to about 100 the number of Native allotment cases NPS could pursue. The former director said the instruction was oral and that he was unsure of the date of the instruction. The former Deputy Under Secretary told us that he placed no limit on the number of Native allotment cases NPS could pursue or challenge.

Because our conversations with the former regional director and the former Deputy Under Secretary revealed contradictory statements, we then asked nine members of the NPS allotment review team for their recollections of the process to determine whether they were instructed to limit the number of cases they could challenge.

Seven of the nine review team members said they were not aware of or could not remember any limitations on the number of cases that could be challenged. Two of the nine said they heard talk of numbers as follows:

- One said there was talk of numbers, but he could not remember who talked of numbers and could not remember any specific numbers.
- One said there was talk of numbers and that a limit had been set by the former Deputy Under Secretary, but said in a follow-up discussion that no one mentioned that NPS should limit its final list of cases to a specific number.

We then reviewed the NPS administrative record of its review of Native allotments to determine whether there was any evidence the former Deputy Under Secretary had placed a limit on the number of allotments NPS could challenge. None of the documentary evidence in the NPS files indicated that the former Deputy Under Secretary instructed NPS to limit the number of cases for additional review to about 100. In fact, in a March 22, 1985, memorandum from the former NPS regional director to the former Deputy Under Secretary, he noted that NPS reviewers found that "the overwhelming majority of applications showed proper evidence of use and occupancy and should be conveyed to the applicants."

As a final step in our evaluation of this issue, we asked NPS for its analysis of the status of the cases it had questioned. NPS told us that as of September 1987, of the 109 cases on NPS' list of the cases set aside for review, 53 were cases that had been previously approved by BLM and 56 had not been decided on by BLM at the time of NPS' questioning of the case.

- For the 53 previously approved cases that NPS questioned, an NPS document showed that NPS had decided not to challenge 24, 25 were still under review within Interior, 1 challenge had been dismissed, 1 had been settled, and 2 previous BLM approvals had been vacated.
- For the 56 cases pending decisions by BLM at the time of NPS' questioning of the case, NPS said that 3 had been approved by BLM, 11 had been partially approved, 37 were still pending decision, and 5 had been rejected by BLM.

In summary, according to NPS, for the 109 cases NPS questioned, 7 applicants have had their claims rejected or prior approvals vacated as of September 1987, and most cases were still awaiting further action.

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