

AGNES S. SAMUELSON

IBLA 78-136

Decided July 22, 1981

Appeal from decision of the Alaska State Office, Bureau of Land Management, rejecting a Native allotment application. AA 8051.

Set aside and remanded.

1. Alaska: Native Allotments

In sec. 905(a)(1) of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435 (1980), Congress provided that all Native allotment applications which were pending before the Department on Dec. 18, 1971, which describe either land that was unreserved on Dec. 13, 1968, or land within the National Petroleum Reserve -- Alaska, are approved on the 180th day following the effective date of that Act subject to valid existing rights, unless otherwise provided by other paragraphs or subsections of that section. Although only nonmineral land may be allotted, Congress has defined that term as used in the Native Allotment Act to include land valuable for deposits of sand and gravel.

## 2. Alaska: Native Allotments -- State Selections

Applications for Alaska Native allotments in "core" townships of Native villages are subject to the statutory approval contained in sec. 905(a)(1) of the Alaska National Interest Lands Conservation Act, notwithstanding a State selection or tentative approval thereof for the same lands prior to Dec. 18, 1971.

APPEARANCES: Keith A. Christenson, Esq., Anchorage, Alaska, for appellant.

## OPINION BY ADMINISTRATIVE JUDGE LEWIS

Agnes S. Samuelson has appealed from a November 9, 1977, decision of the Alaska State Office, Bureau of Land Management (BLM), rejecting her Native allotment application AA 8051, dated December 10, 1970, because BLM determined that the land is mineral in character due to the presence of sand and gravel and that the land therefore is unavailable for allotment. The Alaska Native Allotment Act, 43 U.S.C. §§ 270-1 through 270-3 (1970), repealed, 43 U.S.C. § 1617 (1976), authorizes only allotment of "nonmineral" land.

[1] Appellant raises several arguments against BLM's determination that the land is mineral in character because of the value of the sand and gravel deposits. It appears, however, that this controversy has been resolved by newly enacted legislation. In section 905(a)(1) of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435 (1980), Congress provided that all Native allotment

applications pending before the Department on December 18, 1971, which describe either land that was unreserved on December 13, 1968, or land within the National Petroleum Reserve -- Alaska, are approved on the 180th day following the effective date of that Act subject to valid existing rights, unless otherwise provided by other paragraphs or subsections of that section. Jack Gosuk (On Reconsideration), 54 IBLA 306 (1981). Although section 905(a)(3) provides that an allotment application is not approved if the land described therein is valuable for minerals, it further provides that the term "nonmineral," as used in the Native Allotment Act, "is defined to include land valuable for deposits of sand or gravel." Thus, presence of valuable deposits of sand or gravel does not preclude approval of a Native allotment application.

[2] We note that the Native allotment application conflicts with a state's selection application. Section 905(a)(4) of the Alaska National Interest Lands Conservation Act, supra, provides that an Alaska Native allotment application is not approved under section 905(a)(1) if the land is included in a State selection application but is not within a core township of a Native village. Roselyn Isaac (On Reconsideration), 53 IBLA 306 (1981). However, a BLM status map for the State of Alaska issued in March 1974 indicates that appellant's land is within the core township of the Native village of Dillingham. Thus, it appears that the conflicting State selection application does not bar automatic approval of appellant's application. 1/

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1/ The Senate report explains:

"Applications for allotments in 'core' townships of villages certified as eligible for land selections under Section 11(b) of the

The record shows no reason why appellant's allotment application is not now subject to approval under subsection 905(a)(1), provided that her application was pending before the Department on December 18, 1971. <sup>2/</sup> The record discloses no valid existing rights in conflict with the application, and the land was not reserved on December 13, 1968. Where a Native allotment applicant meets the requirements of subsection 905(a)(1), failure to provide adequate evidence of use and occupancy does not bar approval of the allotment application. Jack Gosuk (On Reconsideration), *supra*. The State Office, therefore, should consider appellant's application for approval, subject to any protest which may have been filed before the end of the 180-day period which would preclude approval under subsection 905(a)(1) and require adjudication pursuant to the provisions of the Native Allotment Act.

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fn 1 (continued)

Alaska Native Claims Settlement Act are, however, subject to the statutory approval contained in subsection (a)(1) notwithstanding a State selection or tentative approval of such core township lands prior to December 18, 1971."

S. Rep. No. 96-413, 96th Cong., 2d Sess. 285, reprinted in [1981] U.S. Code Cong. & Ad. News 9130, 9289.

<sup>2/</sup> The requirement that an application be pending before the Department on Dec. 18, 1971, must be met regardless of whether the application is approved under section 905(a)(1) of the Alaska National Interest Lands Conservation Act or the Alaska Native Allotment Act, because the Native Allotment Act was repealed on that date and no application could be approved thereunder unless it was pending before the Department of the Interior on Dec. 18, 1971. 43 U.S.C. § 1617(a) (1976). Although appellant's application was dated Dec. 10, 1970, it was not filed with the Bureau of Land Management until June 9, 1972, when the Bureau of Indian Affairs (BIA) filed it on appellant's behalf. It appears that many Native allotment applicants had filed their applications or evidence with the BIA prior to Dec. 18, 1971, but that BIA held them past the time when they were required to be filed with the Bureau of Land Management. Such applications are deemed to be pending on Dec. 18, 1971. See, e.g., Julius F. Pleasant, 5 IBLA 171 (1972). On remand appellant should be required to establish that her application was filed with BIA prior to Dec. 18, 1971.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and the case remanded for further action consistent with this opinion.

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Anne Poindexter Lewis  
Administrative Judge

We concur:

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Bernard V. Parrette  
Chief Administrative Judge

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Edward W. Stuebing  
Administrative Judge