

MATILDA TITUS

IBLA 85-377

Decided June 30, 1986

Appeal of a decision of the Fairbanks, Alaska, District Office, Bureau of Land Management, denying petition for reinstatement of parcel A of Native allotment application F-034718.

Set aside and remanded.

1. Administrative Authority: Generally -- Administrative Procedure: Hearings -- Alaska: Native Allotments -- Alaska Native Claims Settlement Act: Conveyances: Valid Existing Rights: Generally -- Applications and Entries: Relinquishment -- Bureau of Land Management -- Hearings -- Patents of Public Land: Suits to Cancel -- Rules of Practice: Appeals: Hearings

Where lands described in a previously relinquished Native Allotment application are patented to another, and the applicant requests reinstatement of the relinquished application, the Department has a duty to a Native Allotment applicant to make a preliminary investigation and determination regarding whether the relinquishment was voluntary and knowing. If it was not, the application should be reinstated and, if deemed appropriate, the Department should pursue recovery of such lands. When a document stating an intent to relinquish a Native allotment application is suspect on its face, a petition for reinstatement of the application should not be denied until the authenticity of the relinquishment document is verified.

Kenai Natives Association, 87 IBLA 58 (1985), and Peter Andrews, Sr. (On Reconsideration), 83 IBLA 344 (1984), overruled to the extent inconsistent herewith.

APPEARANCES: Judith K. Bush, Esq., Alaska Legal Services Corporation, Fairbanks, Alaska, for appellant.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Matilda Titus (Titus) appeals from a decision of the Fairbanks, Alaska, District Office, Bureau of Land Management (BLM), dated January 15, 1985, denying her petition for reinstatement of that portion of Native allotment application F-034718, pertaining to a tract of land described in the application as parcel A.

On August 3, 1965, Titus filed an Alaska Native allotment application with BLM pursuant to the Native Allotment Act of 1906, 43 U.S.C. §§ 270-1 through 270-3 (1970). The application had been certified by the Bureau of Indians Affairs (BIA) on July 30, 1965. Titus' application identified three separate parcels of land claimed by her. Parcel A was described as approximately 40 acres of unsurveyed land, located on the east bank of the Tanana River in protracted sec. 27, T. 2 S., R. 8 W., Fairbanks Meridian. Titus claimed occupancy of this tract beginning in 1938.

By letter dated November 4, 1970, BLM notified Titus that on October 5, 1961, lands in parcel A of her application had been tentatively approved for conveyance to the State of Alaska pursuant to selection application F-026794, filed September 29, 1960. By letter dated January 29, 1973, BLM notified Titus that the Native Allotment Act had been repealed, subject to existing applications, and requested that she choose between her allotment application or a primary place of residence application under section 14(h)(5) of the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. § 1613(h)(5) (1982). The case file does not show that Titus responded and BLM continued processing her application for the three parcels listed in her application under the Native Allotment Act. A survey of parcel A was completed and designated U.S. Survey 4473-A.

On June 30, 1975, BLM received a handwritten letter purporting to relinquish appellant's claim to parcel A. The form of this letter has a direct bearing on the outcome of this decision. Therefore, a photocopy of the letter has been appended to this decision as exhibit "A."

After receipt of the letter, BLM suspended active review of parcel A, including field inspections. The record indicates that BLM did not provide Titus with notice of its acceptance of the relinquishment until a February 8, 1978, decision of the Alaska State Office, BLM. This decision held parcels B and C of the application for approval and stated, regarding parcel A: "Mrs. Titus later relinquished her claim to U.S. Survey 4473-A." The February 8, 1978, decision was served upon Titus on May 22, 1978.

In a BLM decision dated October 24, 1979, state selection application F-026794 was rejected in part and tentative approval rescinded as to the lands in U.S. Survey 4473-A. In the same decision, those lands were approved for conveyance to Toghotthele Corporation pursuant to section 14(a) of ANCSA, 43 U.S.C. § 1613(a) (1982). The lands in U.S. Survey 4473-A were patented to Toghotthele Corporation on January 3, 1980 (Patent No. 50-80-0031).

On October 8, 1980, counsel for Titus filed a request for reinstatement of Titus' allotment application for parcel A. The request was accompanied by an affidavit from Titus stating "she has no present recollection of

intentionally giving up any rights to that Parcel A." ^{1/} In its January 15, 1985, decision, which denied the petition for reinstatement, BLM gave the following rationale for its decision:

In the absence of any supporting evidence to prove the relinquishment was indeed involuntary and unknowing, we must accept your signed statement of relinquishment to be your intent. The Department lacks jurisdiction to adjudicate the rights of claimants to land after it is patented. Although a hearing in the Department may be required where land is patented in derogation of the rights of a conflicting applicant, no hearing is appropriate where at the time of patent the conflicting application has been relinquished and the statutory authority for such application has been repealed. See Peter Andrews, Sr., On Reconsideration, 83 IBLA 344 (1984).

Upon appeal, counsel for Titus requests remand of this case for the purpose of determining whether her relinquishment was knowing and voluntary. ^{2/} Counsel for Titus argues that it is uncertain whether Titus, who allegedly is unable to read or write English, understood the relinquishment. Counsel argues that BLM ignored the affidavit signed by Titus stating she has no recollection of waiving her rights to the parcel. Counsel for Titus also cites Aguiar v. United States, 474 F. Supp 840 (D. Alaska 1979), and State of Alaska v. Thorson (On Reconsideration), 83 IBLA 237, 91 I.D. 331 (1984), as authority for such a remand.

[1] In the case cited by BLM, Peter Andrews, Sr. (On Reconsideration), *supra*, the Board held that where land has been conveyed after a conflicting Native allotment application was relinquished, the Department lacks jurisdiction to consider the rights of the Native allotment claimant or reinstate the relinquished application. This principle was reviewed and reaffirmed in Kenai Natives Association, 87 IBLA 58, 61-63 (1985).

In the normal course of making a determination regarding the validity of a Native allotment application, the Department must determine whether the

^{1/} The affidavit, signed by Matilda Titus and her husband, Leo Titus, Sr., contains the following statements:

"1. That Matilda Titus applied for F-034718 Parcel A as part of 160 acres she is entitled to for her allotment.

"2. That she has no present recollection of intentionally giving up any rights to that Parcel A.

"3. That she received a letter saying that she could not use Parcel A.

"4. That because of the letter saying she could not use Parcel A, she did not use it."

^{2/} Section 905 of the Alaska National Interest Lands Conservation Act (ANILCA), 43 U.S.C. § 1634 (1982), provided statutory approval of Native allotment applications pending on or before Dec. 18, 1971, subject to certain exceptions. The approval did not apply to any application pending on or before Dec. 18, 1971, "which was knowingly and voluntarily relinquished by the applicant thereafter." 43 U.S.C. § 1634(a)(6) (1982).

Native applicant has met the statutory and regulatory requirements pertaining to the use and occupancy of the land claimed. Similarly, if a claimant asserts that a relinquishment of a previously filed claim was not voluntarily and knowingly given, or that the relinquishment document was fraudulently procured, the Department has an obligation to determine the validity of the relinquishment. This principle is long standing in this Department. Deming v. Cuthbert, 5 L.D. 365 (1887).

A document which has been fraudulently procured is, as a matter of law, null and void, as fraud vitiates the document. United States v. Throckmorton, 98 U.S. 61, 64 (1878). "[A] relinquishment which is secured through misrepresentation, fraud or deceit is void." Leo J. Kottas, 73 I.D. 123, 130 (1966), aff'd, Lutzenhiser v. Udall, No. 1371 (D. Mont. June 7, 1968), aff'd, 432 F.2d 328 (9th Cir. 1970). Although the principle is not as easily attributable in the case of a relinquishment which was not voluntarily and knowingly made as it is in the case of a relinquishment obtained by fraud or deceit, the same principle does apply. In order for such relinquishment to be valid, it must be made voluntarily and with knowledge of the applicant's allotment rights and the consequences of the relinquishment. See Leo J. Kottas, supra; Ficker v. Murphy, 2 L.D. 135 (1884); see also Keane v. Brygger, 160 U.S. 276, 287 (1895); O'Brien v. Richtarik, 8 L.D. 192 (1889). ^{3/} This fundamental precept was recognized by Congress and incorporated as a part of section 905(a) of ANILCA, 43 U.S.C. § 1634(a) (1982), which provides that legislative approval of certain Native allotment applications would not apply to those applications "knowingly and voluntarily relinquished by the applicant." ^{4/}

In Peter Andrews, Sr., 77 IBLA 316 (1983), the claimant had filed a relinquishment of his allotment on September 29, 1966. When he petitioned for reinstatement of the application in 1976, BLM held that the application could not be reinstated because his relinquishment was knowing and voluntary and statutory authority for such an allotment had been repealed. The claimant did not immediately challenge BLM's decision and the land previously embraced

^{3/} The question of whether a waiver was voluntarily and knowingly made arises most frequently in cases where a constitutional right has been waived by one accused of a crime. In Edwards v. Arizona, 451 U.S. 477, 482 (1981), quoting in part from Johnson v. Yerbst, 304 U.S. 458, 464 (1938), the Court stated "waivers * * * must not only be voluntary, but must also constitute a knowing and intelligent relinquishment or abandonment of a known right or privilege, a matter which depends in each case 'upon the particular facts and circumstances surrounding the case, including the background, experience and conduct of the accused.'"

^{4/} In Estate of Guy C. Groat, Jr., 46 IBLA 165 (1980), we recognized that a relinquishment of a Native allotment application signed by an individual other than the applicant, who was not authorized to do so, was not effective as a matter of law. There are other instances in which a relinquishment will be considered ineffective as a matter of law. Moreover, in Kenai Natives Association, supra at 62, we expressly recognized that, subject to certain qualifications, section 905(a) of ANILCA, supra, "approved previously relinquished Native allotment application which were not knowingly and voluntarily relinquished." See also Peter Andrews, Sr. (On Reconsideration), supra at 346.

by the Native allotment application was conveyed pursuant to a Native group selection under ANCSA. Notwithstanding this denial, the claimant again petitioned to reinstate the application in 1981. BLM denied reinstatement and the decision was appealed to the Board. A significant factor in the Board's affirmance of the reinstatement denial was a definite lack of evidence to support a claim that the relinquishment was not the intent of the Native claimant. See also Peter Andrews, Sr. (On Reconsideration), *supra*.

In Kenai Natives Association, *supra*, the Native allotment claimant completed and filed an official BLM relinquishment form in 1978, relinquishing his rights in parcel C of his application. The relinquishment statement had been reviewed and approved by BIA. The land was conveyed in 1980, as part of an interim conveyance pursuant to a Native group selection application under ANCSA. In 1982, the Native allotment claimant petitioned for reinstatement of his application. BLM reinstated the claim and posted it to the public land records. The Native group appealed that action. In the Kenai Natives decision, the Board recognized that the Department retains no jurisdiction to consider the status of land previously conveyed. Rather, the only question left for BLM to consider is whether the Department has an obligation to the Native claimant to seek reconveyance. *Id.* at 61.

In Aguilar v. United States, 474 F. Supp 840, 846 (D. Alaska 1979), the court stated: "The protection of Indian property rights is an area where the [Government's] trust responsibility has its greatest force." In Aguilar certain Alaska Natives challenged the Department's decision to reject their Native allotment applications without holding a hearing to review the facts supporting their claims. The stated basis for rejecting the application without rendering a determination on the claimants' rights was that the subject lands had been conveyed to the State of Alaska. The court found that the Native claimants' due process rights were violated because a Native claimant who can establish the facts which he alleges would establish his right to an allotment has an equitable interest in such allotment. *Id.* at 846. The court concluded that if the United States mistakenly or wrongfully conveyed land to the State of Alaska to which Alaska Natives had a "preference right" under the Allotment Act based on use and occupancy, the Government has a responsibility to recover that land. *Id.* at 847. See also State of Alaska v. Thorson (On Reconsideration), *supra* at 254, 91 I.D. at 341. In Oleanna Hansen, 84 IBLA 150 (1984), citing Thorson, we set aside a BLM decision rejecting a Native allotment application where the applicant alleged use and occupancy of the land prior to tentative approval of a State selection and subsequent confirmation of title in the State by section 906(c)(1) of ANILCA, *supra*. Recognizing that title had passed to the State, we, nevertheless, remanded the case to BLM "for a preliminary determination consistent with Aguilar v. United States, *supra*, as to whether the United States should institute proceedings for the recovery of the lands." Oleanna Hansen, *supra* at 154.

An invalid relinquishment will be treated in a manner similar to the manner with which the court treated an erroneous rejection of a homestead entry in Ard v. Brandon, 156 U.S. 537 (1895). The Court allowed the entryman to pursue his claim despite the "wrongful rejection" of that claim by the Department where he had a superior valid claim and had continued to occupy the land.

Similarly, a Native allotment appellant will be permitted to pursue his or her allotment claim to the relinquished acreage, assuming its validity, despite the invalid relinquishment, if an appeal from the adverse decision regarding the application is filed in a timely manner.

Our holding that the Department has the authority to determine whether a relinquishment of a Native allotment application was voluntary and knowing and not fraudulently procured in making its preliminary determination whether to recommend a suit to cancel a conflicting patent is at odds with our decision in Kenai Natives Association, supra. In Kenai Natives, we reversed a BLM decision recognizing the reinstatement of a previously relinquished portion of a Native allotment application where the land had been conveyed by interim conveyance to a Native group pursuant to section 14(h)(3) of ANCSA, as amended, 43 U.S.C. § 1613(h)(3) (1982), after the relinquishment. We based our decision largely on the conclusion that the relinquished application was not a "valid existing right" under section 14(g) of ANCSA, as amended, 43 U.S.C. § 1613(g) (1982), "which should have been excluded from the conveyance." Kenai Natives Association, supra at 62. Citing Peter Andrews, Sr. (On Reconsideration), supra, we also concluded the Department has "no authority which would allow consideration or reinstatement of a relinquished application subsequent to conveyance of the lands embraced therein." Id. at 62. In light of our holding that the Department does have the authority to determine the validity of a relinquishment in deciding whether to recommend a suit to cancel the subsequent conveyance of the land, we must overrule Kenai Natives Association, supra, to the extent that it is inconsistent with this holding. 5/

In the present situation there is sufficient reason to question whether Titus' allotment was knowingly and voluntarily relinquished and her preference rights extinguished. We refer initially to the affidavit from Titus to the effect that she did not recall intentionally relinquishing the allotment. This affidavit, which represents Titus' recollection of the facts, contradicts the only evidence in the record supporting relinquishment -- the relinquishment letter. It appears that BLM summarily resolved this matter and issued its decision based upon the relinquishment letter. There is nothing in the record to suggest BLM undertook any investigation into the circumstances of the relinquishment.

5/ The decision in Peter Andrews, Sr. (On Reconsideration), supra, was predicated on the fact that BLM had rejected the appellant's request for reinstatement of his Native allotment application, which had been relinquished, in a letter dated Nov. 19, 1976. That letter-decision had not been appealed and, therefore, constituted a final administrative determination. Accordingly, in Andrews we reaffirmed an earlier decision by the Board affirming a June 29, 1983, BLM decision which denied reinstatement of the appellant's Native allotment application. However, we also stated that BLM has "no authority for reinstating an application for land previously relinquished which has since been conveyed." Id. at 347. However, in Kenai Natives, we recognized that Andrews also stands for the proposition that the Department has no authority to consider the validity of a relinquishment in determining whether to recommend a suit to cancel the patent which has since conveyed the land. To the extent of that holding, Andrews is overruled.

A review of the relinquishment document should have raised sufficient doubt as to its authenticity to call for an inquiry. The letter appears to have been handwritten by one party in a double-space format on lined paper and signed by another. ^{6/} It was not notarized and there was no showing that the signature was witnessed. Titus claims that she neither reads nor writes English and is dependent upon others to translate or write documents for her. The person who prepared the document was undisclosed in the letter and remains unidentified. While the bulk of the handwriting is double spaced, the phrase "and relinquish my claim" is curiously placed between the preceding line and the signature, an exception to the double-spaced format. The pen weight of this line is slightly lighter than the rest of the document, raising the question whether this line was inserted after Titus' signature was affixed. The record contains no evidence regarding the circumstances surrounding the preparation or filing of the relinquishment document and there is no evidence that there has been any attempt by either BLM or BIA to ascertain its authenticity.

We are unable to find regulations or procedural guidelines applicable to the form for filing a relinquishment of a Native allotment application. See 43 CFR Subpart 2560. A handwritten letter appears to be an acceptable form of relinquishment. ^{7/} However, the case file does not indicate that BLM attempted to ascertain whether the relinquishment letter expressed Titus' knowing and voluntary relinquishment of parcel A. There is nothing in the record to show Titus acknowledged the relinquishment or even knew of the existence of the letter or its meaning. Moreover, despite a trust responsibility imputed to the Government on behalf of Alaska Natives, there is no indication that the agency responsible for the welfare of Alaska Natives, BIA, was involved, as is customary, in ascertaining whether Titus' relinquishment was knowing and voluntary. See, e.g., Kenai Natives Association, supra at 59. The only evidence in the record which would support relinquishment by Titus is the one questionable and unsubstantiated document.

Although the preceding facts do not conclusively support a finding that the May 20, 1975, letter did not accurately reflect the intent of Titus, it does create sufficient suspicion that the document could be inaccurate or not representative of Titus' intent. BLM should have addressed this question before rendering its decision. See Peter John, 91 IBLA 305 (1986). Accordingly, BLM's determination that the relinquishment of parcel A was voluntary and knowing is set aside and the case is remanded to BLM for review.

If after review BLM again concludes that the May 20, 1975, relinquishment was knowing and voluntary, the basis for that determination should be made a part of the record. Following the determination, a decision should be issued, allowing a right of appeal. If on the other hand, BLM should find the application for parcel A was not voluntarily and knowingly relinquished,

^{6/} The signature, although a misspelling of Matilda, appears to be authentic, as it matches signatures belonging to Titus found elsewhere in the record (including the existence of both a Matida and Matilda spelling). ^{7/} An official BLM form for relinquishment was available. See Kenai Natives Association, supra at 59.

the application should be reinstated. Should the application be reinstated, under State of Alaska v. Thorson (On Reconsideration), supra, the Department would have a duty to make a determination as to the validity of the allotment claim and, if appropriate, to pursue recovery of the land through negotiation or litigation.

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 action consistent herewith.

R. W. Mullen
Administrative Judge

EXHIBIT "A"

Matilda Titus
F034718 par A
Minto
May 20, 1975

In approx 1960, I had intended to move on to the land described as par A in my Native Allotment claim. Due to another decision we moved to another fishing area and I have never been on the parcel and relinquish my claim.

Matilda Titus

T. 2 S., R. 8 W, FM

ADMINISTRATIVE JUDGE HARRIS CONCURRING:

The majority opinion in Kenai Natives Association, 87 IBLA 58 (1985), was based on a technical analysis of the timing of the relinquishment, the interim conveyance, and the passage of the Alaska Native Interest Lands Conservation Act (ANILCA), and whether or not valid existing rights had been created. Thus, the Board held that where a Native allotment application conflicts with an interim conveyance and the conflicting application has been relinquished prior to conveyance, and therefore was not excluded from the conveyance, the Department has no authority to reinstate the application pursuant to a request made subsequent to the interim conveyance. Critical to the Board's holding was the fact the interim conveyance was issued prior to enactment of section 905 of ANILCA, 43 U.S.C. § 1634 (1982), on December 2, 1980. Section 905(a)(1) of ANILCA provides, with certain exceptions, for statutory approval of all Native allotment applications pending before the Department on or before December 18, 1971, on the 180th day following approval of the Act. Such approval was subject to valid existing rights. The Board concluded in Kenai, "[W]e believe that in the circumstances of this case the prior interim conveyance to Kenai constituted such a right." 87 IBLA at 62.

In Kenai I concurred in the reversal of the Bureau of Land Management (BLM) decision reinstating the relinquished portion of the Native allotment application; however, my rationale for doing so was based on my analysis of the facts in that case. I disagreed with the statement that the Department had no authority to reinstate a relinquished application. I stated, "I believe the Department has not only the authority, but the duty, to investigate and to reinstate a relinquished application when circumstances warrant such action." 87 IBLA at 64. I then reviewed the facts in the case and concluded that the Native allotment applicant's claim that his relinquishment was unknowing and involuntary was not supported by the record.

Subsequently, the Board issued Peter John, 91 IBLA 305 (1986), in which it distinguished Kenai and held that where an interim conveyance was made after the passage of ANILCA, it could not constitute a valid existing right under section 905 of ANILCA and a Native allotment applicant is entitled to consideration of whether a relinquishment which predates the interim conveyance was involuntary and unknowing.

In the present case, however, the facts are similar to Kenai. Herein, Titus "relinquished" a portion of her allotment in a letter received by BLM on June 30, 1975. Subsequently, on January 3, 1980, prior to the passage of ANILCA, the land in question was patented to a Native corporation. Under the majority rationale in Kenai, the BLM decision denying Titus' request for reinstatement would have to be denied.

We have correctly determined in this case, however, to overrule the Kenai case. Kenai was based on the assumption that any relinquishment filed by a Native is effective to preclude any right to the land covered by the relinquishment and subsequent conveyance of that land to a Native corporation prior to the enactment of ANILCA forecloses investigation into the

circumstances of relinquishment. Such a ruling is, however, unfair to the applicant who could establish that relinquishment was involuntary and unknowing. If an applicant could make such a showing and there was the requisite use and occupancy, he or she would establish that there was a right to a Native allotment which should have been excluded from the conveyance to the Native corporation in accordance with 43 CFR 2650.3-1(a). If that allotment should have been excluded from the conveyance, how could the conveyance constitute a valid existing right under section 905 of ANILCA and thereby preclude consideration of the request for reinstatement? The timing of the conveyance should not be controlling.

Where a request for reinstatement of a previously relinquished Native allotment application is filed, BLM has an obligation to investigate the circumstances of that relinquishment to determine whether reinstatement of the application is warranted. That investigation should include a determination of whether relinquishment was knowing and voluntary and whether the conditions for an allotment have been met. Thus, if BLM concludes that, but for the relinquishment, the application would have been approved, it should reinstate the application and pursue recovery of the land. Our action overruling Kenai and Peter Andrews, Sr. (On Reconsideration), 83 IBLA 344 (1984), opens the door for BLM to follow that procedure in this case.

Bruce R. Harris
Administrative Judge

ADMINISTRATIVE JUDGE GRANT CONCURRING:

As the author of the Board's earlier opinion in Kenai Natives Association, 87 IBLA 58 (1985), and a concurring panel member on the opinion in Peter Andrews, Sr. (On Reconsideration), 83 IBLA 344 (1984), I find it appropriate to explain why I am concurring in this decision overruling those prior holdings in part. It is apparent that many of the applications to reinstate previously relinquished Native allotment applications (although not that of Matilda Titus) followed enactment of section 905 of the Alaska National Interest Lands Conservation Act (ANILCA), 43 U.S.C. § 1634 (1982). However, I do not find that the statutory approval of Native allotment applications pending on or before December 18, 1971, enacted by Congress in section 905(a)(1) of ANILCA, operates to approve Native allotments in land conveyed out of Federal ownership prior to passage of ANILCA on December 2, 1980. See Kenai Natives Association, supra at 62 n.4. Legislation passed by Congress concerning disposition of the public lands cannot generally dispose of lands previously conveyed into private ownership and, hence, no longer part of the public domain. To hold otherwise would pose serious constitutional problems concerning deprivation of property without due process of law in violation of the Fifth Amendment.

The duty to reexamine the circumstances of relinquishment, hence, must be predicated on the Secretary's special fiduciary responsibility to Native Americans, in this case Native Alaskans (*i.e.*, Indians, Aleuts, or Eskimos), rather than on grounds of a statutory grant under section 905(a)(1) of ANILCA. See Aguilar v. United States, 474 F. Supp. 840 (D. Alaska 1979). The Secretary of the Interior and his delegates are properly considered to be under a fiduciary duty to examine the circumstances of any purported relinquishment by a Native allotment applicant and ascertain whether it is knowing and voluntary. ^{1/} See Aguilar v. United States, supra; State of Alaska v. Thorson (On Reconsideration), 83 IBLA 237, 91 I.D. 331 (1984). "The protection of Indian property rights is an area where the trust responsibility has its greatest force." Aguilar v. United States, supra at 846 (citations omitted).

If the Secretary finds that the relinquishment was improperly allowed and that the appellant has established her entitlement to a Native allotment, then legal action through the courts may be pursued seeking recovery of the

^{1/} The lead opinion cites several cases in which the Department has recognized the principle that a relinquishment which is not knowingly and voluntarily made is legally ineffective. It should be noted, however, that these cases involve investigation of the circumstances of relinquishment in the context of adjudicating the rights of conflicting claimants for a tract of land which had not been conveyed out of the public domain. Apart from the trust responsibility of the Secretary to the Native Alaskans recognized by the court in Aguilar, supra, which may be considered to include a responsibility to ascertain the circumstances of a relinquishment, I find no Departmental precedent for reinstating a relinquished application for land which was subsequently conveyed out of Federal ownership.

conveyed land. In this context, the courts may be called upon to resolve the rights and equities of the conflicting claimants to the land.

C. Randall Grant, Jr.
Administrative Judge

