NATIVE LAND CLAIMS

Two of the most important issues in Alaska today are the Native land claims and the resulting "land freeze" imposed by the Secretary of the Interior. The question of land ownership has an obvious impact on the economic growth of the state. Since most of the natural resources in Alaska have yet to be developed, the decision as to who has title may affect the overall pace and direction of economic development.

Native groups, asserting their "right" to own, develop and manage lands their ancestors have "used and occupied since time immemorial," have submitted claims covering approximately 290 million of Alaska's 375 million acres. The Natives are asking both for full title to the lands they claim and for compensation in the form of monetary settlements for lands already taken from their claim areas. In filing these claims, Native groups have stressed the importance of owning ecological areas supporting their villages and have been adamant in their belief that, in the long run, the state will enjoy a greater prosperity if the Natives, rather than a public agency, develop these areas.

While some of the Native claims were first filed over 30 years ago, the majority were recorded in a snowballing action that saw large areas claimed in the latter part of 1966 and in the early months of 1967. In December of 1966, Secretary of the Interior Stewart Udall halted action on the disposal of all public lands in the state to which Natives claimed "aboriginal possession" based on use and occupancy. Since the claims cover much of the most valuable unappropriated land in Alaska, most land disposal in the state was affected. Some state officials predicted serious losses in oil and gas revenues would result from the freeze and charged that natural resource development in the state would be slowed to a standstill.

Secretary Udall told state officials he was legally bound to impose the freeze because of a congressional guarantee (made in 1884) that Alaska Natives would not be disturbed in their use and occupancy of lands. The secretary said he would lift the freeze when Congress passes a bill defining the rights of the Native claimants, a process Alaska's congressional delegates estimate would take from two to five years. Two bills concerning land claims were introduced in Congress by October of 1967, one prepared by the Interior Department and the other by the Alaska Federation of Native Associations (now the Alaska Federation of Natives).

The Native claims and the freeze are highly controversial and have both political and moral overtones. Almost any statement made about either issue could justifiably be followed by "however, the opposing viewpoint is ..." There is heated disagreement over definition of terms; impact of previous court decisions; why the land freeze was imposed; what compromise, if any, can be reached, etc. So far there has been little "middle ground" on which all parties involved can agree.

The possibility of a compromise arose during the October 1967 meeting of the Alaska Federation of Natives. The state and the Natives agreed to make an attempt to work together on a mutually acceptable bill to present to Congress. Hearings on the two land claims bills already before Congress are scheduled to be held throughout Alaska during the winter of 1967-68. Discussion during these hearings may further clear the way to agreement and compromise.

NATIVE PROPERTY RIGHTS

Aboriginal possession (sometimes called Indian Title) is the historic first source of Indian property rights. The right of Natives to use and occupy land their ancestors held dates to the discovery of the American
visions for the Natives to use and occupy land they held was equated with conquest. Each sovereign made pro-

Natives.

continent. It was the accepted policy among the European nations claiming land in America that discovery was equated with conquest. Each sovereign made provisions for the Natives to use and occupy land they held at the time of discovery, but the sovereign claimed exclusive title to the land. It was only the sovereign who could give title to the Natives, and it was only the sovereign who could extinguish title to lands claimed by the Natives.

This exclusive right of the sovereign to the land was understood and adopted by the United States Congress, as is evident in the many treaties made with the Indians. In effect, the treaties gave Indian groups ownership of certain portions of land while extinguishing their "title" to other areas they had used or occupied.

The most famous case dealing with aboriginal possession was decided by the United States Supreme Court in 1823. The decision in the case of Johnson v. McIntosh was handed down by Chief Justice John Marshall and is the basis for all aboriginal possession cases today. Marshall held that while the fact of their being there gave Natives a legal and just claim to possession of the soil, tribes did not enjoy and could not convey complete title to the land because of the fundamental principle that "discovery gave exclusive title to those who made it." This decision placed upon the United States government the burden of granting title to Natives or extinguishing it.

In a discussion of aboriginal title, Federal Indian Law, prepared under the auspices of the Department of the Interior, comments:

Cases and opinions subsequent to the McIntosh case oscillate between a stress on the content of the Indian possessory right and a stress on the limitations of that right. These opinions and cases might perhaps be classified according to whether they refer to the Indian right of occupancy as a 'mere' right of occupancy or as a 'sacred' right of occupancy. All the cases, however, agree in saying that the aboriginal Indian title involves an exclusive right of occupancy and does not involve an ultimate fee title.

Proving aboriginal use and occupancy can be an involved process, as is evident by the number of court cases decided for and against Native claimants. The most obvious difficulty is that aboriginal use of land differs from "use" in the contemporary sense of the term. Native hunting, trapping and fishing grounds are not marked by fences, signs or mapped boundaries that could be taken as proof of occupancy. Since ultimate title to public land rests in the United States government, Congress must first officially recognize aboriginal use before steps toward full title can be taken.

**BASIS OF ALASKAN NATIVE LAND CLAIMS**

Alaskan Native groups are seeking full legal title to, or compensation for, the land they claim, as distinguished from a mere possessory interest which they now hold at the sufference of the sovereign (i. e., the United States Congress). Their legal arguments for land title are based on private international law (as embodied in aboriginal possession); the 1867 Treaty of Cession; the Act of 1884, which brought civil government to the territory; the Statehood Act; and past court decisions honoring Indian claimants.

**Treaty of Cession:** In 1867, Russia ceded Alaska to the United States for $7,200,000. The original price was $7 million, but an additional $200,000 was agreed to after Russia added a clause guaranteeing title to the land to the United States. This title guarantee had far-reaching effects, for it has been argued that the Russian Czar, as sovereign, had the power to extinguish Indian Title. Therefore, the argument maintains, when he guaranteed title to the United States, he did, in fact, extinguish all Native rights to land. This argument is hotly contested by attorneys for the Native claimants who hold that the extra $200,000 guaranteed title only against the Russian American Company and was not applicable to Natives.

Article 3 of the treaty made the "uncivilized tribes" of the territory wards of the government:

The uncivilized tribes will be subject to such laws and regulations as the United States may, from time to time, adopt in regard to aboriginal rights of that country.

This wardship, as interpreted by several courts, extended to the protection of Native property rights. For example, in United States v. Berrigan (1905), the court said:

The uncivilized tribes of Alaska are wards of the government. The United States has the right, and it is its duty to protect the property rights of its Indian wards.

**Act of 1884:** For 17 years after the United States purchased Alaska, scattered military posts represented the only government. During this period, the United States did not sign treaties with the Alaskan Natives because there were no serious hostilities, and the Natives "were
Present Methods of Acquiring Title

Congress has passed several pieces of legislation intended to provide legal means for Natives to acquire title to land in Alaska. Mainly because their application was too limited, none of the bills resulted in a successful solution to the overall land rights problem. Generally the bills failed to accomplish even what they intended, either because funds were not made available to carry out the purpose of the laws, or because personnel were not available to make the Natives aware of their rights under the laws.

NATIVE ALLOTMENT ACT: The Native Allotment Act of May 17, 1906, empowered the Secretary of the Interior to allot no more than 160 acres of non-mineral land to any Alaskan Native of full or mixed blood who was either head of a family or 21 years old. Land secured under this act is both nontaxable and inalienable (i.e., it cannot be sold without permission from the Secretary of the Interior or his representative).

Before 1930, the Bureau of Land Management interpreted the provisions of this act in a liberal manner. A Native could gain ownership of his fish camp site, hunting and trapping sites, berry camps, etc., so long as the total acreage did not exceed 160 acres. Nor was the Native required to "prove up" on his allotments, as the white man had to do under the Homestead Act.

However, after 1930 the BLM began tightening control of Native allotments, until they were "generally limited to homesteads or a single piece of cultivated land." Since the agricultural life did not fit the Native mode and much of the land was more fitted to trapping than farming, few Native allotments were filed. It has only been since 1965, when the regulations were liberalized at the urging of U.S. Sen. E. L. Bartlett, that allotments could be secured piecemeal in four 40-acre tracts and for purposes in keeping with the Native way of life.

Although there are almost 50,000 Natives in Alaska and the act has been in effect since 1906, there are fewer than 500 Native allotments recorded with the BLM today. The past failure of the act has been attributed to the tightening of provisions; the fact that little money was appropriated for the necessary surveys, claim investigations and recording work necessary; and the lack of personnel in existing agencies to handle the task of explaining the Native Allotment Act to the Natives.

1926 TOWNSITE ACT: The 1926 Townsite Act was designed to give Natives title to small acreages on which they had their homes. The legislation included provisions from the general townsite act of 1891, but made it possible for Natives to obtain restricted deeds to the lots they were occupying. Restricted deeds were authorized to safeguard the Native who might not be aware of the value of his land or the laws regulating land tax, mortgages, etc. Under a restrictive deed the title rests with the Native, subject to a restriction against alienation or taxation.

In 1953 Congress authorized the Secretary of the Interior or his representative to issue unrestricted deeds to the Native owners of restricted deeds. The owner must first petition for a change of status. Then the area director for the Bureau of Indian Affairs determines, by the informal method of asking various Native leaders, if the applicant is "competent." Once competency is established, the deed may be changed. Apparently the BIA has never denied the competency of any applicant and the requirement is considered a mere formality.

RESERVATIONS: In 1936 the provisions of the Indian Reorganization Act were extended to Alaska. Under these provisions, the Secretary of the Interior was given authority "to designate as an Indian reservation any area of land which has been reserved for the use and occupancy of the Indians and Eskimos . . ." The stipulation was that 30 per cent of the area residents had to vote for the reservation by secret ballot. Shortly before the same law, Secretary of the Interior Ikpea proposed setting up 100 new reservations in Alaska.

The reaction was violent, Commenting on the reservation policy in UNITED STATES v. LIBBY, McNEIL & LIBBY, the court said in 1952:

"... it is no exaggeration to say that nothing since the purchase of Alaska has engendered so much ill feeling and resentment as the Department's reservation policy . . . Whatever may be said in justification of reservations in the unsettled regions of Alaska, they are viewed as indefensible in Southeastern Alaska, and generally condemned by white and Indians alike as racial segregation and discrimination in their worst forms."

The Secretary of the Interior still has the power to create reservations. It is not (some say "will not") doing so. Although a few Native leaders have indicated that reservations would solve the land rights question, most react strongly against the idea today as they did in the 1940's.

too little known." In 1871, Congress prohibited further treaty-making with Indian tribes, so Indian Title in Alaska was never formally extinguished by treaty. The Act of 1884 brought civil government to Alaska and protected Native land rights in strong language:

Indians or other persons in said district (Territory of Alaska) shall not be disturbed in the possession of any lands actually in their use or occupation or now claimed by them, but the terms under which such persons may acquire title to such lands is reserved for future legislation by Congress.

Congress has passed legislation whereby individual Natives or a Native village may gain title to limited tracts of land. However, there has never been congressional definition of what was meant by "use and occupation," hence the vast claim areas of today. Although 83 years have passed since Congress passed this act and several courts have ruled on its intention, there is still disagreement over whether the Act of 1884 "recognized" Indian Title in Alaska.

Statehood Act of 1958: The Constitution of Alaska protects the Natives' right or title to land with the stipulation that this right would be defined in the act of admission (Statehood Act). However, the Statehood Act did not further define the term, leaving the problem to Congress.

The section of the Statehood Act protecting Natives' land rights reads:

As a compact with the United States, said State and its people do agree and declare that they forever disclaim all right and title . . . to any lands or other property (including fishing rights), the right or title to which may be held by any Indians, Eskimos, or Aleuts . . . or is held by the United States in trust for said Natives; that all such lands or other property, belonging to said Natives, shall be and remain under the absolute jurisdiction of the United States until disposed of under its authority.

Major court decisions resulting from land claims in Southeastern Alaska are highly contradictory in their interpretations of both the Treaty of Cession and the Act of 1884. An early case decided by the Ninth Circuit Court of Appeals in San Francisco (Miller v. United States, 1947) held that the Treaty of Cession extinguished Indian Title based on aboriginal occupancy, but that the Act of 1884 created a statutory species of Indian Title. A later decision by the United States Supreme Court (Tee-Hit-Ton v. United States, 1955) held that neither the Act of 1884, nor any other act of Congress passed thus far, constituted recognition of Indian Title or created any special title for Natives. Therefore, aboriginal interests in land in Alaska were found not to be protected by the Fifth Amendment, which prevents the taking of property by
the government without due process of law and compensation.

A more recently decided case, Tlingit and Haida Indians v. United States, has been the subject of much disagreement over whether the findings can be applied to the entire state or must be confined only to the Tlingit and Haida claimants.

The case came about after the United States government in 1907 appropriated a large area of land in Southeastern Alaska for the Tongass National Forest. In 1935, Congress passed a special act allowing the Tlingit and Haida Indians of that region to sue the United States. The Natives brought suit for compensation for 20 million acres of land. In 1947 and 1959, the United States Court of Claims issued initial decisions holding that the Indians were entitled to compensation. In September of 1966, the Commissioner of the Court of Claims recommended that the Indians be paid some $16 million for the market value of the land and for the exploitation of the lands by non-Indians prior to the takings. The attorney for the Tlingit and Haida Indians criticized the amount as inadequate, and the final settlement is still pending.

The court held that the Indians had owned all of Southeastern Alaska by way of Indian Title and that this ownership survived the Treaty of Cession, public domain Title by Congress.

The impact of the Tlingit-Haida case on other land claim cases in Alaska is a matter of dispute. W. C. Arnold, Anchorage attorney and author of a January 1967 booklet, Native Land Claims in Alaska, commented:

It is difficult or impossible to read the decision of the Court of Claims in TLINGIT AND HAIDA without concluding that counsel for the government were either asleep at the switch or resting on their oars. In some respects, the case hardly rises to the level of an adversary proceeding.

Practically all lawyers familiar with the Indian litigation who had occasion to examine the act authorizing the suit were of the opinion that it did not create any right against the United States which did not exist before and did not supply that Congressional recognition found essential and lacking in TEE-HIT-TON.

A different opinion is offered by Frederick Paul, Seattle attorney representing the Arctic Slope Native Association:

The text in any Alaskan situation and Native rights is TLINGIT AND HAIDA INDIANS v. UNITED STATES. The court . . . had benefit of able counsel on both sides.

While the attitude of the United States, as such, has been beneficial toward Indians, the Department of Justice has done its best to protect the United States Treasury. Were it not for the Tongass National Forest Proclamation, the Southeastern Indians would still own Southeastern Alaska, disregarding actual patents issued by the United States, which certainly must be regarded as 'a taking' by the United States. Using this criterion of the Tlingit and Haida case, the balance of the interior of Alaska is still owned by the respective aboriginal groups there, again disregarding actual patents issued by the United States.

Alaska's attorney general has stressed that the Tlingit-Haida decision resulted from a special act of Congress. Whether or not the court in that case misinterpreted the rights created or recognized by that act is immaterial to all other Native claims in Alaska, which will have to stand and fall on their own merits or upon future legislation to be passed by the Congress.

William Hensley, Kotzebue legislator and chairman of the land claim committee of the Alaska Federation of Natives, holds the opposite view.

The court in the Tlingit-Haida case adopted the view that the treaty of Cession did not extinguish the use and occupancy title of the Tlingit and Haida, nor were any rights held by these Indians arising out of their use and occupancy extinguished. Are those of us not Tlingits and Haida any different? Most of Alaska is today Indian Title land and has not yet been declared 'taken,' as was the Tlingit and Haida Land.

ALASKA NATIVE LAND CLAIMS: AN OLD STORY

There is nothing new about Natives claiming land in Alaska. Southeastern Alaskan Native groups have run the court gauntlet off and on for the past 30 years, and a few Interior Alaska groups have blanket claims dating from the 1940's.

Prior to 1946, Indian claims arising in the United States could be adjudicated by the Court of Claims, providing that Congress authorized this action for specific tribal cases. In 1946, Congress passed the Indian Claims Commission Act with the intent of settling all Native claims. However, the commission was authorized to hear only claims accruing prior to August 13, 1946. Claims accruing prior to 1946 and not presented to the commission before 1951 could not "... therefore be submitted to any court or administrative agency for consideration nor will any claims thereafter be entertained by Congress."

This limitation would obviously have presented special difficulties for contemporary Alaskan cases, but, on May 24, 1949, Congress passed another act enlarging the jurisdiction of the Court of Claims to include any Indian claim accruing against the United States after August 13, 1946 - thus reopening the door for Alaskan claims.

Several Southeastern Alaskan Native claims were filed with the Indian Claims Commission. These filings, plus the Department of the Interior hearings on aboriginal
ights in Alaska (for the towns of Hydaburg, Klawock and Kake), aroused wide interest in Native land rights in the mid-1940’s.

... No matter has come before the Alaska public in years which has occasioned so much discussion, public and private, and which has aroused so much controversy. ...

So read a statement by E. L. Bartlett, delegate to Congress for the Territory of Alaska in 1944. For several years, there also was agitation by the Association on American Indian Affairs, a non-profit lobbyist group for Indian rights headquartered in New York City, calling for filings in Interior and Northern Alaska. The Bureau of Indian Affairs played a part in encouraging the filing of claims to protect Native land rights, but was handicapped by lack of personnel. For many years there was only one BIA realty officer assigned to the entire state.

Concern over Native land rights culminated in blanket claims covering most of the state in 1966-67. Native leaders say these filings resulted from the section of the 1958 Statehood Act which granted Alaska the authority to select 103 million acres from “vacant, unappropriated, unreserved” lands.

When the state began its selection program, the Bureau of Land Management offices in Alaska made an attempt to check Native allotments and titles to ascertain what lands Native groups were actually using and occupying. However, no general investigation was made of land Natives may have thought they had a right to — yet the Statehood Act also protected, in principle, Natives’ “right” to lands.

The result was that much of the land selected by the state, with the approval or tentative approval of the BLM, was in areas that Native groups have hunted, trapped or fished in varying intensity “since time immemorial.” Native leaders became increasingly vocal in their concern and began taking the only action open to them — filing claims to areas of use and occupancy.

The increase in filings that began early in 1966 started in Interior Alaska. A Bureau of Indian Affairs official gave an interesting reason for the timing of the filings. He said that a strong rumor within the Bureau that the Secretary of the Interior might not accept further claim assertions caused a flurry of activity by the BIA to process claims before a cut-off date was announced. Also in March of 1966, the Tanana Chiefs Conference, representing villages along the Yukon and Tanana Rivers, began to encourage their members to file blanket claims.

One factor that cannot be ignored was the growing awareness by the Natives of their political strength. Adult Natives comprise about one-fifth of the voting population, and 1966 was an election year. Political candidates spent extra days visiting the far-flung Native villages, and their stands on the land claims issue made headlines. Land rights proved the cohesive that pulled the several Native associations in the state together, and, in October 1966, the groups met in Anchorage to form a statewide association. A land claims bill was drawn up at this meeting and subsequently submitted to Congress. (Land rights was not the only matter of concern to the association, and active committees were formed on such subjects as education, health and employment.)

THE LAND FREEZE

Secretary of the Interior Udall has said he suspended action on land disposal protested by Native groups because suspension has been a long-time practice of the Interior Department in such cases. On December 21, 1966, the BLM state director received a letter from Washington stating, “... the Department’s program continues to be to suspend only those actions and types of actions which are protested. ...”

Secretary Udall further clarified his stand in a letter to Alaska’s Governor Walter Hickel in August of 1967:

In the face of the Federal guarantee that the Alaska Natives shall not be disturbed in their use and occupation of lands, I could not in good conscience allow title to pass into others’ hands ... Moreover, to permit others to acquire title to the lands the Natives are using and occupying would create an adversary against whom the Natives would not have the means of protecting themselves, or even know of their legal rights.

Attorneys for the Interior Department met with state and Native leaders in May of this year to discuss the legal background for the freeze. Several officials who attended this meeting have claimed that the federal attorneys could not give authoritative reasons for the legality of the freeze, and many hold the opinion that the freeze was the result of a policy decision rather than a legal obligation.

Because of the increasing importance of the petroleum industry to Alaska’s economy, the land freeze brought predictions of hard times ahead for the state. Before the freeze was initiated, the state received revenues from leases on federally administered lands, from state owned lands and from lands to which the state had not yet received patent but to which they had gained “tentative approval” (the next step being title). The freeze did not directly affect federal lands already under lease nor did it affect state-owned lands, including tidal and submerged lands. However, it did stop further leasing of federally administered lands and tentative approval lands, thus cutting off these sources of revenue.

At the time the freeze was imposed, the state had applied for 17.8 million acres, had obtained tentative approval to 7.9 million acres and had been granted patent to 5.2 million acres. This was in addition to the tide and sub-
Department of the Interior
Bureau of Land Management
NATIVE PROTEST MAP

Protest Acres (Approximate)
1. Mentasta 592,800
2. Gulkana 2,245,000
3. Copper Center 1,102,300
4. Yakutat 260,000
5. Lake Aleknagik 59,000
6. Stevens Village 1,604,300
7. Birch Creek 882,900
8. Minto 1,740,300
9. Nenana 2,999,400
10. Tanacross 6,544,400
11. Prince William Sound 25,401,500
12. Anvik 8,551,200
13. Northway 6,384,300
14. Chilkoot 640
15. Cantwell 1,335,900
16. St. George Island 52,000
17. Eklutna 437,000
18. Bethel 33,685,000
19. Southeast 3,088,800
20. Kasilof 336,700
21. Copper River 13,401,400
23. Haila 9,081,000
24. Kotzebue 37,307,400
25. Anaktuvuk Pass 422,500
26. North Slope 55,017,300
27. Venetie and Arctic Village 7,920,600
28. Chalkyitsik 25,628,500
29. Eagle 529,700
30. Seward Peninsula 14,622,000
31. Knik 23,000
32. St. Lawrence Island 4,932,900
33. McGrath 9,383,700
34. Kotzebue 50
35. Nondalton 20,628,600
36. Kenai 4,540,500
37. Tanana 5,187,000
38. Alaska Peninsula-Kodiak 53,719,300
39. Holy Cross 3,345,000

(Current to May 17, 1967)
merged lands which became state property under the Statehood Act. So far the major source of state income has been from bonus bids in the competitive leasing of tide and submerged lands and from oil and gas royalties from Cook Inlet production. Since neither of these sources are affected by the freeze, these revenues are secure.

Recently the Department of Natural Resources stated that the state had suffered an estimated $1,250,000 loss because of federal oil and gas leases that were cancelled because of the freeze (the state receives 90 per cent of the rental lease on federal lands). The estimate of lost revenues included a figure of $450,000 lost on new lease offers which have been suspended and $800,000 in revenues from land which the department claims would have been re-leased.

The history of leasing in Alaska has shown that 20 to 25 per cent of the federal leases are dropped or expire each year. These leases have been replaced by enough new leases to keep the level fairly stable. Under the freeze, with virtually no new federal leases being issued to replace those dropped, the acreage under federal lease has dropped from approximately 10 million in May of 1966 to about 7.8 million at the end of May 1967. It was this loss of more than two million acres that resulted in a revenue loss to the state of about $1 million in one year. However, some observers of the petroleum industry suggest this drop might have occurred even without the complications of the freeze as investor interest in oil leases fluctuates greatly from year to year.

The importance of oil and gas revenues was reflected during the first session of the 1967 state legislature when a projected $10 million in bonus bids from competitive leasing was included in the new budget. Some legislators predicted that if the land freeze continued, this bonus money would be lost and the only solution to the deficit would be the eventual raising of state taxes.

This prediction has already been proven erroneous. In a July lease sale of mostly offshore land in the southern Cook Inlet area, the state received a record $19 million in bonus bids.

Actual effect of the freeze on future oil and gas development is open to conjecture. Presently the freeze is stimulating drilling on some federal leases, especially in the Alaska Peninsula. This increased activity has resulted because the federal leases in this area will be the first to expire and oil companies want to eliminate these areas from their list of prospects before the expiration dates do so automatically. If production is developed on a federal lease-hold, the lease is automatically renewable and therefore not subject to the restrictions of the freeze. Present indications are that the only districts in which oil company activity is actually slowing down

Past Recommendations to The Interior Department

The problem of Alaska Native land rights has haunted the Department of the Interior for years, and there has been no shortage of recommendations on how to deal with the issue. The Department of the Interior bill now before Congress incorporates recommendations made as early as 1944. The bill even more closely follows recommendations made in 1962 by a specially appointed three-man task force.

1944 ABORIGINAL RIGHTS HEARINGS: In 1944, Richard H. Hanna acted as chairman for the Interior Department in hearings on Native land claims for the towns of Hydaburg, Klawock and Kake. At the end of these hearings, the examiner reached the following “conclusions of law”:

1. Occupancy necessary to establish aboriginal possession of land by an Indian tribe, band, or individual Indian is a question of fact.
2. Lands included in the ancestral home of Indians, in the sense that they constituted definable territory occupied exclusively by them, are lands to which they have “Indian Title” until same is extinguished by Congress.
3. The policy of the government to respect the aboriginal possession of land by Indians applies to land ceded by Russia under the Treaty of 1867 with the United States.
4. An Indian aboriginal claim to land will be recognized although it has no basis in any treaty, statute, or other formal government action.
5. Intent of Congress to extinguish Indian title through statutory enactment is not to be lightly implied, all doubts in the construction of the statute being resolved in favor of the Indians.
6. The policy of the United States in dealing with Indians has been to accept the subdivision of the Indians into such tribes or bands as the Indians themselves adopted and to treat with them accordingly.

RECOMMENDATIONS: In connection with his findings and conclusions, the examiner made the following recommendations:

1. That the Department of the Interior shall adequately respect all aboriginal rights of use and occupancy of the Indians, bands or tribes which have not been extinguished or abandoned, and, so far as possible, refrain from leasing, recognizing homestead locations or granting other rights to non-Indians until title is first extinguished.
2. That appropriate legislation be recommended to Congress by the Secretary to authorize thorough investigation of the extent of lands, waters or rights, lost by the Indians by wrongful taking of the same; the survey of such lands and waters and asprial thereof to determine the amount of damage resulting therefrom, as well as the present value of such lands, waters and rights should the Congress elect to extinguish all such rights upon payment of adequate compensation therefor by the United States.
3. That the Congressional action failing for the correction of the present situation, the Secretary of the Interior shall set aside for the bands of Indians here involved and other bands, who may be similar in circumstances and choose to join with them, a reasonable portion of the area claimed by them where continued use and occupancy is shown.
4. That such protection of said Indians take into consideration their present economic situation and their present numbers, and be a consideration for the cession and release of all aboriginal rights to the larger areas claimed or to be claimed by other Indians, under approval, by affirmative vote, of a majority of each tribe involved.

TASK FORCE REPORT: In December of 1962, a three-man task force submitted a report to the Secretary of the Interior concerning Native problems in Alaska. Concerning land claims, an Interior Department news release dated March 5, 1963, stated, "Some of the lands claimed by the Indians, Eskimos, and Aleuts have already been selected by the state and the Department of the Interior has been faced with the problem of deciding whether to comply with the state’s request and transfer title to it, or to wait until Congress acts to define Native rights more precisely." The task force suggested a number of steps for resolving this controversy. These include:

-granting individual Natives the title to home sites and hunting and fishing sites;
-withdrawing small acreages in the vicinity of the Native villages for their future growth and development;
-establishing Native hunting and fishing privileges in larger areas;
-setting up a special tribunal in which to consider Native claims for lands taken from them by others in the period since 1884;
-Congress should prescribe a definite period of time in which to adjudicate Native claims so that the state land selection program will not be indefinitely postponed.

The task force’s land recommendations were sharply criticized by the Association on American Indian Affairs, mainly because there was no recommendation that the Natives be compensated for the land taken from them, nor was any mention made of mineral rights on Indian Title lands.
are in the Copper River Basin and along the Gulf of Alaska shoreline — and activity in these areas may have slowed without the freeze. However, if the freeze continues over a period of years, gaps will occur in potential drilling blocks in these and other areas that could depress future exploration in Alaska.

OTHER LAND DISPOSAL CASES

The freeze affects all land disposal cases situated in claim areas, including state selection, final action on homesteads, homesteads, trade and manufacturing sites, power and airport sites, road right of ways, mining claims, etc. Regarding these cases, Secretary Udall has said: "When there is a specific showing that actual construction of a road, school, airport or other public facility is being held up solely because of transfer of public lands or an interest therein, we will make every effort to give it ad hoc consideration. We have in a few cases sought the views of the protesting Native groups and the way has been cleared for the construction of the facility to proceed."

During the first half of 1967, the state made use of this waiver-right by asking village councils for permission to use state money to build or improve airports, schools, hospitals or roads for the town. In mid-summer, Alaska's Attorney general advised state departments to cease the practice of obtaining waivers from Native groups because he considered the practice "contrary to law and policy." The attorney general said that "in the future, if proposed improvement projects by the state are thwarted by the federal government's failure to clear title in reliance upon Native claims, the state administration will halt the project and take its case to the public rather than to obtain waivers."

Individuals homesteading in claim areas have had patents delayed because of the freeze, but in most instances this delay is not expected to last the life of the freeze. Commenting on this aspect, Secretary Udall wrote Governor Walter Hickel: "When an individual has complied with the public land laws and regulations of the department and invested time and money in land and earned equitable title prior to a general Native protest claiming aboriginal Native rights to the lands in the area of an individual case, the patent may be issued. This will not apply in areas of intensive Native use . . . or in a case where a protest is received against a proposal to issue a particular patent."

While Secretary Udall claims legal obligation as the reason for the freeze and the Native groups look on it as a natural consequence of a federal promise to protect their claim areas, there has been a public charge that partisan politics was at least partially responsible for the action. Proponents of this viewpoint point out that the freeze was imposed by Secretary Udall, a leading Democrat, shortly after Alaska's first Republican governor was sworn into office and that these same claims were allowed to lay dormant during the Democratic state administration. Supporters of the partisan-politics theory claim the freeze was imposed as a punishment to a heretofore Democratic state that had voted Republican. Native groups have answered this charge by saying that before 1966 claimants never received help from attorneys who could afford to spend time on the filings and that before 1966 the claims had not reached state-wide proportions. The Native groups believe that the land freeze forced the state administration to cooperate in finding a solution to the land rights question and that without the freeze the state would have shown no such willingness to work out a compromise.

ALASKA FEDERATION OF NATIVES BILL

In an attempt to define the land claim question, two bills have been submitted to Congress, one prepared by the Department of the Interior and one by the Alaska Federation of Natives. The Federation bill, introduced in Congress on June 26, 1967, includes several points drafted into the Minto Bill, a land claim proposal drawn up in 1962 but never introduced into Congress.

In 1951 the Minto Village Indians, along with several other Native groups, filed a petition with the Department of the Interior asking for hearings to determine their land boundaries. The petitions asked that the lands they claimed be reserved under a section of the Townsite Act. The hearings were never granted, and, after statehood, a large portion of the land in question was included in an application for selection by the state. In 1962, the Bureau of Land Management director in Fairbanks dismissed the protest against state selection of land in the Minto area. The Minto Bill, drawn up after this action, authorized the U.S. Court of Claims to "hear and determine the land claims of the Native Village of Minto and to authorize the Secretary of the Interior to conduct a long-range economic feasibility study of the Minto lands . . . ." The bill gave the Court of Claims jurisdiction to award both monetary compensation for lands taken and title to lands claimed by the Natives. All claimed lands to which the Natives could not prove aboriginal use and occupancy would have continued as public domain.

The Minto Bill was never introduced because the state, Minto, and Association of American Indian Affairs representatives never reached agreement on its content. More important, the contemplated jurisdiction to the Court of Claims for awarding title was considered of questionable constitutionality by some members of the
drafting committee. Historically, the Court of Claims has awarded only compensation for lands taken.

The so-called “Anchorage Bill” was approved at the first meeting of the Alaska Federation of Native Associations in October 1966. This bill also gives the U.S. Court of Claims jurisdiction to “hear, examine, adjudicate and render judgment in any and all claims” which the Natives of Alaska have against the United States. The Anchorage Bill, like the Minto Bill, gives the court jurisdiction over both monetary compensation for lands taken and the granting of land title.

Regarding third party title holders, the bill provides that the court, “if it determines that the Natives of Alaska had Indian Title to such lands so disposed of, shall render judgment on behalf of the Natives of Alaska for such amount as the court shall find to be the fair market value of such lands.”

**INTERIOR DEPARTMENT BILL**

The Department of the Interior land bill is based on the premise that Indian Title in Alaska was extinguished by the Treaty of Cession and, therefore, Alaskan Natives do not now have a legal compensable title. However, if Congress passes a bill recognizing their aboriginal title as of 1867, the Natives, with the consent of Congress, may sue for compensation as of that year for lands taken from them. At the same time, the Department holds that since the Natives have had use of the land for so many years, they should be given title to certain portions of this land, again with the consent of Congress. This position underlies the reasoning behind establishing land values as of 1867 in determining compensation for lands taken from Native claim areas and also explains why the bill limits Native title to only certain portions of land.

The main points of the Interior Department Bill are as follows:

1) The Secretary of the Interior is authorized to grant, in trust of the various groups of Natives, title to the village sites they occupy and such additional lands around these sites as will contribute significantly to the livelihood of the Natives. No group may receive more than 50,000 acres.

2) Natives may be given 25-year exclusive or non-exclusive hunting, fishing and trapping permits on any federal lands, subject to state fish and game laws.

3) Title to the lands granted for village sites may be held in trust for 25 years either by the secretary, by a trustee selected by the Native group with approval of the secretary, or by the State of Alaska or other trustee selected by the secretary. The trustee may manage, subdivide, and dispose of the lands. In land disposals, the right of first refusal must be given to the occupant. Title to a tract that is conveyed to a Native will be held in trust, not subject to taxation, in accordance with laws presently applied to Native townsites. At the end of 25 years, the trust must be liquidated in accordance with the terms of the trust.

4) Lands withdrawn by the secretary for the Natives will not be subject to state selection. Lands not withdrawn will be subject to state selection regardless of Native use and occupancy claims.

5) In view of the fact that Natives are claiming much larger areas than the department’s bill would grant to them, the bill permits the state to initiate an action in the Court of Claims on behalf of the Natives to recover the value of the additional lands from the United States. The bill allows for only one claim representing all Natives as a single group. Value of the lands will be determined as of March 30, 1867, the date Alaska was purchased by the United States.

6) The bill authorizes an appropriation of not more than $12 million to pay the costs involved in conveying land to Native groups.

**THE STATE’S POSITION**

The state’s position is that Native land claims are based on a moral right, reinforced by the Act of 1884, but that further congressional legislation is necessary to implement this moral right and give the claims legal basis.

Governor Hickel has taken the stand that regardless of the legal basis of the claims, they are founded on sound historical and strong moral grounds and should, therefore, be recognized by Congress. The governor has said the claims should be settled “equitably and promptly” and has promised the political support of the state in speeding up congressional action.

The governor met with Native leaders several times at the beginning of 1967 in an attempt to prepare a land claim bill acceptable to all parties. However, when it was learned that the Interior Department was also working on a bill, the governor held off on his proposal, which included three main points:

1) Immediate title in fee simple, including, all surface and subsurface rights, given to Native communities for land the communities occupy and also for surrounding lands which might be used for expansion purposes in the foreseeable future.
2) Surface rights to large areas of land around the villages for hunting, trapping and fishing purposes.

3) Jurisdiction to the U.S. Court of Claims to decide monetary settlements for lands to which Natives can prove aboriginal title. Value of land would be set at the time of taking rather than 1867.

The state has taken the position that while the Interior bill contains "many worthwhile features," it does not go far enough in meeting the Natives' demands and goes too far in restricting the scope of compensation and in creating a "bureaucratic empire." The portions of the bill granting land to Native communities have the full support of the state, but there is disagreement with the choice of 1867 as the determining date for the value of land taken.

Alaska's attorney general has said that the state believes that a California case has set a precedent for taking the date of statehood as the date of evaluation and that the state would be prepared to support such a date. The state administration is also opposed to those provisions which "perpetuate" and expand control by the Department of the Interior over Native lands.

At the same time, the state finds the Native-proposed bill "unacceptable," especially that portion which gives the Court of Claims the right to adjudicate fee title to the claimants. The state claims this authority would leave title to vast areas of the state up in the air for a period of at least five to perhaps as much as 25 or 30 years — however long it may take for the Court of Claims and eventually the Supreme Court to resolve individual cases.

Another objection is that the bill leaves open the time within which claims may be filed and then decrees that thereafter, while any claim is pending, there can be no disposition under any of the public land laws, including the Alaska Statehood Act. The state says this stipulation would mean a perpetuation of the land freeze for at least 25 years, the complete drying up of oil and gas activity, mineral activity, the building of roads, airports, hydroelectric and other power sites, and the complete stoppage of all development in Alaska based on land.

The state strongly opposes the land freeze and, contending that the action is illegal, filed suit in the U.S. District Court on Feb. 10, 1967, seeking a declaratory judgment that Native claims may not hold up the state land selection program. The test case named two tracts of land selected by the state in the Nenana claim area near Fairbanks. The United States filed a motion to dismiss, but this motion was denied in early October 1967, clearing the way for a trial on the merits of the case.

The state has also appealed directly to the Native claimants to support the state's request for a lifting of the freeze, arguing that because a few isolated claims may have been ignored by the federal government in the past, this would not happen again with most of the state covered by claims and the state administration actively supporting the Native cause.

The state contends that the land freeze, in an indirect way, suggests that the state government is fraudulent — that the governor would betray his promise to see that the land claims issue is settled "equitably and promptly" once the freeze is lifted. If the freeze were lifted, the state would continue to select land, but not, the administration says, around villages or in areas where title would be granted to the Natives under a congressional bill. Also, the state has promised to actively participate, through its own land disposal program, in the creation of large tracts of fee title land around Native communities, supplementing federal disposal.
THE NATIVES' POSITION

The Natives' position, as reflected in the Anchorage Bill, is that Indian Title survived the Treaty of Cession and their land rights are based in law, therefore title and compensation ought to be forthcoming, regardless of any "moral rights" they may have.

Native spokesmen have objected strongly to the Interior Department Bill, calling it "totally unacceptable." They dislike the additional power the bill gives to the secretary, to the trustees and to the state, over land they may gain title to, and they also object to one claim covering the multitude of claims. They vehemently oppose the section that would determine land values as of 1867, especially since compensation for the Tlingit and Haida Indians was based on land values in the 1900's.

Native leaders have taken the position that title to lands they have used and occupied is necessary to maintain the traditional way of life and that at the same time the land and resources are necessary in order for the Native people to move into the contemporary mainstream. They argue that compensation for lands taken from them and their land rights are based in law, therefore title and protection or wardship of Native-use areas has continued for the 83 years since the Act of 1884 spelled out federal policy for Native land rights. The question of whether the Natives, who became increasingly sophisticated, were in need of or wanted such protection was never resolved. Native land rights might have remained in congressional limbo—except for the vast land claims filed by Native groups in 1966-67. With so much of the state under claim or protest, the federal and state governments could no longer ignore the existence of the title problem.

Native leaders claim there is little danger that gaining title will "freeze" the Native people into the traditional way of life which today means a subsistence economy. Instead they see land ownership as one of the keys to a brighter economic future and thus are determined to press for an acceptable solution.

CONCLUSION

Protection or wardship of Native-use areas has continued for the 83 years since the Act of 1884 spelled out federal policy for Native land rights. The question of whether the Natives, who became increasingly sophisticated, were in need of or wanted such protection was never resolved. Native land rights might have remained in congressional limbo—except for the vast land claims filed by Native groups in 1966-67. With so much of the state under claim or protest, the federal and state governments could no longer ignore the existence of the title problem.

The land claims are an indication of the increasing independence of the Alaska Natives and of their growing disenchantment with the government's philosophy of wardship. This movement has been gathering momentum for the past several years, but never has had the force and direction that it does today. Therefore, a congressional bill defining Native land rights will affect not only the economic development of the state, but also the social development of the Native peoples.

Although the Alaskan Federation of Natives finds the Interior bill "totally unacceptable" and the state administration finds the federation bill "unacceptable," there is sufficient common interest in the development of the state and the Native peoples to give promise that satisfactory legislation can be worked out and the land freeze issue resolved.