TANANA CHIEFS CONFERENCE

A consortium of 42 members, working in unity to advance Alaska Native Self-Determination

Re-conveyance of Alaska Native Allotments by State of Alaska (Aguilar cases)

FACT SHEET

1. Numerous Alaska Native allotments were erroneously conveyed by the federal government to the State of Alaska. These are referred to as Aguilar cases.
   - Allotment applications were lost or improperly closed. BLM was not aware of valid allotment claim when conveying parcels to the state.
   - BLM then closed these cases systematically once land was selected by the state. The Aguilar case reversed this practice, directing BLM to recover title to these valid existing cases, re-opening dozens of cases.
   - Current Aguilar cases are approximately 300, most in the Tanana Chiefs and Bristol Bay regions.

2. A legislative solution is sought to re-convey title to BLM, for ultimate conveyance to rightful owner.

3. State of Alaska accepted land title subject to valid existing rights. A native allotment is a valid existing right.

4. The State of Alaska has over-selected lands for their remaining entitlement of 5 million acres. The Alaska Lands Acceleration Act limits over-selection to 25% of remaining entitlement, putting the state in a position where it needs to relinquish nearly 10 million acres of over-selection.
   - Allotment acreage sought under quit claim is less than 48,000 acres.

5. Allotment applications are decades-old, some nearly 100 years old. It is time to settle and convey to private ownership.

6. Re-conveyance by the state is negotiated and if a trail existed before the applicant's use and occupancy began, then the trail is subject within conveyance documents.

Land Status Differentiations:

- Aguilar cases are UNCONVEYED valid allotment applications.
- Conveyed allotments are trust property with the federal government and many have RS2477 rights of way.
- ANCSA lands have separate provisions for access under federal law.

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RS-2477 claims to access Native allotments and ANCSA lands

Issue: There is concern that Native entities are blocking access over certain Native allotments and ANCSA lands. **This not the case.** The issue is the State of Alaska's use of RS-2477 in an arbitrary manner on Native-owned lands, including "spur" trails not approved by law.

Extensive damage from unauthorized use on RS-2477 trails beyond the intent of access has resulted, including in the recent Purdy case. The Purdys recognize the trails reserved in their land deeds (certificates of allotments) but not additional "spur" access. In the Klutina case, Ahtna is not blocking access rather they acknowledge access by 17(b) easements reserved by the federal government under ANCSA.

RS-2477 Background: Revised Statute 2477 was originally enacted as Section 8 of the Mining Act of 1866 granting right-of-ways for the construction of highways over public lands. The act was repealed in 1976 with enactment of Federal Land Policy and Management Act (FLPMA). Pre-existing RS-2477 claims were not affected by the FLPMA repeal.

Purdy Case: Sisters Agnes and Anne Purdy, Native allotment owners in Chicken, were sued by the State of Alaska in 2013. The State wanted to acquire "quiet title" by condemning portions of land where RS-2477 trails crossed the allotment. Previous to the State filing suit, TCC Realty Program placed "No Trespassing" signs at "spur" trail heads, because extra trails are not recognized as legal access. The Federal District Court found that the State could not sue the allottees for the following reasons: the allotments are trust or restricted lands; the United States is an indispensable party to the State's claim again the Native allotment; the U.S. has not waived its sovereign immunity; the Court lacks subject matter jurisdiction; and the claims by the State have been dismissed. The primary trails reserved in their (Purdys) title documents are recognized as valid access, but additional "spur" offshoot trails are not.

Ahtna-Klutina Case: Ahtna recognizes and allows public access over their lands through 17(b) easements (60 feet wide) as reserved by the Federal government; however, Ahtna does not recognize the State of Alaska claims for RS-2477 easements (100 feet wide) over the same trails. Ahtna is litigating with the State over 26 miles of undeveloped road that begins at the Richardson Highway and ends at the outlet of Klutina Lake – known as the Brenwick-Craig Road. In 2007, the State widened several miles of the road, cutting trees, and removing one of Ahtna's permit fee stations, as an "unauthorized encroachment" on its claimed easement. There was an attempt at mediation, but the State claimed more area, such as "spur" and secondary easements off of the originally claimed primary trail to Klutina Lake. Ahtna is now sponsoring legislation to vacate, or remove the RS-2477 claim, and recognize the federal 17(b) easement.

Excessive access claims on Native allotments and damages: Through the use of RS-2477, the State claims access for a 100 foot wide trail, and asserts uses for future highway development. With the Purdy allotments, the State was claiming 17.5 acres and 6.4 acres in excess of the original RS-2477 trail reservation. The pending settlement for damages by a local miner in the periphery of the RS 2477 trail across the Purdy allotment acknowledges excessive use of primary access trails.

Understanding Land Status Differentiations

Allotment Application (Aguilar cases) vs conveyed allotments and ANCSA lands—
Seeking Legislative Solution to Aguilar Cases

Pending allotment applications, due to erroneously conveyed allotment parcels to the State of Alaska, must be resolved after languishing for decades, sometimes nearly 100 years. A legislative solution to convey these parcels to their rightful owners must move forward.

Allotment titles can be subject to RS2477 access if evidence demonstrates this access pre-dates use by the allotment applicant. Less than 5% of the pending allotment cases have trails on them.

This issue has nothing to do with recent RS2477 cases.

Conveyed land parcels: certificated Native allotments and ANCSA lands

Certificated Native allotments have been conveyed to the allotment owner, governed by certain statutes and regulations pertaining to trust responsibilities. The title may contain provisions for access under RS2477.

If there are issues of trespass, it is the responsibility of the trustee to protect the allotment owner. Recent cases, such as the Purdy's in Chicken, demonstrate that trust responsibility (see TCC white paper RS 2477 claims to access Native allotments and ANCSA lands).

ANCSA land is provided to regional and village corporations through the 1971 Alaska Native Claims Settlement Act. Provisions for access include section 17(b) easements and RS 2477.

Access to lands to these lands, whether a certificated through federal provisions pertain to CONVEYED, TITLED land.

Purdy and Ahtna are recent cases dealing with access (see TCC RS-2477 claims to access Native allotments and ANCSA Lands)—in both, ample access has been granted.

RS2477 --Background

RS 2477 refers to access through statute 2477, originally enacted as Section 8 of the Mining Act of 1866 granting right-of-ways for the construction of highways over public lands. The act was repealed in 1976 with enactment of Federal Land Policy and Management Act (FLPMA). Pre-existing RS-2477 claims were not affected by the FLPMA repeal.