Who will own Alaska's pipeline land?

Resolution of the legal tangle surrounding land ownership in Alaska, not a decision to do what is best for the environment, may settle the question of whether North Slope oil will travel to the United States via a trans-Alaskan pipeline.

Alaska native peoples believe they own the land by right of primeval occupancy and use. White citizens may have a claim by reason of residency. Since most of the state is federally owned, all U.S. taxpayers may have a fair claim to it. To move the oil to market, oil developers want a pipeline either across the entire state to the port of Valdez in the south or across part of the state and into Canada. In either case, the pipeline would have to cross lands now involved in the ownership dispute.

When Russia "sold" Alaska to the United States in 1867, all that was really transferred was the right to administer and tax what then was simply a fur-trading colony and fishery. Most of the interior of the mainland was still under Indian and Eskimo control. The sale agreement recognized the natives' aboriginal rights to the land on which they and their ancestors had lived and hunted. Recognition of aboriginal rights long had been part of federal law.

Until the discovery of gold in 1880 government in Alaska was almost nonexistent and the natives remained powerful. In response to demands for better government after the gold strike, Congress in 1883 passed the Organic Act setting up a form of territorial administration. This act again recognized the natives' right to their lands: "The Indians . . . shall not be disturbed in the possession of any lands actually in their use or occupancy or now claimed by them." Then, as now, natives occupied, used, or claimed 340 million of Alaska's 365 million acres. The legal principle leading to today's confusion is stated in the act's next provision: "But the term under which such persons [natives] may acquire title to such land is reserved for future legislation by Congress."

Congress has not yet acted. It is not an easy issue. The Western idea of property ownership is not an Indian one. Indians thought of the individual as owning only his personal possessions; the tribe controlled the land. There was no concept of selling land. A tribe member's right to use the land was equal to any other member's right and could not be sold, given away, or inherited. The Western system is almost the opposite of this. Individuals own exclusive rights to land that they can buy, sell, accumulate, and pass to whomever they please. Western society has tended to shy away from holding land in common since the Middle Ages. When Western and Indian systems met, they clashed, to the Indians' disadvantage.

In the case of Alaska's natives, Western society has not been as concerned with protecting native rights as many people believe it should be. As long as the natives were a force to be reckoned with in the Alaskan interior, aboriginal rights were recognized by statements such as that of the Organic Act. Until 1939 natives were a majority in Alaska, and there was little conflict with Western economic aims because whites used only a minute percentage of the land. But as their culture was diluted, the native became the lowest rung on the economic ladder rather than a society apart. At the same time others began to covet their lands.

By 1959 when the Alaska Statehood Act was passed, attitudes toward aboriginal rights were changing. The act stated that the "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." However, the Statehood Act further provided, somewhat contradictorily, that the state could select 103 million acres from the public domain. (The "public domain" is 97 percent of the state, the same lands the natives claim.)

The state picked the land it wanted, despite native use, occupancy, and claims. The Department of Interior's Bureau of Land Management began to process the state's choices without telling affected native villages and apparently with little consideration of native claims on file.

The state's most significant choice was of 2 million acres of Barrow Eskimo hunting and fishing territory on the North Slope. It was this land on which the state sold oil leases for $900 million. It is from this land that the oil companies want to transport hot crude nearly 800 miles south to Valdez via a 4-foot-diameter pipeline. The state published a legal notice of its intent to choose the land in a small newspaper rarely read by natives, who might have had difficulty understanding the legal language and implica-

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Alaska...

tions anyway. When no claimants to the land spoke up, the state took title.

These land choices jarred the natives to their own defense. In 1966 the Eskimos, Aleuts, and Indians buried old hostilities and formed the Alaskan Federation of Natives to protect native rights. The first native gain was former Interior Secretary Stewart L. Udall's land freeze, imposed under his legal mandate as trustee for Indian affairs. The freeze went into effect after the Bureau of Land Management had granted Alaska title to 6 million acres, all native-claimed land, and was processing title to another 12 million acres. The move prevented further transfers of title until the native claims issue was settled and native rights to the land defined.

Walter Hickel, Udall's successor but then governor of Alaska, charged that Udall's action was illegal, and the state went to court to try to lift the freeze. The case has not yet been decided. Meanwhile, administrations changed in Washington. As almost his last act, Secretary Udall made the freeze formal with Public Land Order 4582. This order expires at the end of 1970. During confirmation hearings on his nomination as Secretary of Interior, Hickel promised that he would not move to lift the freeze order; but he made it plain that if Congress failed to act to resolve native claims, he would not extend the order beyond its scheduled termination date. However, if the freeze were to expire and land transfers were to begin again, in all probability the natives would take the matter to court, where it could drag on for years. For this reason, it is considered likely that Hickel will extend the freeze as the lesser of two evils, despite his earlier words.

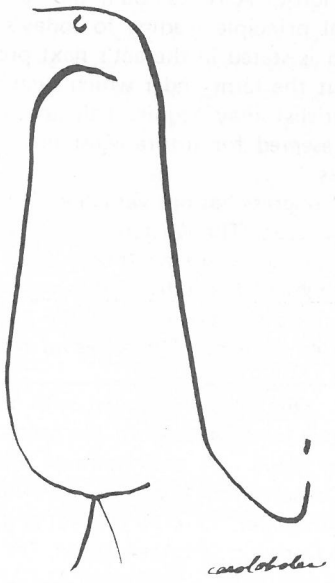
Even though the natives believe that they have a well-founded legal claim to 340 million acres, they have said they will settle for much less.

In July the Senate passed, by a vote of 76 to 8, a bill that would convey to the natives a little more than 10 million acres of land, $500 million cash compensation for the 330 million acres taken, and $500 million in mineral lease revenues and production royalties. The bill would establish a five-man Alaska Native Commission, two of the commissioners being natives, to determine the names and numbers of residents of the approximately 200 villages entitled to the benefits of the bill.

The House Interior Committee is considering legislation which differs considerably from the Senate bill. It is believed quite unlikely that there will be any further action on the House bill this session.

Passage of such a bill by Congress and its signing into law would extinguish native legal rights in all lands to which natives had not been granted clear title. The claims issue would be settled for good, and the state could start again acquiring title to its 103 million acres. Many believe the state will include in its choices the right-of-way needed for the trans-Alaskan pipeline.

At the moment the pipeline is held up by two court orders and the Department of the Interior. Secretary Hickel has proposed stipulations for pipeline construction in an effort to protect the environment. He has also demanded an exact route for the pipeline. So far lacking satisfaction of these conditions, and faced with the two court orders, he has held up his approval for the start of construction. One of the two court orders was handed down in response to a suit by Stevens Indian village seeking to prevent the pipeline from crossing village lands. The other was obtained by the Environmental Defense Fund. It blocks not the pipeline itself but the haul road needed to build the pipeline, on the grounds that the proposed road is wider than allowed by law on federal lands. The Mineral Leasing Act of 1920 stipulates a maximum width for pipeline rights-of-way on federal land: pipe width plus 25 feet on each side. Pipeline planners say they need 100 feet for the pipe, plus a 200-foot-wide roadway north of the Yukon River.



In the event that title to the right-of-way is conveyed to the state, Hickel's objections and the second court order both will be academic. The state can do what it wants on its own land. The suit brought by Stevens Village reportedly was filed because the oil companies planning the pipeline promised the villagers jobs if they allowed the line to cross their lands but then reneged on the promise. That suit could be settled without much ado.

Ironically, justice for the natives after a century of waiting could be the undoing of efforts to use caution in developing North Slope oil. With native claims settled and the route state-owned, little would prevent the oil firms from building the pipeline any way they choose, environment notwithstanding. However, there are a couple of legal opportunities that environmentalists still could use. First, gravel is needed for the road to build the pipeline itself. It would have to be obtained by dredging river beds, and if the stream is navigable, this requires a permit from the Army Corps of Engineers. Second, bridges would have to be built over many streams, and those over navigable water would have to be approved by the Department of Transportation. Both DOT and the Corps would have to file with the Council on Environmental Quality statements of environmental impact as required under the Environmental Quality Act of 1970. These statements would have to show that alternatives with less impact had been considered and rejected as unworkable. This approach is weaker than those used so far, but it may be the only port in a storm. If this situation were to arise, it would be a glaring example of the need for CEQ veto power over projects with whose impact statements the Council is not satisfied. In Alaska, without a CEQ veto, environmentalists may find themselves dependent on the ecological conscience of the Corps and DOT. That should be good for a hollow laugh from someone.

Regardless of who owns the land, the power to safeguard the delicate ecology of the Alaskan tundra rests with the public, since no government agency properly carries out this duty. If the citizen outcry is loud enough, especially from those living in Alaska, neither the federal nor the state governments will find it possible to allow industrialists greedy for profit to rape Alaska's land and people. We do not need the oil in Alaska now, and if a reasonable amount of money is dedicated to research for alternate energy sources, we may never need it.