

*Robinson*

UNITED STATES GOVERNMENT

# Memorandum

2000

TO : Director

DATE: August 8, 1963

FROM : State Director, Alaska

SUBJECT: Alaska State selection program

By letter of May 17, 1963 Under Secretary James K. Carr advised Assistant Secretary for Public Land Management, John A. Carver, Jr., that the Secretary was assuming supervisory jurisdiction over such Alaska matters as state selections, survey practices, and native land rights. Such jurisdiction to be retained until the Secretary had received and acted upon recommendations of Assistant Secretary Carver subsequent to his trip to Alaska and to his negotiation talks with officials here.

As I mentioned to you at Salt Lake City, I believe much good was accomplished by Carver here and I believe he was generally pleased with his discussions with state officials. He discussed the general problem with Governor Egan and then later he had several work conferences with Commissioner of the Department of Natural Resources, Phil Holdsworth, Director of the State Division of Lands, Roscoe Bell, State Attorney General George Hayes, Area Director BIA Robert Bennett, and myself. Bob Coote was in attendance at all meetings.

As a result of the meetings certain agreements were reached, and certain procedures approved. Secretary Carver also urged us to get the "show on the road." We are doing so.

The entire selection program has been under slow bell for over a year for several reasons. We are making positive effort to get the program up to desirable levels of accomplishment as soon as possible. This means I am moving ahead at present under general Secretarial agreement but hope to have all procedures back under general Bureau control as soon as possible. I frankly don't know whether Secretary Carver will initiate action toward restoring supervisory control to the BLM or whether you will have to initiate it. Therefore, the following is submitted for your information.

1. Secretary Carver gave verbal directive for our office to proceed immediately with the processing of state selections, following the intent of Congress as expressed in the Conference Report on HR 5279. This means--

a) Surveys will be made for exterior boundaries of full townships ( even if composed of as many as four land selections) with monumentation at an average of two miles around the perimeter.

b) The State has agreed in all future selection applications to file on full townships. There may be a few exceptions but they will be exceptions individually justified.

c) BLM will process existing applications by combining two or more to meet the township size. Each application on file will be processed to tentative approval with the general statement that "application serial No. X together with application serial No. Y meets the compactness and size requirements of the Statehood Act and is tentatively approved as a selection." By so doing we can process existing applications without making any further record changes. (The idea is agreeable to Congress; see Conference Report.)

d) We shall be submitting for acceptance plats with one township denoted thereon.

e) We were instructed by Carver to process state selection applications covered by native protest up to, but not including, tentative approval. We can thus clean up valid existing individual rights. Further, since the area is segregated by the selection, no subsequent rights can be legally initiated before Congress has had an opportunity to spell out its decision on native rights. This preserves the Department's faith with the natives. We are also to go ahead and make appropriate township surveys and exclusion surveys in these areas.

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Mr. Carver also felt it quite appropriate for the State to file applications on public domain covered by a native "blanket protest." For example, the area east and south of Nenana. In this way the segregative effect of the state selection application can serve to classify the land as unavailable for settlement.

f) Since we currently have in progress all stages of survey and types of monumentation the following practice, concurred in by the State, has been adopted by us.

For each general area of state selections we shall develop an appropriate layout of townships embracing all applications. Thereon we shall indicate the monumentation now existing and that now programmed for establishment. This will then be shown to the State and concurrence as to monumentation reached with Roscoe Bell. He will approve this planning sheet by signature, as will I. This sheet will be reproduced and copies supplied Remington's shop to use as a guide against which to base acceptance of subsequent plats; it, of course, will be used by our several offices in processing of selections, etc.

Perhaps this point needs further elucidation. Due to the many past and current procedures and survey instructions, our present surveys are of several types: one-half township, one township, four township, and miscellaneous sizes; monumentation varies from corners only on one-half to one township selections, to these plus monuments every three miles, every two miles and averaging two miles on exterior boundaries. Now the Conference Report calls for monumentation on average of two miles around township perimeter. I asked Carver if this was a positive requirement and he said he felt it was maximum requirement and that we could negotiate with the State for any monumentation not exceeding the average of two miles. Bell is in full agreement. Thus, in order to accommodate present surveys and to systematize them in an orderly manner we are developing the planning chart. We already have agreement on the Susitna Basin and are working on the Fairbanks area surveys.

To summarize at this point--the survey of exterior boundaries of townships and the agreed pattern of monumentation allow us to get the survey program going again. The designation by Congress of the township as the unit of survey automatically gives the size area deemed compact and acceptable for tentative approval (even though tentative approval is made up of as many as four individual applications).

2. We are to monument the two patented areas now under appeal by the State (which included 7 and 8 one-half township selections) on the township basis described by Congress. Bell has already withdrawn his protests as a result of Carver's commitment. I told Bell that since the land was patented we would give it low priority but would try to get it within the next two years. I believe we may actually talk him out of it altogether. We shall approach him later on this.

3. Wood River-Tikchik Lakes selection. Carver, Bell and I agreed that we would ask for the return of jurisdiction of these cases to the Anchorage and Fairbanks Land Offices. (The 152 cases are physically located there now.) On February 20 (see attachment 1) former Director Landstrom signed a decision rejecting the 152 state applications in favor of a single application. The decision was forwarded to the Department for approval. Secretary Carver should be requested to return the decision to you for cancellation and return of case jurisdiction to us. We can then proceed to act upon the present applications.

4. There currently exist several conflicting policy statements, regulations, and instructions which need modification in order to prevent operational problems and blocks when the Secretary returns supervisory control to BLM.

a) By wire of June 12, 1963 we were instructed to halt processing of state selections in areas covered by native protest (attachment 2). In view of Secretary Carver's instructions above this restriction should be removed. //

b) By wire of March 12, 1963 we were instructed to transmit selection applications to Washington when approval was proposed (attachment 3). Authority to issue tentative approval should be restored to the Alaska Land Offices.'

c) We currently are under instructions to make no surveys of areas not already tentatively approved. This restriction should be removed, for we must be able to work on basis of programs and planning charts, for often we must commit survey costs two years ahead of actual survey on the ground (e.g.-photogrammetry operations).

d) It is essential that 43 CFR 76 be revised to reflect recent Congressional interpretation of the intent of the Statehood Act as it relates to the selection program. Manual revisions are also needed.

It is suggested that the proposed regulation changes to Part 76 submitted to us for review on 4/18/63 (attachment 4) be further delayed for comprehensive review at all levels in the light of recent developments in the selection program.

We are initiating proposed revisions of the current regulations and manual which will be forwarded for your review and comment. This will take some time and I suggest an interim instruction letter be issued to cover points cited above and specifically including statement to the effect: (1) that a one township application will fully meet the requirements of law and be acceptable for the granting of tentative approval; (2) smaller size applications may be administratively grouped into one township size selections as the basis for tentative approval, survey, and eventual patent; (3) applications for area larger than one township will be approved and the boundary of such areas will be surveyed without interior subdivision; and (4) certain fringe and other area applications may be approved and survey executed for less than one township size under other controlling features of law.

5. It was agreed that there was nothing against BLM providing the State with supplemental monumentation on a reimbursable basis provided it did not slow down our survey program and we locally felt the United States benefited in subsequent exclusion surveys, etc.



6. Carver suggested we go ahead and get the Moose Range Boundary line run as planned. We can define it as surveying the abutting state selections. Even if we must hold up actual plat submission the work will be done.

7. In townsite surveys, Carver liked our planning procedure. He asked us to lay out about 640 acres as a townsite reservation around all native villages. We can subdivide a portion of the area as per present procedures. More on the native problem later.

8. Several times Secretary Carver said that between now and next spring BLM and the State of Alaska should make a joint progress report on state selections. This report would cover actual progress in processing state selections as well as the problems needing solution by Departmental or Congressional action.

Secretary Carver said that he had no policy objection to the government being left with only the mountains of Alaska. However, he does not know whether this is the desire of Congress and he will probably present proposed legislation or ask us for proposed guidelines to be reviewed by the Congressional Committee. As you know, I have repeatedly over the past year asked what responsibility and what criteria the United States had in establishing residual areas of management. It is Carver's opinion that with the township compactness criteria established by Congress the State has the entire initiative of selection and we, in fact, now have no means of extending or limiting selection areas included in the state selection program. We merely have the general good will and general understanding by the State of land management problems confronting both sovereign parties. This particular point very definitely needs clarification by Congress.

9. Carver described to the conferees and the BLM staff here his interpretation of the place of BLM in recreation programs per se. You are well aware of his position. He agrees that we need to provide protection and sanitation facilities in order to guide or control use of public domain lands. As you know, it is for these programs that we have received APW funds.

However, since we do not have classification authority, we are faced with a problem in withdrawing these lands to perpetuate their use for campgrounds, etc. We have in the mill, and I believe in Bob Coote's office, many requests for permission to withdraw lands in Alaska for recreational purposes which are not being acted upon.

Carver stated that since we are not in the recreation business we are unable to go before the Congressional Committees requesting their concurrence in the processing of recreation area withdrawals. Carver suggests that we work with the State of Alaska, asking them to cover each present and future withdrawal request with a "letter of support." The letter will be to the effect: that the State recognizes the area to have high recreational value and it may wish to select the area in the future, utilizing it for recreational purposes; that the State operates under a planned selection program and since the areas involved were not within the areas planned for selection in the near future, it is desirable that BLM withdraw these lands to hold them available for state selection--it being alleged that such action is in the public interest. Roscoe Bell appreciates Carver's position and will work with us in drafting standardized language to be contained in such "letters of support."

Carver asked that we get together with Roscoe Bell and prepare a draft brief for him describing our mutual understanding and proposed procedure in the matter of recreational withdrawals. (Roscoe is out of town for two weeks at the present time.) I told Carver I was particularly concerned in placing Federal investments such as APW funds in campgrounds only to have them subsequently selected by the State. This did not seem to particularly bother Secretary Carver. However, he admitted there might be a legislative question. I asked Carver what would happen if the State did not follow up on the selection of the proposed recreational withdrawal. He left me, as well as Roscoe Bell, with the impression that if a "letter of support" is properly written no commitment is made by the State that it will select. The State is merely recognizing the desirable recreational areas and indicating possible selection of the area at some time in the future. From another viewpoint it may be said that in accord with ORRC thinking Alaskan recreation is state-oriented and the State is going on record as concurring in the desirability of certain areas for recreational purposes and for their development, even though the State itself does not do the work or acquire the land.

10. In discussing the present request by Senator Bartlett for legislation to provide a five year extension of the right to select areas covered by mineral leases, Carver said he could see no reason for the United States to object.

11. We discussed at some length the question of several existing and anticipated cases of Federal interest being expressed in areas covered by state selection applications but prior to the issuance of tentative

approval. We have instances of NASA, the Military, FAA, Alaska Railroad, and others requesting withdrawals in areas already covered by state application. We here have taken the position that until tentative approval a Federal request for withdrawal will always be treated senior to any state application no matter when filed. Secretary Carver felt that our position was quite proper and that we should continue to suspend action on state selections involved. He felt that it was up to the State to have resolved either by Presidential Executive Order or decision of the Attorney General of the United States the rights of the State in such cases. He also raised the question as to whether or not there was a difference in legal position between a tentative approval and a patent. In other words, he questioned whether or not the United States could exercise sovereign interest right up to the time of patent rather than tentative approval. It was decided that the State will determine the legal status of the application at tentative approval. X X

12. It was agreed that Holdsworth and Bell will attempt to obtain from Governor Egan a precise statement as to the Governor's interest in the lands and/or mineral leasing of the north slope area (Gubik and east). Holdsworth will then let us know the Governor's position and we will advise Secretary Carver.

13. The question of determination of navigability of streams and lakes was discussed. A proposal by the State to have BLM regard all water areas insofar as mineral leasing is concerned as though non-navigable, was discussed. A copy of the July 24 agreement is attached (attachment 5). Carver signed it.

Initially, last winter, Secretary Carver had objected to the proposal that a joint navigability commission be established by authority of Congress and the State Legislature with BLM and the State being members. Secretary Carver changed his mind while here. He asked Roscoe Bell to draft a bill for submission by Carver to the Department and the Congressional Delegation. He asked that the State work with us in preparing the draft. He wants to see the draft before it is actually presented to the delegation. X

Briefly, Congress would be asked to allow the United States and the State of Alaska to establish a commission with quasi-judicial authority to determine stream by stream and lake by lake whether they are navigable or non-navigable. The criteria to be used by the commission would be suggested or established by Congress in establishing the commission authority.

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Director

August 15, 1963

State Director, Alaska

Alaska state selection program

Further reference is made to my letter to you of August 8, above subject.

Under item 9, page 6 above letter, I mentioned that a "letter of support" would be prepared by Roscoe Bell covering requests for withdrawals of recreation areas. A copy of his letter to me of July 23 is enclosed. It carries the language proposed for use in subsequent letters of support. We currently are reviewing our list of recommended withdrawals with the State and will soon forward copies of the State's letters of support to them.

Under item 12, page 7 of above letter, I understand that Governor Egan has already written directly to the Secretary about his interest on the North slope. I am sure you are aware of his recommendations.

While reviewing my August 8 letter I find that I omitted one important suggestion made by Secretary Carver. We discussed at length the problem being created by the relinquishment of valid existing rights in areas covered prior to relinquishment by state selection applications. We discussed the procedure whereby a claimant or entryman sells his improvements, relinquishes his claim, and the purchaser then files for the land. (In all instances we are discussing claims valid at time of state filing.)

We advised Secretary Carver: that we are talking of relatively few cases; that we are talking of valid rights; that since they are valid the individuals involved are immediately and understandably irked and initiate appeal actions; that claims which are relinquished and not refiled on immediately have with the passage of each day geometrically increasing odds that they never will be filed upon; that if refiled upon we check validity of first claimant; that for such few cases we were getting very heavy adverse publicity.

Bell and Holdsworth both said the State was not interested in intervening in such cases, and it was definitely not their intent to do so in future applications nor in those already on file. Secretary Carver suggested the State and BLM work out a statement to be included in applications which would specifically clarify this point. A copy of



the statement included in a new selection application (A-055409) is enclosed. We are awaiting the return of Bell from vacation to obtain a letter which will express similar intent for all past applications. ✓

This minor in extent but troublesome problem now appears to be resolved. We are recalling those cases on appeal in which the only questions are relinquishment of valid existing claims and our refusal to accept new claimants for the same land.

Enclosures

cc: District Manager, Fairbanks