

FILED

JUL 12 2004

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**EYAK NATIVE VILLAGE; CHANEGA
NATIVE VILLAGE; NANWALEK
NATIVE VILLAGE; PORT GRAHAM
NATIVE VILLAGE; TATITLEK
NATIVE VILLAGE,**

Plaintiffs - Appellants,

v.

**WILLIAM M. DALEY; DONALD
EVANS,**

Defendants - Appellees.

No. 02-36155

D.C. No. CV-98-00365-HRH

ORDER

Appeal from the United States District Court
for the District of Alaska
H. Russel Holland, Chief Judge, Presiding

Argued and Submitted June 22, 2004
San Francisco, California

Before: **SCHROEDER**, Chief Judge, **KOZINSKI**, **O'SCANNLAIN**,
KLEINFELD, **HAWKINS**, **THOMAS**, **W. FLETCHER**, **PAEZ**, **TALLMAN**,
RAWLINSON and **CLIFTON**, Circuit Judges.

The district court decided the federal paramountcy question and thereby avoided determining the existence or extent of the plaintiff villages' claimed aboriginal rights. As an appellate body, we would be greatly assisted by an initial determination by the district court of what aboriginal rights, if any, the villages have. We therefore **VACATE** the district court's order granting summary judgment for defendants. We **REMAND** with instructions that the district court decide what aboriginal rights to fish beyond the three-mile limit, if any, the plaintiffs have. For purposes of this limited remand, the district court should assume that the villages' aboriginal rights, if any, have not been abrogated by the federal paramountcy doctrine or other federal law.

The en banc panel retains jurisdiction over all future proceedings in this matter.

Counsel

Lawrence A. Aschenbrenner, Anchorage, Alaska, for Appellants.

David C. Shilton, U.S. Department of Justice, Washington, D.C., for Appellees.