

**U.S. Office of Personnel Management  
Office of Merit Systems Oversight and Effectiveness  
Classification Appeals and FLSA Programs**

San Francisco Oversight Division  
120 Howard Street, Room 760  
San Francisco, CA 94105

---

**Classification Appeal Decision  
Under Section 5112 of Title 5, United States Code**

**Appellant:** [The appellant]

**Agency classification:** Land Law Examiner  
GS-965-9

**Organization:** [The appellant's installation]  
Bureau of Land Management  
U.S. Department of the Interior

**OPM decision:** Land Law Examiner  
GS-965-9

**OPM decision number:** C-0965-09-01

**RECONSIDERATION**

This decision reopened, reconsidered, and superseded OPM decision number C-0965-11-01, dated 11/17/98.

Theodore G. Shepherd, Director  
San Francisco Oversight Division

November 23, 1999

Date

As provided in section 511.612 of title 5, Code of Federal Regulations (CFR), this decision constitutes a certificate that is mandatory and binding on all administrative, certifying, payroll, disbursing, and accounting officials of the government. The agency is responsible for reviewing its classification decisions for identical, similar, or related positions to ensure consistency with this decision. There is no right of further appeal. This decision is subject to discretionary review only under conditions and time limits specified in the Introduction to the Position Classification Standards, appendix 4, section G (address provided in appendix 4, section H).

**Decision sent to:**

[The appellant's address]  
[The appellant's servicing personnel office]  
Bureau of Land Management  
U.S. Department of the Interior

Ms. Linda D. Sedbrook, Director  
National Human Resources Management Center  
Bureau of Land Management  
U.S. Department of the Interior  
Denver Federal Center, Building 50  
Denver, CO 80225-0047

Assistant Director for Human Resources  
Bureau of Land Management  
U.S. Department of the Interior  
Mail Stop 5628  
1849 C Street, NW  
Washington, DC 20240

Director of Personnel  
U.S. Department of the Interior  
Mail Stop 5221  
1849 C Street, NW  
Washington, DC 20240

Ms. Melissa Drummond, Director  
Classification Appeals/FLSA Programs  
Office of Merit Systems Oversight and Effectiveness  
Theodore Roosevelt Building, Room 7671  
1900 E Street, NW  
Washington, DC 20415-0001

## **Introduction**

On February 11, 1999, the U.S. Office of Personnel Management (OPM) accepted a request from [Director's name], Director, Office of Personnel Policy, Office of the Secretary, U.S. Department of the Interior, to reconsider a decision issued by the San Francisco Oversight Division of OPM on the classification appeal submitted by [the appellant]. [The appellant] was employed in the [appellant's unit and installation], Bureau of Land Management, U.S. Department of the Interior, The November 17, 1998, decision issued by the San Francisco Oversight Division changed the grade of the position from Land Law Examiner, GS-965-9, to Land Law Examiner, GS-965-11. The agency's request for reconsideration was remanded to the San Francisco Oversight Division under the provisions of 5 CFR 511.613 on the basis of new information, and disagreements over the significance of previously considered information. It is our understanding that [the appellant] is no longer employed by the Bureau of Land Management. Nevertheless, we are issuing this reconsideration decision at the request of the agency to resolve those issues presented and clarify the record. We have decided the agency's request for reconsideration under section 5112 of title 5, United States Code (U.S.C.).

## **General issues**

The Department of the Interior (DOI) requested that OPM reconsider its classification appeal decision, among other reasons, because OPM's fact-finding included telephonic interviews with the appellant and the appellant's current supervisor, but did not include an interview with the appellant's former supervisor. The agency pointed out that the appellant's former supervisor had supervised the appellant for most of the time period covered by the decision and had been involved in most of the appellant's assignments cited in our decision. The DOI also questioned other aspects of the decision, such as not addressing apparent differences in information obtained from telephone interviews and information submitted as part of the agency record.

It is OPM policy to decide appeals and reconsiderations based on the actual duties that management assigns and the employee performs. To obtain this information for this reconsideration decision, we conducted onsite interviews with the appellant, the appellant's current supervisor, the appellant's former supervisor, the Division Chief, two Lead (Senior) Land Law Examiners, GS-11, the [name of state] Native Claims Settlement Act Coordinator, and the State Allotment Coordinator. We also telephonically contacted a former Lead Land Law Examiner, GS-11, who had retired but had worked with the appellant during the time period covered. In addition, we accepted and reviewed additional written statements, material and documents provided by the appellant, the appellant's current supervisor and her former supervisor. In reaching our decision for this reconsideration, we have carefully reviewed all the information furnished by the appellant and the agency, including previously submitted material.

The appellant also submitted information on a Lead Land Law Examiner position in another branch that the agency evaluated at the GS-11 level, and stated that there were similarities to her work. By law, we must classify positions solely by comparing their current duties and responsibilities to OPM standards and guidelines (5 U.S.C. 5106, 5107, and 5112). Since comparison to standards is the

exclusive method for classifying positions, we cannot compare the appellant's position to others as a basis for deciding her appeal.

### **Position information**

The appellant was a Land Law Examiner for the BLM in [appellant's duty station]. During the time period covered by our review, August 1997 through September 1998, the appellant adjudicated applications for land claims under the [name of state] Native Claims Settlement Act (ANCSA), as amended or modified. This included research and interpretation of applicable law, regulations, Interior Board of Land Appeal (IBLA) decisions, Public Land Orders, policies, guidelines and procedures, as well as Regional Solicitor's opinions and previous actions and decisions on similar cases or situations. She prepared various conveyance documents, such as decisions, notices, letters and memoranda, to effect the required actions, and to respond to related inquiries. This work involved determination of, and appropriate followup on, land status, determination of superior rights of applied for lands, and related work such as conducting audits of [name of state] Native corporation entitlement(s) and remaining acreages. The appellant typically worked on a number of cases over a period of time, as the adjudication process is completed. The cases discussed in our reconsideration are identified by the native corporation name or the name commonly associated with the lands applied for.

The results of our interviews and the material of record provide much more information on the appellant's duties and responsibilities, and how they were performed.

### **Series, title, and standard determination**

We found that the appellant's position is properly covered by the Land Law Examining Series, GS-965, titled Land Law Examiner, and graded using the GS-965 single agency classification standard (dated April 1962). The agency did not disagree.

### **Grade determination**

The land law examiner standard uses two classification factors: Nature and complexity of work, and Level of responsibility. The agency requests we reconsider our decision that both factors meet the GS-11 level. To be graded at the GS-11 level, both factors would need to be evaluated at the GS-11 level. Our reconsideration of these factors follows.

#### *Nature and complexity of work*

As described in the standard, considered under this factor are:

- the variety and complexity of the factual data and issues which must be analyzed and evaluated;
- the nature of determinations and commitments, including the amount of judgment required;

- the availability and applicability of regulations, guides, or precedents;
- the extent of private interest in the actions, and the significance of such actions and decisions from the standpoint of economic values and the public interest;
- the breadth and intensity of knowledge required of the various laws, rules, regulations, policies and decisions governing public land administration.

Our evaluation of this factor follows.

-- *variety and complexity of factual data and issues which must be analyzed and evaluated*

As described on page 18 of the standard, GS-9 examiners are full journey level workers, and process applications, claims or requests for information encompassing the *broad range* of land or mineral leasing and mining laws, *primarily* those involving a *high level of difficulty*. This is restated on page 22 of the standard, as the GS-9 examiner at the journey level processes a *broad range of cases* involving a *high level of difficulty*, but may consult a higher-grade examiner about difficult, unusual or novel claims, or such claims may be segregated for processing by the GS-11 examiner.

By contrast, as described on page 22 of the standard, GS-11 examiners are *specialists* and process or give advice and guidance on *complex, unusual, or novel claims* or applications for rights or interests in mineral leasing, mining, or public lands. Additionally, they may train or review work of lower-grade personnel; issue instructions or interpretations of land laws in unusual or complex situations; or develop, modify or suggest changes in procedures or policies.

Our decision credited the appellant with spending the majority of her time processing and giving guidance on complex and novel applications for rights or interests in public lands. It specifically cited [name of case] as a complex and novel case due to uplifted land, claims on city and state owned land, dual ceilings, multiple third parties and required application of the Oil Pollution Act, [name of state] National Interest Lands and Conservation Act (ANILCA), as well as ANCSA. The agency did not agree with the level credited to the appellant, pointing out that the information of record submitted showed the appellant had received instructions and guidance on complex aspects of the case such that the assignment was limited so that no complex decisions remained to be made by her. Further, the agency added that many other items worked on by the appellant which took significant amounts of the appellant's work time were not discussed in the decision, and that not all documents or aspects of even the more difficult types of cases, such as Eyak, are complex, complicated, or novel.

We found the appellant performed adjudication work on various applications for land under ANCSA. Adjudicating assigned cases involves a range of activities, from the mostly routine requests, such as 17b easement information from BLM field offices and third-party interests from the U.S. Forest Service and the U.S. Fish and Wildlife Service, to reviewing files and relevant history (if any) that varies in difficulty by case, to analysis of applicable laws or regulations to circumstances that may not be specifically covered, to complex and/or novel situations, e.g., uplifted land. We also found, as the agency asserts, that not all documents of even a complex case are

complicated or novel, e.g., as noted above requests for easement information and notices such as for publication are fairly well-defined and standardized.

The appellant stated that the majority of her time for the period covered was spent on the relatively more complex cases, e.g., [names of cases]. She also stated in interviews and various documents that she produced related conveyance documents independently. As is further discussed in the second factor, Level of responsibility, we found that like the GS-9 level, the appellant consulted a higher-grade examiner about difficult, unusual or novel claims, such that the full scope of GS-11 level assignments cannot be credited.

The agency also stated that the appellant did not spend a significant amount of time giving advice and guidance on complex and novel applications for rights or interests in public lands, reviewing the work of other land law examiners, or issuing instructions or interpretations of the law. As discussed further in our reconsideration, we did not find that the appellant spent a significant amount of time in giving advice and guidance on *complex and novel* applications for rights or interests in public lands. We did find that the appellant is knowledgeable about processing lands covered by the Oil Pollution Act of 1990, and recovering title from the State of land affected by hazardous waste under ANCSA. Her current supervisor considers the appellant an expert on the Oil Pollution Act. However, this did not constitute a significant portion of her work, other adjudicators have also been involved in application of the Oil Pollution Act, and we find that this is more narrow than the broader description of the expertise a GS-11 specialist would be expected to possess. In addition, there were no lower graded examiners that were trained. We did note that it was typical for examiners to review each others' work. We also found that the appellant did not develop, modify, or suggest changes in procedures or policies, although we did note that the appellant said she prepared a checklist for recovering title from the State when hazardous materials were involved. It is the Conveyance Coordination Team that writes policies and procedures (e.g., the ANCSA Handbook). In addition, land law examiners do not issue instructions or interpretations of law, such as the Regional Solicitor does. While a portion of her time in this area may have exceeded the GS-9 level, as a whole we found that it does not meet the GS-11 criteria, (e.g., a *specialist* who processes or gives advice and guidance on *complex, unusual, or novel claims*), and thus credit this element at the GS-9 level.

*-- the nature of determinations and commitments, including the amount of judgment required*

GS-9 examiners are required to exercise judgment in those areas where the guides and precedents may not be applicable, or their applicability may not be clear, or they may apply only in a very general sense, *i.e.*, the exercise of judgment where guides and precedents are not applicable.

In addition to the exercise of judgment where guides and precedents may not be applicable, as shown for the GS-9 level, the GS-11 examiner *more frequently* must make determinations in situations when (1) different possible constructions may be placed on the facts or precedents involved; (2) obscure, vague, or conflicting land laws or implementing regulations must be applied; or (3)

potential conflicts in public land administration policies or procedures must be recognized and required action taken to resolve them.

The agency disagreed with our decision crediting the appellant with making determinations in each of the three situations described at the GS-11 level. The first situation where different possible constructions may be placed on the facts or precedents involved was credited, with the example of needing to obtain the Solicitor's opinion about relinquishing land. Further fact-finding showed that the appellant discussed the case circumstances with the ANCSA Program Coordinator and her former supervisor, and followed their interpretation of the regulations in processing the application and preparing conveyance documents. It was the current supervisor who upon reviewing the documents had further questions that then raised the issue to the Solicitor for an opinion. The appellant's current supervisor then made a determination contrary to that contained in the documents submitted by the appellant based on the Solicitor's opinion. We acknowledge that the appellant did recognize the problem and raised the question, but also that she did not make the determination in the manner described in the standard.

Our decision also credited the appellant with making determinations where obscure, vague, or conflicting land laws or implementing regulations must be made, e.g., conveyance of lands that were withdrawn and involved conflicting laws and regulations. Further fact-finding showed that the appellant discussed the situation with the ANCSA Program Coordinator, a GS-11 lead land law examiner who, together with the appellant, met with her former supervisor to discuss their interpretation and recommend further action. At this meeting, the former supervisor agreed with their interpretation but he decided on the approach, action and rationale that was presented in writing to the native corporation as the basis for the denial of conveyance.

Our decision also credited the appellant with recognizing and taking action to resolve potential conflicts of interest in forest land between Native corporations, Federal agencies, and the [name of state]. The appellant, like all examiners, must review and determine the superior right to lands applied for under appropriate law(s), e.g., ANCSA and effects of Native Allotment Act, the Statehood Act, or ANILCA. In the [name of case] case, the State erroneously was conveyed land and title to the land needed to be recovered or other agreement reached, e.g., land exchanges, so the Native corporation could receive appropriate land entitlements as provided for under ANCSA. The appellant knew of the problem and facilitated and attended meetings between the corporation and the State so that the State and the Native corporation could reach an agreement. However, BLM does not have the authority to make such agreements, as they are made between the State and the Native corporation, although such agreements may need to be made within applicable requirements. While facilitating and attending meetings contributed to the parties reaching agreement, we do not find that the extent of appellant's involvement meets the GS-11 criteria, as the agreement was made between the State and Native corporation and the agreement was approved at a level above the appellant.

The appellant was also credited for resolving potential conflicts of interest concerning the Bering Straits Native Corporation (BSNC) application for the [name of case] selection that involved

reserving BLM's right to the campground and at the same time allowing the BSNC to have its conveyance. With respect to the [name of case] lands and campground, a GS-11 lead land law examiner worked with the appellant, and she consulted with the ANCSA Program Coordinator as well. While the appellant discussed researching various complicating factors (e.g., campground access, third party presence), the potential conflicts were in effect moot, as land selected by the BSNC was determined by the former supervisor to not be available for selection, and discussions with the State by the former supervisor showed that the State would not relinquish its apparently proper and timely claim to the [name of case] lands that could have led to the Native corporation acquiring it (we note that the decision rejecting the selection of [name of case] was on appeal by the corporation).

We did not find other situations in sufficient quantity that would support the finding that the appellant *more frequently* made *determinations* where guides and precedents were not applicable as described at the GS-11 level. Consequently, we find the appellant met the GS-9 level.

*-- the availability and applicability of regulations, guides, or precedents*

As described in the standard, at GS-9 actions require application of *numerous and different provisions of land law* or the mineral leasing and mining laws and implementing regulations.

At GS-11, action may require application of *any or all of the multiplicity of land law* or the mineral leasing and mining laws and implementing regulations, including those stemming from special and private acts of Congress. The GS-9 examiner, on the other hand, may not necessarily be familiar with laws that are infrequently used.

The agency does not agree that the appellant applies any or all of a multiplicity of land laws and implementing regulations, as our decision credited. The agency notes that the appellant only adjudicated one claim under the Native Allotment Act since 1996, and the remainder of her assigned work was processing land selections under ANCSA, as amended or modified, and not the wide variety of acts cited in the decision. Other branches of the [appellant's organization] adjudicate applications and claims by the State, those filed under the Native Allotment Act and other land laws, including title recovery. However, as the agency notes, part of the ANCSA adjudication process may require the adjudication of other conflicting claims under other laws, but the basic land laws applied are ANCSA. The other laws are primarily the Native Allotment Act, ANILCA, and the Statehood Act to determine superior rights and availability of land. The agency further adds that various guides, such as the ANCSA Handbook and precedent and previously completed cases provide direction and reference in determining superior rights. However, as our decision states, the appellant did have cases that involved amendments to ANCSA or special agreements, as is noted at the GS-11 level of the standard.

The appellant did apply other laws and regulations besides ANCSA in processing and adjudicating claims, but we found that the primary basis for processing the applications was ANCSA. The application of the amendments or special agreements on some assigned cases, while a strengthening



factor, was limited and not sufficient to meet the GS-11 level requirement of the *any of a multiplicity* of land laws, and we credit GS-9 for this element.

*-- extent of private interest in the actions, and the significance of such actions*

As described in the standard on pages 18 - 19, and 22, at GS-9 cases have local impact and limited public interest but may involve numerous parties or major interests (e.g., a large oil company) and relatively high property or economic values, either directly or indirectly, or competing governmental entities are not involved.

At GS-11, actions and decisions affect, economically and/or socially, directly or indirectly, a *significant segment* of private or public interest; or public interest in and demand for the federally-owned lands and/or resources is *highly competitive*; or *high* property or economic values are involved.

The agency contends the example of [name of case] in our decision as a case economically directly affecting a significant segment of the public interest, and the example of [name of case] where significant public interest in and demand for Federally-owned lands and/or resources is highly competitive, are both greatly overstated with respect to ANCSA. The agency states that BLM has no authority to base ANCSA adjudication decisions on economic needs or public interest. It adds that the economic value of the surface estate does not in any way modify how BLM adjudicates land selections under ANCSA. They point out that high economic value does not make the adjudication more complex nor is the adjudication any different than for land with minimal value, as it is BLM's responsibility to convey, in accordance with the law, land that was properly selected and prioritized by the Native Corporations. It further adds that the Department of Interior has very little discretion to exercise in this area and that discretion is exercised at the Secretarial, not local, level. While the agency noted that some of the lands adjudicated by the appellant may have significant economic benefits to the Native corporation(s), and the value may influence the corporation in making its determinations as to its selections and priorities on which lands it desires conveyance next, at most it will require BLM to process land selections in a different order and does not affect the adjudication process. The agency adds that, with the possible exception of easements, public interests are handled by entities like the State, Forest Service and Park Service through laws that do not impact or involve BLM. It also differed with the accuracy or relevancy of statements in the decision describing effect, interest and impact.

We have considered all the information and find that overall the appellant's assignments did not involve cases with aspects of high economic or property values, and that there was not major public or private interest; it was mostly local or regional versus a "significant segment" of private or public interest as described at the GS-11 level. Although in some instances her work involved numerous parties, and there were some competing governmental entities, this does not fully meet the intent of the standard at the GS-11 level. We credit this element at GS-9.

*-- the breadth and intensity of knowledge required of the various laws, rules, regulations, policies, and decisions governing public land administration*

GS-9 examiners make determinations and judgments on complex and controversial factual issues. The standard provides examples of such issues on pages 19 and 20.

As described on pages 22 and 23 in the standard, GS-11 Land Law Examiners are required to process a *wide variety of different types* of cases which are considered *complex, novel, or unusual*. The standard provides examples to illustrate the types of cases envisioned at the GS-11 level.

The agency disagreed with our decision crediting the appellant with processing a wide variety of different types of cases which are considered complex, novel or unusual and that are comparable to examples (1), (3), and (4) on pages 23-24 of the standard. The agency notes that the appellant only adjudicated one claim under the Native Allotment Act since 1996 and the rest of her assigned work was under ANCSA, as amended or modified, not the wide variety of acts cited in the decision. Example (1) at the GS-11 level in the standard describes cases where public land administration policies and national interest factors are involved (e.g., *resolving policy conflicts* relating to applications initiated by States, counties, municipalities and agencies of the Federal government which *require negotiation* with representatives of the parties...). The agency states that reconveyance of land erroneously conveyed to the State in the [name of case] case was not complicated, and that the reconveyance process is covered by standard procedures established and used under the Native Allotment Act. Further, that the appellant's authority was limited such that she may have facilitated and attended meetings between representatives from the State and the Native corporation, but she did not engage in negotiations with the representatives, as any agreement is made between the State and the Native corporation, not BLM. The authority to negotiate, settle, or decide was not vested in her position. The decision allowing the mining claims and other interests to stand in the [name of case] case to avoid possible legal action was made between the State and the Corporation. However, the situation of potential hazardous materials on two parcels of land did raise questions as this particular situation was not specifically covered by guidelines. The agency adds that the appellant's former supervisor briefed higher level BLM officials on the agreement made by the State and the corporation, including discussions of the potential hazardous material on the property, requesting and receiving concurrence before proceeding with the reconveyance. Considering the additional information obtained, we do not find that the appellant's case met the criteria of resolving policy conflicts through negotiation (the question of superior right had previously been determined and the State and Corporation needed to resolve third party issues).

Our decision also credited the appellant with cases equivalent to example (3) at the GS-11 level, where considerable research is required over many and voluminous records, some of which may be obscure, vague or difficult to locate as only one or a few copies are known to exist, or old and infrequently used laws not of general applicability may be involved (e.g., tracing entitlement to resolve private land claims based on grants from the Crowns of Spain, France, or Great Britain to settlers or colonists). This credit was based on [name of case] selection cited as requiring considerable research of case files, public land orders, Executive Orders, the Geothermal Act, and

Solicitors' opinions to consider the effect of the conveyance of land around the hot springs. The agency notes that the case had not been processed, and in effect is a moot point as the land in question was not available for conveyance. We also note that the research involved did not meet the GS-11 criteria, e.g., the vagueness, age or a few copies with dates equivalent to the grants to the colonists or settlers. We do not find this case or others are equivalent to example (3).

With respect to example (4), our decision cites a number of instances where the appellant processed claims for lands that included those valuable for economic, social and/or recreational purposes and that were sought by different groups or governmental entities. The agency differs, stating that in some cases another examiner had previously made the determination, and that in other cases the appellant prepared the documents in accordance with the ANCSA Handbook or other guidance or direction, such that the work did not meet the criteria of complex, novel or unusual. However, we find that sufficient information supports the conclusion that the appellant processed some cases that meet the description of example (4) in the standard, i.e., involved property of high economic value being sought by different groups or governmental entities and requiring contacts with other Federal agencies, State representatives, and private individuals or groups. We credit the appellant with cases similar to example (4).

In summary, while we credited the appellant with cases similar to example (4), we do not find that overall the appellant's cases fully met this GS-11 level element requiring the processing of a wide variety of different types of complex, novel, or unusual cases described in the standard. Therefore, we credit this element at GS-9.

In summary, for the first factor, Nature and complexity of work, while we found portions of the appellant's work exceeded the GS-9 level, we did not find that the type and complexity of her cases fully met the GS-11 level.

#### *Level of responsibility*

Considered under this factor are:

- the amount and kind of supervision received during the progress of the work;
- the extent and purpose for which the completed work is reviewed;
- nature and extent of personal contacts.

*-- amount and kind of supervision received during the progress of the work*

As described on page 21 of the standard, GS-9 land law examiners are normally expected to proceed on their own initiative in developing facts and evidence, in defining legal and factual issues, in searching for and locating precedents, and in drafting letters, notices, decisions and other documents to effect required actions. Advice and guidance is provided by or available from a higher-grade examiner or supervisor whenever any unusual or novel problem or question is presented, or whenever an important policy consideration appears to be involved.

Similar to the GS-9 level, the appellant is expected to proceed on her own initiative in processing applications. This includes completing a variety of actions that are involved in processing applications, depending upon the status of the application and the stage of adjudication. Actions such as requesting master plats internally, and third-party interests from the U.S. Forest Service and the U.S. Fish and Wildlife Service externally, are typical at the early stages of adjudication. Preparing patents and auditing status of acreage entitlement(s) are involved in the later stages.

In contrast to the GS-9 level, and as described on page 23 of the 965 standard, GS-11 level land law examiners exceed the GS-9 requirements in that, as *authoritative specialists*, they *frequently* give advice to other land law examiners on *precedent decisions* in carrying out their assignments. The intent at the GS-11 level, then, is for the examiner to be a recognized expert whose advice is often sought out by other examiners on new, novel, unusual and unprecedented situations. The agency contends that the information of record does not support a finding that the appellant is considered an “expert” as was credited in our decision.

We found that the appellant is knowledgeable of assigned cases. This is as expected of all adjudicators assigned specific cases and typically would meet GS-9 journey level criteria. We also found, as cited in our decision, that the appellant is knowledgeable of adjudicating cases involving oil spills and the Oil Pollution Act from work on [name of case] and the [name of case] oil spill on selected lands. Further, the appellant is knowledgeable about procedures regarding title recovery from the State under ANCSA for land parcels having hazardous materials and she developed a checklist for this process. However, the appellant’s knowledge of assigned cases, processing applications of lands involving oil spills, and title recovery from the State of parcels with hazardous materials is more narrow than the broader range of expertise described at the GS-11 level in the standard. In our judgement this does not meet the intent of the requirement of, and is not equivalent to, being an authoritative specialist who frequently is called upon by other land law examiners to provide advice on new, novel unusual and unprecedented decisions. The appellant and other information sources also indicated that land law examiners discuss with each other various aspects of cases, especially with other examiners who have previously dealt with similar situations they are encountering. This also does not meet the broader authoritative expert criteria. In summary, we find that the appellant does not meet the authoritative specialist criteria as described at the GS-11 level.

As is further described on pages 23-24 of the standard, at the GS-11 level examiners proceed independently in developing facts and evidence; in defining legal and factual issues; in searching precedent decisions and other reference materials; in applying laws, regulations, policies and procedures; and in drafting letters, decisions, notices and other documents to effect actions required. Nevertheless, they must recognize legal issues or precedent decisions that will have broad or serious public relations impact. These are referred to superiors or to the legal staff for advice or action to be taken.

The agency does not agree that the appellant proceeded as independently as our decision concluded, particularly on the relatively more complex cases, such as [names of cases]. The agency refers to information provided in the record that includes a memorandum (dated October 27, 1997) submitted

by the appellant stating that she spoke regularly with and received guidance and advice from the ANCSA Program Coordinator, and that she also discussed assigned cases with a number of GS-11 lead adjudicators. The agency further adds that the material of record shows that the appellant's former supervisor provided the appellant with direction and guidance, and made important decisions for such cases worked on until July 1, 1998. In interviews and in various documents submitted, the appellant's former supervisor reiterated that he did provide direction and guidance to the appellant on assigned cases, particularly on any complex or unusual aspects, and made important decisions affecting the cases outcome, so that no complex decisions needed to be made by the appellant on the cases.

The appellant, on the other hand, stated in interviews and in various documents submitted that her former supervisor did not provide the level of involvement, guidance or direction asserted when assignments were made or in the progress of conducting her work. We acknowledge that the appellant's current supervisor observed her to work independently on assigned cases. Relatedly, the appellant cites various analyses, decisions, and documents maintaining that she prepared them independently. In many instances the appellant did proceed independently in developing and reviewing facts and evidence, and in general pursuing the adjudication of cases. However, the general courses of action in adjudicating a case are outlined in the ANCSA Manual, such as collecting data plats, reviewing case files, requesting easement reviews and memoranda from the appropriate BLM Field Office, etc., and are relatively well-established. In other cases, available guidelines are not specific to projects and assignments, or are not applicable, as described at the GS-9 level. In other cases the appellant did seek out information, advice, guidance, options, interpretations from others, e.g., other adjudicators who may have worked on cases with similar situations, a GS-11 Senior Land Law Examiner and/or the ANCSA Program Coordinator. The appellant noted that it is normal and not an unusual practice for all land law examiners, regardless of grade level, to check with other examiners who have adjudicated cases with similar circumstances as those assigned, with GS-11 lead land law examiners, and/or with the ANCSA Program Coordinator on various situations.

In assessing the information provided, including interviews and material of record, we find that there is sufficient information to conclude that the appellant received guidance or consulted with others, e.g., GS-11 examiners and the ANCSA Coordinator, in defining legal issues (dual ceilings and uplifted land in [name of case], land patterns in [name of case], application and interpretation of statute and regulations in [name of case]), in searching precedent decisions (name of case) and other reference materials, such that she did not proceed as independently in the more complex, unique, or novel areas as envisioned at the GS-11 level in the standard. We note that she recognized legal issues or precedent situations and sought advice, e.g., uplifted lands, but this is not sufficient to meet the GS-11 level criterion.

We find that appellant best meets the GS-9 level, as described on page 21 of the standard. As previously stated, Land Law Examiners at the GS-9 level are normally expected to proceed on their own initiative in developing facts and evidence, in defining legal and factual issues, in searching for and locating precedents, etc. At the GS-9 level, advice and guidance is provided by or available

from a higher-grade examiner or supervisor whenever any unusual or novel problem or question is presented, or whenever an important policy consideration appears to be involved. Similarly, the appellant does proceed independently in many aspects of the cases assigned, but has advice and guidance available from a higher level examiner when unusual or novel problems or questions arise.

*-- extent and purpose for which the completed work is reviewed*

As described in the standard on page 24 at the GS-11 level, although signed by personnel delegated such authority, letters and decisions are given only a  *cursory review*. Completed work is normally assumed to be accurate, adequate, and acceptable in accordance with applicable laws, regulations, policies and procedures. Review of completed work is normally limited to those cases where an important precedent is being established or where the action or decision is expected to provoke considerable criticism or unfavorable public reaction.

As described in the standard on page 21 at the GS-9 level, the examiner must be able to recognize problems which may be of a precedent-setting nature or cause unfavorable public reaction and require referral to a higher level for decision. Except for occasional spot check for technical accuracy and adequacy, review of completed work is limited to examination of the final decision and/or other documents for general quality and effectiveness.

The appellant issued under her signature and without review a number of documents, such as requests for easement information from BLM field offices, requests for third party interests from the Forest Service and the Fish and Wildlife Service, publication notices to newspapers, and a modified decision to provide an easement for the U.S. Coast Guard. However, information obtained from interviews and from the record reflected other conveyance documents, e.g., patents, were described as thoroughly reviewed by a GS-11 lead land law examiner and/or her former or current supervisor. While signature authority for these conveyance documents (such as patents and interim conveyance) is reserved for supervisors, the information from interviews described these reviews as detailed and thorough, not cursory. These detailed reviews included [names of cases]. In addition, the agency points out that during the period covered, signing authority for all documents for [names of cases] was retained by the appellant's former supervisor, with prior review by a GS-11 senior land law examiner. Information from interviews reflected that review of these other products was also thorough. We do note that the appellant's current supervisor restored certain signing authority to the appellant. In addition, other reviews were also conducted by GS-11 lead examiners and also described as thorough and were not limited to cases where an important precedent was being established or where action or a decision was expected to provoke considerable criticism or unfavorable public reaction. We credit this element at GS-9.

*-- nature and extent of personal contacts*

As described on page 24 of the standard, personal contacts at the GS-11 level are significant because the examiner serves as the *focal point* for *giving authoritative advice*. At lower levels, contacts are made by the examiners primarily to secure information to adjudicate cases. GS-11 examiners have

contacts with attorneys in private business, officials of other Governmental agencies, including Departments of Defense, Commerce, Agriculture, Attorney General's Office, and other Bureaus and offices of the Department of Interior, and Congressional contacts. Such contacts include discussion or explanation of such matters as jurisdiction over lands; special provisions and stipulations in orders or permits, amendments and applications; the effect and meaning of orders, documents and other material pertinent to cases; what claims may be initiated or asserted affecting the lands involved under existing land laws; or other aspects of acquisition, disposal, or rights in and to the public lands.

As described on page 21 of the standard, GS-9 level examiners have telephone or personal contacts with applicants or their representatives, other employees in the office or Bureau, and representatives of other agencies on problems associated with cases at the GS-9 level of difficulty.

The majority of the appellants external contacts were with individuals in, or designated representatives of, Native Corporations and local Federal and State agencies related to assigned case work. These contacts included attorneys, land managers and consultants representing Native regional and village corporations, realty specialists from the State's Department of Natural Resources and in other Federal agencies, such as the Coast Guard and FAA, and Forest Service on third party and access issues. The appellant was knowledgeable and able to provide a wide range of information, advice and assistance to these contacts, and due to good working relationships and past experience with the corporations could also be contacted for information that was not always directly related to cases assigned. The appellant also had internal contacts within BLM, including other land law examiners, the ANCSA Program Coordinator, field office personnel, and other [appellant's installation] State Office employees. However, as noted above, these contacts would not be characterized as serving as the *focal point* for giving *authoritative advice* in the sense intended at the GS-11 level, e.g., either to outside organizations and typically not case related or to other land law examiners on precedent, unusual, novel, controversial topics. Information provided on ANCSA, IBLA decisions, Solicitor's opinions, was typically case related like the GS-9 level. The appellant also had personal contacts, such as facilitating the attendance of and attending meetings, and serving as a knowledgeable expert on the instant case, such as where various issues needed to be resolved between the State and native corporations. Typically, in these meetings, a lead land law examiner and/or the supervisor also attended to serve as an ANCSA and broader subject matter expert, with the appellant serving as the specific case expert. Thus, while the extent of the appellant's contacts may exceed that typical of GS-9, we do not find that the extent and nature fully meets the GS-11 level.

The standard also describes the examiner at the GS-11 level as demonstrating considerable ingenuity in meeting the public land needs of the public. At this level, the examiner is often called upon to suggest an existing law (which may be very old or seldom used) as an appropriate vehicle for the satisfaction of such public needs. The agency differs with our decision crediting the appellant at this level in citing the appellant's use of the provisions of the Geothermal Act and various Executive Orders in the [name of case] application to make the [name of case] available to the general public. Among the agency objections are that the Geothermal Steam Act (of 1970) is not an old law in the context of the standard, that the application had not yet been adjudicated so it could not have met

the public needs, that the public is not a factor in adjudicating selections under ANCSA, and that the authority attributed to the appellant is only delegated to the Secretary of the Interior. The agency adds that the extent of local authority is limited to basically reviewing of easements identified by field offices before they are reserved, and the Division does not even have the delegated authority to recommend what lands will be made available for public purposes. We do note that in some instances, various permits for land use are provided for in patents. We also note that one interviewee added that some discretion exists in the area of ANCSA, Section 14 (h) lands, e.g., historical sites and cemeteries. However, we find that the opportunity to use ingenuity in meeting the public land needs of the public is limited and not considerable, so an examiner would not often be called upon to suggest an old law to meet such needs, as is described in the standard at the GS-11 level. We credit this element at the GS-9 level.

### *Summary*

We have found that the Nature and complexity of the appellant's work exceeds the GS-9 level in some limited aspects, but does not fully meet the GS-11 level. In addition, her Level of responsibility favorably compares to the GS-9 level. Therefore, the position is graded overall at the GS-9 level.

### **Decision**

The appellant's position is properly classified as Land Law Examiner, GS-965-9.