

ALASKA NATIVE LEGISLATION

HEARING BEFORE THE SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS OF THE COMMITTEE ON NATURAL RESOURCES HOUSE OF REPRESENTATIVES ONE HUNDRED THIRD CONGRESS

SECOND SESSION

ON

H.R. 3612

TO AMEND THE ALASKA NATIVE CLAIMS SETTLEMENT ACT,
AND FOR OTHER PURPOSES

H.R. 4665

TO AMEND THE ALASKA NATIVE CLAIMS SETTLEMENT ACT,
AND FOR OTHER PURPOSES

H.R. 3613

KENAI NATIVES ASSOCIATION EQUITY ACT

HEARING HELD IN WASHINGTON, DC, SEPTEMBER 22, 1994

Serial No. 103-120

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ALASKA NATIVE LEGISLATION

THURSDAY, SEPTEMBER 22, 1994

HOUSE OF REPRESENTATIVES,
COMMITTEE ON NATURAL RESOURCES,
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS,
Washington, DC.

The subcommittee met, pursuant to call, at 9:49 a.m. in room 1324, Longworth House Office Building, Hon. George Miller (chairman of the subcommittee) presiding.

Mr. MILLER. The committee will come to order for the purpose of a hearing on the listed bills on the agenda.

If there is no objection, I will put my opening statement in the record.

[Text of the bills and prepared statement of Mr. Miller follow:]

103D CONGRESS
1ST SESSION

H. R. 3612

To amend the Alaska Native Claims Settlement Act, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 21, 1993

Mr. YOUNG of Alaska introduced the following bill; which was referred to the
Committee on Natural Resources

A BILL

To amend the Alaska Native Claims Settlement Act, and
for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. RESCISSION OF RELINQUISHMENT.**

4 Section 12 of the Alaska Native Claims Settlement
5 Act (43 U.S.C. 1611) is amended by adding at the end
6 the following:

7 “(f) The Secretary of the Interior shall develop proce-
8 dures under which a rescission of a relinquishment of a
9 parcel of land properly selected pursuant to this Act may
10 be made before adjudication with respect to that parcel
11 and conveyance to a third party.”.

1 **SEC. 2. KAGEET POINT LAND SELECTION.**

2 The following lands shall be treated as acreage allot-
3 ted to the Chugach Alaska Corporation for the purpose
4 of making selections under section 12(c) of the Alaska Na-
5 tive Claims Settlement Act (43 U.S.C. 1611(c)): those
6 lands contained within the west half of Township 21
7 South, Range 24 East, Copper River Meridian, commonly
8 known as "Kageet Point".

9 **SEC. 3. RATIFICATION OF CERTAIN CASWELL AND MON-**
10 **TANA CREEK NATIVE ASSOCIATIONS CON-**
11 **VEYANCES.**

12 The conveyance of approximately 11,520 acres to
13 Montana Creek Native Association, Inc., and the convey-
14 ance of approximately 11,520 acres to Caswell Native As-
15 sociation, Inc., by Cook Inlet Region, Inc. In fulfillment
16 of the agreement of February 3, 1976, and subsequent
17 letter agreement of March 26, 1982, among the three par-
18 ties are hereby adopted and ratified as a matter of Federal
19 law. These conveyances shall be deemed to be conveyances
20 pursuant to section 14(h)(2) of the Alaska Native Claims
21 Settlement Act (43 U.S.C. 1613(h)(2)). The group cor-
22 porations for Montana Creek and Caswell are hereby de-
23 clared to have received their full entitlement and shall not
24 be entitled to the receipt of any additional lands under
25 the Alaska Native Claims Settlement Act.

1 **SEC. 4. MINING CLAIMS AFTER LANDS PATENTED TO RE-**
2 **GIONAL CORPORATION.**

3 Section 22(c) of Alaska Native Claims Settlement Act
4 (43 U.S.C. 1621(c)) is amended by adding at the end the
5 following:

6 “(3) After the fee or subsurface lands subject to a
7 valid mining claim have been patented to a Regional
8 Corporation—

9 “(A) any person holding such valid mining
10 claim shall continue to meet all requirements of the
11 general mining laws and section 314 of the Federal
12 Land Policy and Management Act of 1976 (43
13 U.S.C. 1744);

14 “(B) the administration of the mining claim
15 shall continue to be by the United States, unless the
16 Secretary, acting through the Bureau of Land Man-
17 agement, waives administration in favor of the Re-
18 gional Corporation; and

19 “(C) all revenues from the mining claim other-
20 wise due the United States shall be remitted to the
21 Regional Corporation for distribution pursuant to
22 section 7(i) of this Act, except that in the event that
23 the Regional Corporation patent does not cover all
24 land embraced within the mining claim, the Regional
25 Corporation shall be entitled only to that proportion

1 of revenues reasonably allocated to the portion of the
2 mining claim so covered.”.

3 **SEC. 5. SETTLEMENT OF CLAIMS ARISING FROM CONTAMI-**
4 **NATION OF TRANSFERRED LANDS.**

5 (a) IN GENERAL.—The Alaska Native Claims Settle-
6 ment Act (43 U.S.C. 1601 et seq.) is amended by adding
7 at the end the following:

8 “CLAIMS ARISING FROM CONTAMINATION OF
9 TRANSFERRED LANDS

10 “SEC. 40. (a) As used in this section:

11 “(1) The term ‘contaminant’ means substances
12 harmful to public health or the environment, includ-
13 ing asbestos.

14 “(2) The term ‘lands’ means real property
15 transferred to a Native Corporation pursuant to this
16 Act.

17 “(b)(1) Not later than one year after being notified
18 by a Native Corporation of contaminants on lands, the
19 Secretary shall reach a settlement with the Native Cor-
20 poration that provides for—

21 “(A) the removal of all contaminants left by the
22 United States, an agent of the United States, or a
23 lessee, from the transferred lands; or

24 “(B) the replacement of the lands containing
25 contaminants in accordance with paragraph (2).

1 “(2) If the settlement reached pursuant to paragraph
2 (1) provides for the replacement of lands containing con-
3 taminants in accordance with paragraph (1)(B), the Sec-
4 retary shall—

5 “(A) accept title to the lands containing con-
6 taminants from the Native Corporation; and

7 “(B) replace the lands by conveying to the Na-
8 tive Corporation—

9 “(i) other lands, from unreserved, vacant,
10 and unappropriated public lands, in accordance
11 with section 1302(h) of the Alaska National In-
12 terest Lands Conservation Act (16 U.S.C.
13 3192(h)); or

14 “(ii) other lands, interests in lands, or
15 rights available under this Act, pursuant to
16 such authority, and under such terms with re-
17 spect to value and acreage, as governed the
18 original conveyance.

19 “(c) The United States shall—

20 “(1) assume all past, present, and future liabil-
21 ities and obligations arising from the original trans-
22 fer of contaminated lands; and

23 “(2) defend and hold harmless Native Corpora-
24 tions in all claims arising from the original transfer
25 of contaminated lands.”.

1 (b) PENDING TRANSFERS.—Nothing in the amend-
2 ment made by subsection (a) is intended to impede or
3 delay any transfer of lands under the Alaska Native
4 Claims Settlement Act (43 U.S.C. 1601 et seq.) that is
5 pending on the date of enactment of this Act.

6 **SEC. 6. AUTHORIZATION OF APPROPRIATIONS FOR THE**
7 **PURPOSES OF IMPLEMENTING REQUIRED**
8 **RECONVEYANCES.**

9 Section 14(c) of Alaska Native Claims Settlement Act
10 (43 U.S.C. 1613(c)) is amended by adding at the end the
11 following:

12 “There is authorized to be appropriated such sums as may
13 be necessary for the purpose of providing technical assist-
14 ance to Village Corporations in carrying out this sub-
15 section. The Secretary may provide amounts appropriated
16 pursuant to this subsection through contracts to nonprofit
17 organizations whose function is to provide technical assist-
18 ance in planning, developing, and administering assistance
19 to Village Corporations in fulfilling their requirements
20 under this subsection.”.

21 **SEC. 7. COMMUNITY NEED.**

22 Section 14(c)(3) of the Alaska Native Claims Settle-
23 ment Act (43 U.S.C. 1613(c)(3)) is amended—

24 (1) by striking “community needs: *Provided*,”
25 and inserting “community needs: *Provided*, That the

1 Village Corporation need not convey any particular
2 lands unless the Municipal Corporation or the State
3 in trust shows that those lands are necessary for
4 community expansion, rights-of-way, or other fore-
5 seeable community needs: *Provided further,*"; and

6 (2) by inserting after "one thousand two hun-
7 dred and eighty acres:" the following: "*Provided fur-*
8 *ther,* That if the improved lands owned by the Vil-
9 lage Corporation within the Native Village plus the
10 Village Corporation lands that are shown to be nec-
11 essary for community expansion, rights-of-way, or
12 other foreseeable community needs amount to less
13 than 1,280 acres, and if the Municipal Corporation
14 or the State in trust cannot reach a written agree-
15 ment with the Village Corporation, then the Village
16 Corporation shall have the discretion to designate
17 which additional lands shall be conveyed to bring the
18 total conveyance to 1,280 acres:".

19 **SEC. 8. NATIVE ALLOTMENTS.**

20 Section 1431(o) of the Alaska National Interest
21 Lands Conservation Act (94 Stat. 2542) is amended by
22 adding at the end the following:

23 "(5) Following the exercise by Arctic Slope Regional
24 Corporation of its option under paragraph (1) to acquire
25 the subsurface estate beneath lands within the National

1 Petroleum Reserve—Alaska selected by a Village Corpora-
2 tion, where such subsurface estate entirely surrounds
3 lands subject to a Native allotment application approved
4 under section 905 of this Act, and the oil and gas in such
5 lands have been reserved to the United States, Arctic
6 Slope Regional Corporation, at its further option, shall be
7 entitled to receive a conveyance of the reserved oil and
8 gas, including all rights and privileges therein reserved to
9 the United States, in such lands. Upon the receipt of a
10 conveyance of such oil and gas interests, the entitlement
11 of Arctic Slope Regional Corporation to in-lieu subsurface
12 lands under section 12(a)(1) of the Alaska Native Claims
13 Settlement Act (43 U.S.C. 1611(a)(1)) shall be reduced
14 by the amount of acreage determined by the Secretary to
15 be conveyed to Arctic Slope Regional Corporation pursu-
16 ant to this paragraph.”.

17 **SEC. 9. OPEN SEASON FOR CERTAIN NATIVE ALASKAN VET-**
18 **ERANS FOR ALLOTMENTS.**

19 (a) IN GENERAL.—During the one-year period begin-
20 ning on the date of enactment of this Act, an individual
21 described in subsection (b) is eligible for an allotment of
22 not to exceed 160 acres under the Act of May 17, 1906
23 (Chapter 2469; 34 Stat. 197), as such Act was in effect
24 before December 18, 1971. The Secretary shall prescribe
25 such rules as may be necessary to carry out this section.

1 (b) ELIGIBLE INDIVIDUALS.—(1) An individual is eli-
2 gible under subsection (a) if the individual would have
3 been eligible under the Act of May 17, 1906 (Chapter
4 2469; 34 Stat. 197), as such Act was in effect before De-
5 cember 18, 1971, and the individual is a veteran of the
6 Korean conflict or the Vietnam era.

7 (2) In the case of an individual described in para-
8 graph (1) who is deceased, the heirs of the individual shall
9 be treated as the individual described in paragraph (1).

10 (c) CONVEYANCE DEADLINE.—The Secretary of the
11 Interior shall complete land conveyances pursuant to this
12 section within one year after the end of the period referred
13 to in subsection (a).

14 (d) DEFINITIONS.—For the purposes of this section,
15 the terms “veteran”, “Korean conflict”, and “Vietnam
16 era” have the meaning given such terms by paragraphs
17 (2), (9), and (29), respectively, of section 101 of title 38,
18 United States Code.

19 **SEC. 10. LAPSED MINING CLAIMS.**

20 Section 22(c)(2)(A) of the Alaska Native Claims Set-
21 tlement Act (43 U.S.C. 1621(c)(2)(A)) is amended—

22 (1) in clause (i)—

23 (A) by striking “outside the boundaries of
24 a conservation system unit (as such term is de-

1 fined in the Alaska National Interest Lands
2 Conservation Act) and”; and

3 (B) by striking “The Secretary shall
4 promptly determine the validity of such claims
5 or locations within conservation system units.”;
6 and

7 (2) in clause (ii), by striking “outside a con-
8 servation system unit” both places it appears.

9 **SEC. 11. TRANSFER OF WRANGELL INSTITUTE.**

10 (a) **PROPERTY TRANSFER.**—Cook Inlet Region, In-
11 corporated, is authorized to transfer to the United States
12 and the General Services Administration shall accept an
13 approximately 10-acre site of the Wrangell Institute in
14 Wrangell, Alaska, and the structures contained thereon.

15 (b) **RESTORATION OF PROPERTY CREDITS.**—

16 (1) **IN GENERAL.**—In exchange for the land
17 and structures transferred under subsection (a),
18 property bidding credits in the total amount of
19 \$382,305, and in addition, interest calculated in ac-
20 cordance with paragraph (2), shall be restored to the
21 Cook Inlet Region, Incorporated, property account in
22 the Treasury established under section 12(b) of the
23 Act of January 2, 1976 (Public Law 94-204; 43
24 U.S.C. 1611 note), referred to in such section as the
25 “Cook Inlet Region, Incorporated, property ac-

1 count.” Property bidding credits sufficient to reim-
2 burse Cook Inlet Region for all legal and other ex-
3 penses incurred due to the return of this property,
4 shall also be added to the property account provided
5 that all such credits restored or added to the prop-
6 erty account shall be used solely for the acquisition
7 or purchase of General Services Administration
8 properties.

9 (2) CALCULATIONS OF INTEREST.—The inter-
10 est credited to the Cook Inlet Region, Incorporated,
11 property account shall be compounded semiannually
12 and calculated at the same interest rate as that of
13 5-year Treasury bonds issued by the United States
14 Treasury on or about November 2, 1987. The inter-
15 est shall be calculated on a principal amount equal
16 to the property bidding credits restored to the prop-
17 erty account under paragraph (1), and shall be for
18 the time period from November 2, 1987, to the date
19 of conveyance of the land and buildings to the Unit-
20 ed States.

21 (3) HOLD HARMLESS.—The United States shall
22 defend and hold harmless Cook Inlet Region, Incor-
23 porated, and its subsidiaries in any and all claims
24 arising from Federal or Cook Inlet Region, Incor-

- 1 porated, ownership of the land and structures prior
- 2 to their return to the United States.

103^D CONGRESS
2^D SESSION

H. R. 4665

To amend the Alaska Native Claims Settlement Act, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 28, 1994

Mr. YOUNG of Alaska introduced the following bill; which was referred to the
Committee on Natural Resources

A BILL

To amend the Alaska Native Claims Settlement Act, and
for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. PURCHASE OF SETTLEMENT COMMON STOCK**
4 **OF COOK INLET REGION.**

5 Section 7(h) of the Alaska Native Claims Settlement
6 Act (43 U.S.C. 1606(h)) is amended by adding at the end
7 the following new paragraph:

8 “(4)(A) As used in this paragraph, the term ‘Cook
9 Inlet Regional Corporation’ means Cook Inlet Region, In-
10 corporated.

1 “(B) The Cook Inlet Regional Corporation may, by
2 an amendment to its articles of incorporation made in ac-
3 cordance with the voting standards under section
4 36(d)(1), purchase Settlement Common Stock of the Cook
5 Inlet Regional Corporation and all rights associated with
6 the stock from the shareholders of Cook Inlet Regional
7 Corporation in accordance with any provisions included in
8 the amendment that relate to the terms, procedures, num-
9 ber of offers to purchase, and timing of offers to purchase.

10 “(C) Subject to subparagraph (D), and notwithstand-
11 ing paragraph (1)(B), the shareholders of Cook Inlet Re-
12 gional Corporation may, in accordance with an amend-
13 ment made pursuant to subparagraph (B), sell the Settle-
14 ment Common Stock of the Cook Inlet Regional Corpora-
15 tion to itself.

16 “(D) No sale or purchase may be made pursuant to
17 this paragraph without the prior approval of the board of
18 directors of Cook Inlet Regional Corporation. Except as
19 provided in subparagraph (E), each sale and purchase
20 made under this paragraph shall be made pursuant to an
21 offer made on the same terms to all holders of Settlement
22 Common Stock of the Cook Inlet Regional Corporation.

23 “(E) To recognize the different rights that accrue to
24 any class or series of shares of Settlement Common Stock
25 owned by stockholders who are not residents of a Native

1 village (referred to in this paragraph as ‘non-village
2 shares’), an amendment made pursuant to subparagraph
3 (B) shall authorize the board of directors (at the option
4 of the board) to offer to purchase—

5 “(i) the non-village shares, including the right
6 to share in distributions made to shareholders pur-
7 suant to subsections (j) and (m) (referred to in this
8 paragraph as ‘nonresident distribution rights’), at a
9 price that includes a premium, in addition to the
10 amount that is offered for the purchase of other vil-
11 lage shares of Settlement Common Stock of the
12 Cook Inlet Regional Corporation, that reflects the
13 value of the nonresident distribution rights; or

14 “(ii) non-village shares without the nonresident
15 distribution rights associated with the shares.

16 “(F) Any shareholder who accepts an offer made by
17 the board of directors pursuant to subparagraph (E)(ii)
18 shall receive, with respect to each non-village share sold
19 by the shareholder to the Cook Inlet Regional Corpora-
20 tion—

21 “(i) the consideration for a share of Settlement
22 Common Stock offered to shareholders of village
23 shares; and

24 “(ii) a security for only the nonresident rights
25 that attach to such share that does not have at-

1 tached voting rights (referred to in this paragraph
2 as a 'non-voting security').

3 “(G) An amendment made pursuant to subparagraph
4 (B) shall authorize the issuance of a non-voting security
5 that—

6 “(i) shall, for purposes of subsections (j) and
7 (m), be treated as a non-village share with respect
8 to—

9 “(I) computing distributions under such
10 subsections; and

11 “(II) entitling the holder of the share to
12 the proportional share of the distributions made
13 under such subsections;

14 “(ii) may be sold to Cook Inlet Region, Inc.;
15 and

16 “(iii) shall otherwise be subject to the restric-
17 tions under paragraph (1)(B).

18 “(H) Any shares of Settlement Common Stock pur-
19 chased pursuant to this paragraph shall be canceled on
20 the conditions that—

21 “(i) non-village shares with the nonresident
22 rights that attach to such shares that are purchased
23 pursuant to this paragraph shall be considered to
24 be—

25 “(I) outstanding shares; and

1 “(II) for the purposes of subsection (m),
2 shares of stock registered on the books of the
3 Cook Inlet Regional Corporation in the names
4 of nonresidents of villages; and

5 “(ii) any amount of funds that would be distrib-
6 utable with respect to non-village shares or non-vot-
7 ing securities pursuant to subsection (j) or (m) shall
8 be distributed by Cook Inlet Regional Corporation to
9 itself.

10 “(I) Any offer to purchase Settlement Common Stock
11 made pursuant to this paragraph shall exclude from the
12 offer—

13 “(i) any share of Settlement Common Stock
14 held, at the time the offer is made, by an officer (in-
15 cluding a member of the board of directors) of Cook
16 Inlet Regional Corporation or a member of the im-
17 mediate family of the officer; and

18 “(ii) any share of Settlement Common Stock
19 held by any custodian, guardian, trustee, or attorney
20 representing a shareholder of Cook Inlet Regional
21 Corporation in fact or law, or any other similar per-
22 son, entity, or representative.

23 “(J)(i) The board of directors of Cook Inlet Regional
24 Corporation, in determining the terms of an offer to pur-
25 chase made under this paragraph, including the amount

1 of any premium paid with respect to a non-village share,
2 may rely upon the good faith opinion of a recognized firm
3 of investment bankers or valuation experts.

4 “(ii) Notwithstanding any other provision of law,
5 Cook Inlet Regional Corporation, a member of the board
6 of directors of Cook Inlet Regional Corporation, and any
7 firm or member of a firm of investment bankers or valu-
8 ation experts who assists in a determination made under
9 this subparagraph shall not be liable for damages resulting
10 from terms made in an offer made in connection with any
11 purchase of Settlement Common Stock if the offer was
12 made—

13 “(I) in good faith;

14 “(II) in reliance on a determination made pur-
15 suant to clause (i); and

16 “(II) otherwise in accordance with this para-
17 graph.

18 “(K) The consideration given for the purchase of Set-
19 tlement Common Stock made pursuant to an offer to pur-
20 chase that provides for such consideration may be in the
21 form of cash, securities, or a combination of cash and se-
22 curities, as determined by the board of directors of Cook
23 Inlet Regional Corporation, in a manner consistent with
24 an amendment made pursuant to subparagraph (B).

1 “(L) The eligibility of any Native or descendant of
2 a Native for any programs, benefits, services, or other
3 rights or privileges made available to Natives or descend-
4 ants of Natives by any agency of the Federal Government
5 or the government of a State or political subdivision of
6 a State shall not be diminished or affected by the sale
7 of Settlement Common Stock in accordance with this
8 paragraph.”.

103D CONGRESS
1ST SESSION

H. R. 3613

Entitled the "Kenai Natives Association Equity Act".

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 21, 1993

Mr. YOUNG of Alaska introduced the following bill; which was referred jointly to the Committees on Natural Resources and Merchant Marine and Fisheries

A BILL

Entitled the "Kenai Natives Association Equity Act".

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Kenai Natives Associa-
5 tion Equity Act of 1993".

6 **SEC. 2. FINDINGS AND PURPOSE.**

7 (a) FINDINGS.—Congress finds that—

8 (1) the acquisition by the United States of cer-
9 tain lands owned by the Kenai Natives Association,
10 Inc. (KNA) will enhance the purposes for which the
11 Kenai National Wildlife Refuge (the Refuge) was es-
12 tablished, as set forth in section 303(4)(B) of the

1 Alaska National Interest Lands Conservation Act, as
2 amended (43 U.S.C. 3101 et seq.) (ANILCA);

3 (2) the Service and KNA have agreed to an ex-
4 change and acquisition program pursuant to Public
5 Law 102-458, of lands and interests in land;

6 (3) the lands to be conveyed to KNA are of
7 lower quality habitat in relation to lands to be ac-
8 quired by the United States. Conveyance of lands to
9 KNA would not significantly impact the purposes for
10 which the Refuge was established;

11 (4) this acquisition of and exchange of lands
12 will significantly enhance the ability of the Service to
13 conserve fish and wildlife populations and habitats,
14 fulfill migratory bird treaties, ensure water quality
15 and quantity, provide opportunities for environ-
16 mental research and education, improve access to
17 fish and wildlife oriented recreation, and further en-
18 hance the Refuge management objectives;

19 (5) the amount to be paid for the Swanson
20 River Road West Tract, the sole issue upon which
21 the Service and KNA could not agree, is established
22 by Congress at \$7,500,000; and

23 (6) it is in the public interest to complete this
24 exchange, and to provide for the economic and bene-
25 ficial use of lands conveyed to KNA in fulfillment of

1 the purpose of the Alaska Native Claims Settlement
2 Act of 1971, as amended (43 U.S.C. 1601 et seq.)
3 (Settlement Act).

4 (b) PURPOSE.—The purpose of this Act is to author-
5 ize and direct the Secretary to complete an exchange and
6 acquisition as provided by Public Law 102-458 of lands
7 owned by KNA that will provide for and enhance the man-
8 agement opportunities and objectives of the Refuge, and
9 assist KNA in achieving economic viability and use of its
10 retained lands in furtherance of the Settlement Act.

11 **SEC. 3. DEFINITIONS.**

12 For purposes of this Act, the term—

13 (a) “ANILCA” means the Alaska National In-
14 terest Lands Conservation Act, as amended (16
15 U.S.C. 3101 et seq.);

16 (b) “conservation system unit” has the same
17 meaning as in ANILCA;

18 (c) “KNA” means the Kenai Natives Associa-
19 tion, Inc., an urban corporation incorporated in the
20 State of Alaska pursuant to the terms of the Settle-
21 ment Act;

22 (d) “lands” means both the surface and sub-
23 surface estates or any interest therein whenever both
24 estates are owned by the United States or KNA, as
25 applicable;

1 (e) "property" has the same meaning given
2 such term by section 12(b)(7) of the Settlement Act;

3 (f) "refuge" means the Kenai National Wildlife
4 Refuge;

5 (g) "region" means Cook Inlet Region, Incorporated,
6 an Alaska Native Regional Corporation
7 which is the appropriate Regional Corporation for
8 KNA, under section 1613(h) of the Settlement Act;

9 (h) "Secretary" means the Secretary of the
10 Interior;

11 (i) "Service" means the United States Fish and
12 Wildlife Service; and

13 (j) "Settlement Act" means the Alaska Native
14 Claims Settlement Act of 1971, as amended (43
15 U.S.C. 1601 et seq.).

16 **SEC. 4. EXCHANGE AND ACQUISITION OF LANDS**

17 (a) EXCHANGE OF LANDS.—

18 (1) IN GENERAL.—Within 180 days of the en-
19 actment of this Act and upon receipt by KNA of
20 funds for the payments provided by this Act, the
21 Secretary shall convey to KNA, in accordance with
22 the provisions of ANILCA and subject to the provi-
23 sions of section 4(a)(3) and valid existing rights, ap-
24 proximately 1,831 acres of land, portions of the Fed-
25 eral subsurface estate underlying the same, and por-

1 tions of the Federal subsurface estate underlying an-
2 other 3,238 acres, all as identified in section 4(b)(2),
3 in exchange for approximately 14,338 acres of KNA
4 land, and the relinquishment by KNA of its
5 unpatented selections and all entitlement to selec-
6 tions under the Settlement Act, consisting of ap-
7 proximately 1,207 acres, all located within the Ref-
8 uge and identified in section 4(b)(1).

9 (2) LIMITATION.—The Secretary may not con-
10 convey any lands or make any payment to KNA under
11 this section unless title to the lands to be conveyed
12 by KNA in exchange for such lands and payments
13 is in accordance with the Department of Justice
14 standards for preparation of title evidence in land
15 acquisitions by the United States.

16 (b) EXCHANGE AND ACQUISITION LANDS.—

17 (1) KNA LANDS TO BE ACQUIRED.—The lands
18 or interests to be conveyed by KNA to the United
19 States, all situated within the existing authorized
20 boundary of the Refuge, and identified on the map
21 titled “Kenai Natives Association, Inc. and United
22 States Fish and Wildlife Service Negotiated Ex-
23 change/Acquisition Package,” dated October 1993,
24 on file and available for inspection in the Office of
25 the Secretary, generally include—

1 (A) approximately 803 acres located along
2 the Kenai River, known as the Stephanka
3 Tract;

4 (B) approximately 1,243 acres located
5 along the Moose River, known as the Moose
6 River Patented Lands Tract;

7 (C) approximately 2,120 acres located
8 along Marathon Road, known as the Beaver
9 Creek Tract;

10 (D) approximately 10,172 acres located
11 along the Swanson River Road and the Sunken
12 Island Lake Road, known as the Swanson River
13 Road West Tract;

14 (E) all of the remaining KNA selections
15 under the Settlement Act, consisting of approxi-
16 mately 1,207 acres, are hereby relinquished and
17 all remaining entitlement of KNA is hereby ex-
18 tinguished; and

19 (F) an easement for access to and use of
20 less than one acre of land, located in the NE¹/₄
21 NE¹/₄ of section 24, T.6N., R.9W., Seward Me-
22 ridian, within the Swanson River Road East
23 Tract, for so long as the site is used by the
24 Service as a radio communications repeater site.

1 (2) LANDS TO BE EXCHANGED.—The lands or
2 interests to be conveyed by the United States to
3 KNA, and identified (except for the parcel identified
4 in section 4(b)(2)(A)) on the map titled “Kenai Na-
5 tives Association, Inc. and United States Fish and
6 Wildlife Service Negotiated Exchange/Acquisition
7 package,” dated October 1993, on file and available
8 for inspection in the Office of the Secretary, gen-
9 erally include—

10 (A) approximately five acres, located with-
11 in the city of Kenai, Alaska, identified as
12 United States Survey 1435, and known as the
13 old Fish and Wildlife Service Headquarters site;

14 (B) approximately 1,826 acres located
15 along the Swanson River Road, known as the
16 Swanson River Road East Tract; and

17 (C) the subsurface estate (less oil, coal,
18 and gas) to approximately 5,064 acres, includ-
19 ing approximately 1,826 acres underlying the
20 Swanson River Road East Tract and approxi-
21 mately 3,238 adjacent acres underlying lands
22 previously patented to KNA which are located
23 east of the Swanson River Road.

24 (3) The lands identified for acquisition by the
25 United States, specifically identified on the maps

1 referenced in section 4(c) as the Stephanka Tract,
2 the Beaver Creek Tract, and the Moose River Pat-
3 ented Lands Tract, collectively referred to as the
4 "Kenai River Project," shall be acquired by the
5 United States pursuant to the Land and Water Con-
6 servation Fund Act.

7 (4) NATIONAL REGISTER OF HISTORIC
8 PLACES.—Upon completion of the exchange author-
9 ized in section 4(a), the Secretary shall promptly un-
10 dertake to nominate the Stephanka Tract to the Na-
11 tional Register of Historic Places, in recognition of
12 the archeological artifacts from the original Kenaitze
13 Indian settlement.

14 (c) GENERAL PROVISIONS.—

15 (1) REMOVAL OF RESTRICTIONS.—(A) Those
16 lands retained by KNA, and those parcels within the
17 Refuge, including designated wilderness, conveyed to
18 KNA pursuant to the terms of this Act, shall be re-
19 moved in their entirety from inclusion within the
20 boundaries of the Refuge by operation of this Act.
21 Such removal from the boundaries of the Refuge
22 shall terminate any application of Federal manage-
23 ment and patent restrictions applicable to lands
24 within the Refuge for which conveyance was made
25 pursuant to the terms of the Settlement Act or any

1 other law or regulation applicable solely to Federal
2 lands.

3 (B) The Secretary shall execute and file such
4 instruments as are necessary to convey lands and re-
5 move the restrictions referred to in this section at
6 the time of the conveyances provided in section
7 4(a)(1).

8 (C) Any lands KNA shall receive from the Unit-
9 ed States pursuant to this Act shall be deemed to
10 have been conveyed pursuant to the Settlement Act.

11 (2) MAPS AND LEGAL DESCRIPTIONS.—The
12 maps described in section 4 and a legal description
13 of the lands depicted on the maps shall be on file
14 and available for public inspection in the appropriate
15 offices of the United States Department of the Inte-
16 rior. Not later than 120 days after the day of enact-
17 ment of this Act, the Secretary shall prepare a legal
18 description of the lands depicted on the maps re-
19 ferred to in section 4. Such maps and legal descrip-
20 tions shall have the same force and effect as if in-
21 cluded in this Act, except that the Secretary may
22 correct clerical and typographical errors.

23 (3) CANCELLATION.—Prior to implementation
24 of the exchange required by section 4(a), if KNA no-
25 tifies the Secretary in writing that it no longer in-

1 tends to complete the exchange, the lands referenced
2 in section 4(a) shall revert to their status as of the
3 day before the date of enactment of this Act.

4 (4) FINAL MAPS.—Not later than 120 days
5 after the conclusion of the exchange required by sec-
6 tion 4(a), the Secretary shall transmit maps accu-
7 rately depicting the lands transferred and conveyed
8 pursuant to this Act and the acreage and legal de-
9 scriptions of such lands to the Committee on Natu-
10 ral Resources and the Committee on Merchant Ma-
11 rine and Fisheries of the House of Representatives
12 and the Committee on Energy and Natural Re-
13 sources and the Committee on Environment and
14 Public Works of the Senate.

15 **SEC. 5. ADJUSTMENTS TO NATIONAL WILDLIFE REFUGE**
16 **SYSTEM.**

17 (a) ADDITION TO THE KENAI NATIONAL WILDLIFE
18 REFUGE.—The Secretary shall add the lands conveyed to
19 the United States pursuant to section 4(a)(1) to the Ref-
20 uge. The Secretary shall manage such lands in accordance
21 with the provisions of the National Wildlife Refuge System
22 Administration Act of 1966 (16 U.S.C. 668dd–668ee) and
23 ANILCA.

24 (b) KENAI NATIONAL WILDLIFE REFUGE BOUND-
25 ARY ADJUSTMENT.—The boundaries of the Refuge as set

1 forth in section 303(4)(A) of ANILCA are hereby adjusted
2 to include those lands generally depicted on the map de-
3 scribed in section 4(c)(4) entitled "Proposed Boundary
4 Extension", dated October 1993.

5 (c) ADDITION TO WILDERNESS AREA.—Upon acqui-
6 sition of lands by the United States pursuant to section
7 4(a)(1), that portion of the Stephanka Tract lying south
8 and west of the Kenai River, consisting of approximately
9 592 acres and as generally depicted as "To be included
10 in wilderness" on the map referenced in section 4(b)(1),
11 shall be included in and managed as part of the Kenai
12 Wilderness. Upon their inclusion into the Kenai Wilder-
13 ness, such lands shall be managed in accordance with the
14 applicable provisions of the Wilderness Act and ANILCA.

15 (d) REMOVAL OF CONVEYED LANDS FROM WILDER-
16 NESS AREA.—Upon conveyance to KNA of those lands
17 under section 4(b)(2), a portion of which is currently des-
18 ignated wilderness, consisting of approximately 623.5
19 acres and identified as "To be removed from wilderness"
20 on the map referenced in section 4(b)(2), such lands are
21 removed from the Kenai Wilderness and the National Wil-
22 derness Preservation System.

23 **SEC. 6. SURPLUS PROPERTY ACCOUNT**

24 (a) ESTABLISHMENT.—

1 (1) Notwithstanding any other provision of law,
2 on October 1, 1996, the Secretary of the Treasury,
3 in consultation with the Secretary, shall establish a
4 KNA account. The valuation of the account shall be
5 established at \$6,457,000, the amount necessary to
6 equalize values in the land exchange and acquisition
7 program agreed to by the Service and KNA.

8 (2) Beginning on October 1, 1996, the balance
9 of the account shall—

10 (i) be available to KNA for bidding on and
11 purchasing property sold at public sale, subject
12 to the conditions described in section 6(a)(3);

13 (ii) remain available until expended; and

14 (iii) KNA may use the account established
15 under section 6(a)(1) to bid as any other bidder
16 for property (wherever located) at any public
17 sale by an agency and may purchase the prop-
18 erty in accordance with applicable laws and reg-
19 ulations of the agency offering the property for
20 sale.

21 (3) In conducting a transaction described in
22 section (6)(a), an agency shall accept, in the same
23 manner as cash, any amount tendered from the ac-
24 count established by the Secretary of the Treasury
25 under section 6(a)(1). The Secretary of the Treasury

1 shall adjust the balance of the account to reflect the
2 transaction.

3 (4) The Secretary of the Treasury, in consulta-
4 tion with the Secretary, shall establish procedures to
5 permit the account established under section 6(a)(1)
6 to—

7 (i) receive deposits;

8 (ii) make deposits into escrow when an es-
9 crow is required for the sale of any property;
10 and

11 (iii) reinstate to the account any unused
12 escrow deposits in the event sales are not con-
13 summated.

14 (b) IMPLEMENTATION.—

15 (1) Notwithstanding any other provision of law,
16 KNA may assign without restriction any or all of
17 the account to any party upon written notification to
18 the Secretary of the Treasury and the Secretary.
19 Notwithstanding any other provisions of this Act, in
20 the event such assignment is to the Region on notice
21 from KNA to the Secretary of the Treasury and the
22 Secretary, the amount of such assignment shall be
23 added to or made a part of the Region's Property
24 Account in the Treasury established pursuant to sec-

1 tion 12(b) of Public Law 94-204 as amended, and
2 may be used in the same manner as that account.

3 (2) KNA shall be deemed to have accepted the
4 terms of this section in lieu of any other land enti-
5 tlement it would have received pursuant to the Set-
6 tlement Act and such acceptance shall satisfy any
7 and all claims KNA had against the United States
8 on the date of this enactment;

9 (c) TREATMENT OF AMOUNTS FROM ACCOUNT.—

10 (1) The Secretary of the Treasury shall deem
11 as cash receipts any amount tendered from the ac-
12 count established pursuant to section 6(a)(1) and re-
13 ceived by agencies as proceeds from a public sale of
14 property, and shall make any transfers necessary to
15 allow an agency to use the proceeds in the event an
16 agency is authorized by law to use the proceeds for
17 a specific purpose.

18 (2) Subject to section 6(b), the Secretary of the
19 Treasury and the heads of agencies shall administer
20 sales pursuant to this section in the same manner as
21 is provided for any other Alaska Native corporation
22 authorized by law as of the date of enactment of this
23 section (including the use of similar accounts for
24 bidding on and purchasing property sold for public
25 sale).

1 SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

2 There are authorized to be appropriated such sums
3 as may be necessary to carry out the purposes of this Act.

○

CHAIRMAN GEORGE MILLER
OPENING STATEMENT

NATURAL RESOURCES COMMITTEE
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS
SEPTEMBER 22, 1994 LEGISLATIVE HEARING

H.R. 3612

To Amend the Alaska Native Claims Settlement Act,
and for other purposes ("Technical Amendments Bill")

H.R. 4665

To Amend the Alaska Native Claims Settlement Act,
and for other purposes ("CIRI Stock Buyback Bill")

H.R. 3613

"Kenai Natives Association Equity Act"

The Subcommittee on Oversight and Investigations will come to order for the purpose of conducting a hearing on H.R. 3612, to amend the Alaska Native Claims Settlement Act, and for other purposes ("Technical Amendments Bill"), H.R. 4665, to amend the Alaska Native Claims Settlement Act, and for other purposes ("CIRI stock buyback bill") and H.R. 3613, the "Kenai Natives Association Equity Act." These three bills were introduced

by our Ranking Minority member, Rep. Don Young of Alaska.

H.R. 3612, the "Technical Amendments" bill, was introduced by Rep. Young on November 21, 1993 and is intended to address a number of issues that have arisen in the implementation of the Alaska Native Claims Settlement Act and the Alaska National Interest Lands Conservation Act.

H.R. 4665, the "CIRI stock buyback bill" was introduced on June 28, 1994. This bill authorizes the shareholders of Cook Inlet Region, Inc. (CIRI) to vote on whether to adopt a Board of Directors-approved plan that would allow the corporation to repurchase stock from shareholders on a voluntary sale basis. The bill only applies to CIRI.

H.R. 3613, the "Kenai Natives Association Act" was introduced by Rep. Young on November 21, 1993. The Subcommittee held a hearing on this issue during the last Congress and passed a bill which directed the Secretary of the Interior to expediate a negotiated settlement with KNA of lands within the Kenai National Wildlife Refuge. In September of 1993, the U.S. Fish and Wildlife Service reached an agreement with KNA. H.R. 3613 would codify the September 1993 agreement and provide \$10.9 million in equalization payments to KNA.

At this point I would like to recognize Mr. Young for an opening statement.

[After Young's Statement]

Our witnesses on the first panel are Deborah Williams, Special Assistant to the Secretary for Alaska, Department of the Interior; Julie Kitka, President of the Alaska Federation of Natives, Roy Huhndorf, President of Cook Inlet Region, Inc. and John Shively, Senior Vice President of NANA Development Corporation.

Welcome to the Subcommittee. Your statement will be placed in the record in its entirety and you may proceed for the next few minutes as you are most comfortable.

Mr. MILLER. Let me say at this point that we are under a little bit of a time pressure because, unfortunately, I have a conference committee on the Elementary Secondary Education Act that I must be present at since my measures are in contention.

So the extent to which people can summarize their testimony, I would appreciate it. I am sorry to do that, but this is the end of the session and that is unfortunately what happens to us.

So let us begin and we will start with panel number one, which is made up of Deborah Williams, Special Assistant to the Secretary of the Interior for Alaska, Department of the Interior; Julie Kitka, President of the Alaska Federation of Natives in Anchorage, Alaska; Mr. Roy Huhndorf, President, Cook Inlet Region, Inc., Anchorage; and Mr. John Shively, Senior Vice President of NANA Development Corporation.

Welcome to the committee. We look forward to your testimony. We will give it complete consideration. And again my apologies for the time constraints that we are operating under here.

PANEL CONSISTING OF DEBORAH L. WILLIAMS, SPECIAL ASSISTANT TO THE SECRETARY FOR ALASKA, DEPARTMENT OF THE INTERIOR, ANCHORAGE, AK; JULIE KITKA, PRESIDENT, ALASKA FEDERATION OF NATIVES, ANCHORAGE, AK; ROY M. HUHDORF, PRESIDENT, COOK INLET REGION, INC., ANCHORAGE, AK; AND JOHN T. SHIVELY, SENIOR VICE PRESIDENT, NANA DEVELOPMENT CORPORATION, ANCHORAGE, AK

Mr. MILLER. Ms. Williams, we will begin with you.

STATEMENT OF DEBORAH L. WILLIAMS

Ms. WILLIAMS. Mr. Chairman, thank you very much for giving the Department of the Interior the opportunity to testify this morning. And pursuant to your request, I will be very brief.

The Department of Interior worked quite closely with AFN and the State and others to come together on an agreed-upon bill, and I believe to a large extent we have achieved that purpose.

To summarize, we believe that H.R. 3612 should be passed in a modified form. And I will be brief in saying what those modifications should be.

We think there are three sections of House Bill 3612 that can go forward with very minor modifications. And we strongly urge the committee to go forward with those. Those would make corrections to the ANCSA that we believe are very beneficial.

The three sections are: Section 3, ratification of certain Caswell and Montana Creek Native Associations conveyances; Section 6, authorization of appropriations for the purposes of implementing required reconveyances; and Section 8, native allotments.

We believe there is consensus among the State, AFN, and the administration on going forward with those with the minor modifications. I won't go into detail at this time on the minor modifications. Those are set forth both in our testimony and in a report which you will receive later today, which has been approved but not, unfortunately, yet in your hands by the Department of Interior.

Second, there are two sections that we believe should go forward with some substantial modification, but one of those sections we be-

lieve has been agreed upon by all of the parties. And the section that would go forward with substantial modification would be Section 5. What the administration is proposing and we believe both the State and AFN have concurred with, is that there be a study to study the issue of contamination on native-conveyed lands, and we have language which describes the nature of that study.

We believe that study would look at existing remedies, including CERCLA, and would study what additional remedies, if any, should go forward. And so we encourage this committee to address this important problem of contamination on native lands, to order the Department of Interior with consultation with Agriculture to create a study for congressional analysis and action.

The other section that we believe should go forward with modification is Section 4. Now, we understand that the State does have some concerns about that and so that at this point is not a consensus recommendation among AFN, the State and Interior, but Interior and the administration do believe that there is a lack of clarity on who has regulatory authority over certain mining claims that are completely surrounded by regional corporations. We think clarity is needed.

Candidly, we disagree with the State that this poses a taking problem or any other problem, and we would be happy to work with the committee further on this if clarification can be reached. We do have substitute language for your consideration that I understand AFN concurs with, and again we believe that the committee should go forward with a modified Section 4.

Finally, there are five sections that we believe should be withdrawn from this bill. These are five sections that either the administration or the State of Alaska strongly disagrees with, and those sections are: Section 1, rescission of relinquishment; Section 2, Kageet Point land selection; Section 7, community need; Section 10, lapsed mining claims; and Section 11, transfer of Wrangell Institute.

I would be happy to answer any questions you have about that when the panel has completed their testimony. I think it probably makes sense in the spirit of keeping my testimony brief, to be responsive to your questions as opposed to going forward in detail with the analysis of each of those sections, unless you would like me to do so at this time.

There is one final section that I haven't addressed and that is Section 9 which is native allotments. The administration is not able at this point to give a consensus analysis of native allotment section but we hope to do so in the very near future. And we will be happy to work with your staff and other members of the committee once we have reached a consensus administration position.

To conclude, we have worked very hard over the last many months with AFN, the State, and others to come to what we believe is a consensus position on four sections of the bill and we encourage that those four go forward. We believe that is non-controversial.

We also encourage that the mining section that I described go forward, if we can come to an agreement with the State. And we hope that we will get back to you on the allotment section soon, and if there is agreement there, that that go forward. And finally,

that five sections of House Bill 3612 be dropped so that a consensus bill can go forward.

We thank you very much for allowing the Department of Interior to testify. And again, I anticipate you will have questions, given that I have condensed my testimony and I will look forward to answering those.

Mr. MILLER. Thank you and thank you very much for all of your help in participating in these discussions and negotiations.

[Prepared statement of Ms. Williams follows:]

**TESTIMONY OF DEBORAH L. WILLIAMS
SPECIAL ASSISTANT TO THE SECRETARY FOR ALASKA
DEPARTMENT OF THE INTERIOR
BEFORE THE HOUSE NATURAL RESOURCES COMMITTEE
REGARDING H.R. 3612, "TO AMEND THE ALASKA NATIVE CLAIMS
SETTLEMENT ACT, AND FOR OTHER PURPOSES."**

September 22, 1994

Mr. Chairman, thank you for the opportunity to testify today on H.R. 3612, to amend the Alaska Native Claims Settlement Act (ANCSA).

The Department supports a modified H.R. 3612. The Department has worked diligently with the Alaska Federation of Natives (AFN), the State of Alaska, and others in its consideration of this legislation. We believe we have an acceptable group of technical amendments to ANCSA. Accordingly, the Department would endorse H.R. 3612 if modified in accordance with the terms of our report which will be submitted to the Committee today. The Department's recommendations are set forth in detail in that report. The testimony I will give will summarize key issues raised in the report.

Several months ago, the Alaska Federation of Natives presented to the Department a series of proposed ANCSA amendments for the Department's review. These amendments formed the basis for H.R. 3612. After numerous internal meetings, the Department conducted a series of meetings with AFN to review the Department's responses to the proposed amendments. The Department also engaged in many conversations with the State of Alaska about H.R. 3612.

Following these extensive discussions and negotiations, the Department makes the following recommendations for supporting a modified H.R. 3612: 1) adopt three sections of H.R. 3612 with minor modifications, 2) substitute language for two sections, and 3) omit from the bill five sections, four of which we believe the AFN is recommending be withdrawn. There is one additional section that the Administration needs more time to study. I will discuss, in turn, each category of proposed modifications to H.R. 3612.

The Department recommends adopting three sections of H.R. 3612 with minor modifications. These sections are:

Section 3. Ratification of Certain Caswell and Montana Creek Native Associations Conveyances.

Section 6. Authorization of Appropriations for the Purposes of Implementing Required Reconveyances.

Section 8. Native Allotments.

With regard to the Caswell and Montana Creek conveyances, the Department supports the request of the Cook Inlet Region Inc. that conveyances by it to the Caswell Creek and Montana Creek Native Associations be ratified by the Congress to be treated as lands conveyed pursuant to ANCSA. This would make the lands eligible for fire protection and land bank status under ANCSA and ANILCA. We propose language to assure that the amendment would not give rise to any liability to the United States or the State

States or the State of Alaska, nor adversely impact any section 14(h) entitlements of the other ANCSA corporations.

Section 6 would authorize appropriations for the purpose of providing technical assistance to Village Corporations for reconveyances required under section 14(c) of ANCSA. The reconveyances are complex and difficult, and we support the amendment, refined to read as we set forth in our report.

Section 8 would permit the conveyance to the Arctic Slope Regional Corporation (ASRC) of the federally owned oil and gas estate under two Native allotments for the purpose of consolidating the subsurface interests in the area. The State of Alaska has consented to the transfer, and it would result in no net loss of subsurface estate to the United States. We support this amendment.

The Department supports substitute language for section 4, Mining Claims After Lands Patented to Regional Corporation, and section 5, Settlement of Claims Arising From Contamination of Transferred Lands.

The purpose of section 4 is to clarify who has mining regulatory authority over mining claims on lands patented to regional corporations. Under the amendment, regional corporations are explicitly given the authority to regulate the mining claims

under the mining laws of the United States. This would have the desired effect of bringing clarity to the relationship between the miner/inholder and the Regional Corporation.

The Department supports these purposes, but we propose substitute language, which we believe is more explicit than that which is currently proposed in H.R. 3612 and more clearly gives management authority to the Regional Corporations.

Section 5 concerns settlement of claims from contamination of transferred lands.

Native corporations have selected and the United States has conveyed lands which contain contamination. The contamination may come in various forms including residue from abandoned upstream mining operations, and in many cases substances now considered contaminants were not so considered at the time of the transfer.

We are strongly opposed to the proposed amendment as drafted, which would put an untenable burden on the Federal Government without sufficient information to address this issue. Accordingly, the Department proposes a substitute amendment to provide for a study, conducted by the Department in concert with the Department of Agriculture, and a report to Congress addressing issues raised by the presence of hazardous substances

on Native owned lands, including the applicability of the provisions of the Comprehensive Environmental Response, Compensation and Liability Act to this situation.

Section 9 provides for a new open season for certain Native Alaskan veterans, including Vietnam and Korean war veterans, for allotments.

The Alaska Native Allotment Act of 1906 was repealed by ANCSA on December 18, 1971. Individuals who were otherwise entitled to apply for an allotment but who were on active duty during 1970 and 1971 may have had an insufficient opportunity to apply for such allotments. The Administration has concerns with this section and is still reviewing recommendations to address these concerns. We urge you to defer action on section 9 until this review is complete.

Finally, the Department endorses omitting from H.R. 3612 the following five sections:

Section 1. Rescission of Relinquishment.

Section 2. Kageet Point Land Selection.

Section 7. Community Need.

Section 10. Lapsed Mining Claims.

Section 11. Transfer of Wrangell Institute.

The Department, the AFN, and the State have not been able to

reach an agreement on any of these five sections. The sections are very controversial, to the State or the Department. It is our understanding that AFN is withdrawing these sections and we strongly concur with these withdrawals.

With reference to Kageet Point, this amendment relates to a request by Chugach Alaska Corporation (Chugach) to obtain a parcel not withdrawn for selection by Chugach. The parcel is within a wilderness designation area of the Wrangell-St. Elias National Park and Preserve where protection of scenic quality is important and development would adversely affect the park resources. The State has identified the Kageet Point area as a highly important habitat and recreational area, has given this area its highest level of protection, and has stated that no development should occur there. Accordingly, we agree that the amendment should be deleted.

Section 11, the Wrangell Institute amendment, would convey the Institute buildings and ten acres of land previously conveyed to CIRI, back to the United States.

The Department cannot support the relief sought for CIRI. Under the facts we do not believe they are entitled to the relief sought, and to do so would require relief for others similarly situated. We are not in a position to assume that very extensive liability at this time. To the best of our knowledge, the

buildings were not contaminated when the United States conveyed them, since the asbestos was not friable, and indeed asbestos was not yet identified as a source of contamination. We do not believe that as a matter of law the United States must reimburse CIRI for lost opportunity and for all of their other costs, or to hold them harmless. In short, we do not support this amendment. It is our understanding that GSA also opposes this amendment for numerous similar reasons.

Although we do not support section 11, the Department does support reviewing the Wrangell Institute situation in the context of the section 5 contamination study we have proposed.

In summary, the Department believes that five sections of H.R. 3612 should go forward as suggested herein. We also believe that the State, AFN, and the Department have worked together cooperatively and productively on H.R. 3612, and we urge you to adopt our recommendations.

Thank you again, Mr. Chairman, for providing the Department of Interior the opportunity to testify. I will be pleased to respond to questions at this time.

Mr. MILLER. Julie.

STATEMENT OF JULIE KITKA

Ms. KITKA. Thank you, Mr. Chairman.

My name is Julie Kitka and I am President of Alaska Federation of Natives. And on behalf of our board of directors, I would like to thank you and Congressman Young for scheduling this hearing and allowing us this opportunity to convey our views on these important pieces of legislation.

I also want at this time to thank the staff members with the Department of Interior and the State of Alaska for their diligent work on behalf of the Department and the State in trying to work to address some of the issues that we have raised in the legislation.

I would like to also thank Congressman Young's staff and your staff for their help in helping us clarify the issues and try to solve some of the problems. I think it is safe to say without the Department and the State and the important work of the staff that, we wouldn't be here today. So with that, I would like to acknowledge that.

I would also like to thank the committee for continuing the process of accepting concerns that we have with the Alaska Native Claims Settlement Act and trying to work to resolve that and do these amendments. I believe this is either the 18th or 19th time that the Alaska Native Claims Settlement Act has been amended to try to address concerns that native people have brought forward. And it is with that spirit that we ask that House Bill 3612 be introduced to try to resolve some of the problems on the village and regional level that people have been having in trying to resolve that.

So I wanted to speak to those provisions that were being withdrawn which are specified in our testimony, to indicate the fact that we are withdrawing them does not mean that we do not think that they have merit. We just don't think that it is possible to resolve the conflicts the State or the Department may have with that, and we would anticipate that we would have an opportunity down the road to try to resolve some of those concerns and maybe come up with new approaches to solve the conflicts or problems that are being expressed in that.

So with that, I would like you to accept our testimony, the written testimony, including our request to withdraw several provisions and allow them to go on their own merits separate from our package of amendments.

Specifically, Section 1, we are asking it to be withdrawn and no further action. Section 2, Kageet Point, withdrawn. Section 3, ratification of certain Caswell and Montana Native Creek conveyances, we are asking that that go forward.

On Section 4, the mining claims after lands patented to regional corporations, I would like to bring to your attention the detailed analysis of that issue and the proposed resolution of that that is expressed in our testimony. I think that is a very important one. And in particular, the point that unless this gets resolved that there is basically a vacuum where neither the native corporation nor the miner knows who administers the claim, and ensures any kind of legal obligations are met and rights are protected, and I

think that that vacuum needs to be closed and the issue needs to be resolved.

The other significant aspect of that amendment concerns royalties and the fact that the amendment, if it is adopted, the royalties are required for valid mining claims and that the royalty should be paid to the landowner. And we think that that is very important that the ANSCA corporation be included in that resolution.

On Section 5, we bring to your attention our whole analysis of the settlement of claims on contamination of transferred lands, and the key point, we support going forward with the study on that. But it is very important that ANSCA corporations be indemnified from any liability for the presence of hazardous substances on land conveyed to ANSCA, because we think the uncertainty on that and that cloud hanging over hinders people's willingness to come forward to identify hazardous substances that are on the lands that were conveyed, and we think that is very important to resolve that liability.

We also think that is a very important issue in national environmental policies, the removal of hazardous waste and the mitigation and the cleaning up of the sites on that, and we think it is very important for our land to be considered as some of the top priorities in the State of Alaska when the Congress addresses that issue. Our people do not have the resources to clean up the lands and, in many cases, that contamination was prior to the conveyance and we think that it is inappropriate for that cloud to be hanging over native corporations.

On Section 6, authorizing appropriations for the purposes of implementing required reconveyances, I just want to bring to your attention that many of our village corporations do not have the resources to do all the work that is necessary for the reconveyances for community needs and that a major obstacle in addressing that is if you don't have the resources, if you are just barely hanging on as a village corporation on that, that issue is going to get unresolved for quite a period of time. So we hope that at some point that can get resolved also.

On Section 8, the Alaskan Native allotments ASRC land, we fully support, and the agreements with the Department and the State.

Section 9, the open season for certain Alaska Native veterans' allotments, we look forward to working with the Department in trying to resolve any concerns that the administration may have so that this can go forward in our package of amendments.

I think it is very important to note that our Alaskan Native people have been very patriotic as far as serving our country in the Armed Services. And, in fact, I think if you look at percentage of Alaskan Native men and women that participate in the Armed Services, we, along with other Native Americans, are in the highest numbers on a per capita basis of any people participating and serving our country. And so as a matter of equity for their service, we think that this issue should not be allowed to drop. And we are hopeful that we can get this resolved so that this issue can go forward and the equity to our people who should have been allowed the opportunity for native allotments can get behind this.

On Section 10, lapsed mining claims, that is withdrawn and additional work is being done on that.

On Section 11, transfer the Wrangell Institute, withdrawn out of our package of amendments here. And then in addition, there was one new amendment that wasn't in the original bill that we are asking consideration of, and I understand that there is—at least our understanding, no objection to it, is the Shishmaref amendment. And basically, we are requesting that the inclusion of the proposed amendment on behalf of the Shishmaref Natives be incorporated.

This amendment would permit prompt conveyance of abandoned airport lands in Shishmaref to the Shishmaref Native Corporation, and there is draft language that is included that has been shared with the Department of Interior as well as the State of Alaska. Attached to our testimony is proposed legislative language for either the minor modifications that have been agreed with the Department of Interior or some of the major rewrites on that. So that concludes my testimony on that bill.

On the other bill that is before you, H.R. 4665, I would like to ask my written testimony be included in the record, and basically to summarize.

The Alaska Federation of Natives has no objection to that bill going forward. And we feel the issue that surrounds that bill is a very important issue to the native community, the fundamental issue of what the proper balance between individual rights and economic interests of ANSCA shareholders on the one hand and the historical goals of group survival and retention. And we think that in the case of the Cook Inlet region and their shareholders, that this amendment is something that we are not objecting to, because we both, through our internal debate in the last 10 years in the native community on the issue of stock and stock retention and protection of our corporations for the future, we have recognized the unique needs of CIRI and its shareholders, both because of the mix of shareholders that they have and also the fact of them being primarily based in Anchorage. And we would hope that they would be able to resolve the issues that they have with their shareholders through this provision.

But I did want to state for the record that I think there are still other unresolved issues in regard to our corporations that people would like the chance to go forward with, not holding back this piece of legislation, but with the new Congress as far as issues pertaining to our corporations and that whole issue of shareholder rights and what is the long-term future of the corporation with our people. So we would continue the discussion internally on that. But like I said, at this point, we want to go on record that we do not object to this bill and we raise no concerns for you.

Mr. MILLER. Thank you.

[Prepared statement of Ms. Kitka follows:]

**JULIE KITKA, PRESIDENT, AFN
TESTIMONY BEFORE THE
HOUSE COMMITTEE ON NATURAL RESOURCES HEARING ON
HR 3612 AND HR 4665
SEPTEMBER 22, 1994**

MR. CHAIRMAN, CONGRESSMAN YOUNG, LADIES AND
GENTLEMEN:

FOR THE RECORD, MY NAME IS JULIE KITKA. I AM HONORED TO
BE HERE TODAY TO TESTIFY IN MY CAPACITY AS PRESIDENT OF
THE ALASKA FEDERATION OF NATIVES, INC. (AFN) ON HR 3612
AND HR 4665. AS YOU MAY BE ALREADY KNOW, AFN IS A
STATEWIDE NATIVE ORGANIZATION FORMED IN 1966 TO
REPRESENT ALASKA'S 85,000+ ESKIMOS, INDIANS, AND ALEUTS
ON CONCERNS WHICH AFFECT THE RIGHTS AND PROPERTY
INTERESTS OF THE ALASKA NATIVES ON A STATEWIDE
NATURE. PLEASE INCLUDE THIS STATEMENT AND MY
REMARKS INTO THE RECORD OF THIS HEARING.

ON BEHALF OF AFN, ITS BOARD OF DIRECTORS AND
MEMBERSHIP, THANK YOU VERY MUCH FOR GIVING ME THIS
OPPORTUNITY TO TESTIFY TO COMMITTEE IN SUPPORT OF THE
PROPOSED AMENDMENTS TO THE ALASKA NATIVE CLAIMS
SETTLEMENT ACT OF DECEMBER 18, 1971 AS AMENDED (ANCSA)
IN FORMS OF HOUSE BILLS HR 3612 AND HR 4665. I WILL
ADDRESS THESE TWO BILLS SEPARATELY.

HR 3612

PLEASE ALLOW ME TO ADDRESS SPECIFIC ISSUES OF HR 3612 THAT WE HAVE AGREED TO WITH THE REPRESENTATIVES OF THE DEPARTMENT OF THE INTERIOR THAT SHOULD BE INCORPORATED AS PARTS OF HR 3612. THESE ARE AS FOLLOWS:

SECTION 1. WITHDRAWN AND NO FURTHER ACTION NECESSARY AT THIS TIME.

SECTION 2. KAGEET POINT LAND SELECTION.
WITHDRAWN AND NO FURTHER ACTION NECESSARY AT THIS TIME.

SECTION 3. RATIFICATION OF CERTAIN CASWELL AND MONTANA CREEK NATIVE ASSOCIATIONS CONVEYANCES.

THIS AMENDMENT PROPOSES TO RATIFY LANDS TRANSFERS MADE TO CASWELL AND MONTANA CREEK NATIVE ASSOCIATIONS BY COOK INLET REGION, INC IN 1974.

THIS AMENDMENT HAS BEEN INCLUDED IN THE SET OF ANCSA AMENDMENTS THAT WERE CONSIDERED IN THE PAST BUT HAS BEEN WITHDRAWN EACH TIME BECAUSE THE INTERIOR QUESTIONED WHERE THE CONVEYANCES WERE TO BE CHARGED.

THE AFN AND DOI UNDERSTAND THAT THE PASSAGE OF THIS AMENDMENT WILL HAVE NO IMPACT ON THE OVERALL 14(h)(C) LAND ENTITLEMENTS OF THE REGIONAL CORPORATIONS IN ALASKA. FURTHER, AFN AND DOI AGREE THAT THE PASSAGE OF THIS AMENDMENT SHOULD NOT BE THE BASIS OF ANY CLAIMS BY CASWELL AND MONTANA CREEK NATIVE ASSOCIATIONS AGAINST THE FEDERAL AND STATE GOVERNMENTS

THE AFN LAND MANAGERS MET ON SEPTEMBER 16, 1994 AND DISCUSSED THE INCLUSION OF THIS SECTION ON THESE SET OF AMENDMENTS. THEY CONCLUDED THAT THIS SECTION WILL NOT HAVE AN IMPACT ON THE OVERALL 14(h)(8) LAND ENTITLEMENTS OF THE REGIONAL CORPORATIONS. THEY SUPPORT THIS AMENDMENT.

SECTION 4. MINING CLAIMS AFTER LANDS PATENTED TO REGIONAL CORPORATION.

THIS SECTION OF THE BILL PROVIDES A NEEDED CLARIFICATION CONCERNING THE ADMINISTRATION OF MINING CLAIMS LOCATED ON CERTAIN LANDS CONVEYED TO ANCSA CORPORATIONS.

CURRENTLY, THE BUREAU OF LAND MANAGEMENT (BLM) HAS TAKEN THE POSITION THAT THE FEDERAL GOVERNMENT HAS

NO JURISDICTION OVER MINING CLAIMS ON LAND CONVEYED TO NATIVE CORPORATION WHERE THE CORPORATION HAS RECEIVED THE LAND "SUBJECT TO" VALID EXISTING RIGHTS, WHICH INCLUDE VALID MINING CLAIMS. THE GOVERNMENT HAS REFUSED TO ACCEPT FILINGS MADE BY MINERS EVEN THOUGH THE FILINGS WERE REQUIRED BY LAW. (MORE RECENTLY, BLM HAS ADVISED MINING CLAIMANTS TO CONTACT THE NATIVE CORPORATIONS DIRECTLY.) THIS CREATES A VACUUM WHERE NEITHER THE NATIVE CORPORATION NOR THE MINER KNOWS WHO IS TO ADMINISTER THE CLAIMS TO INSURE LEGAL OBLIGATIONS ARE MET AND RIGHTS ARE PROTECTED.

THE LEGISLATIVE LANGUAGE CONTAINED IN THIS SECTION WOULD ASSURE THAT THIS CATEGORY OF MINING CLAIMS WOULD BE TREATED IN A MANNER SIMILAR TO THAT FOUND IN ANCSA'S SECTION 14(g), WHERE SIMILAR VALID RIGHTS AND LESS-THAN-FEE ISSUES ARE ADDRESSED. THE BLM WOULD TRANSFER TO REGIONAL NATIVE CORPORATION ADMINISTRATION OF THE MINING CLAIMS ON LAND CONVEYED TO ANCSA CORPORATIONS "SUBJECT TO" VALID MINING CLAIMS. THE BLM WOULD WAIVE ADMINISTRATION OF THE MINING CLAIMS IN FAVOR OF THE REGIONAL NATIVE CORPORATION. WITH SUCH A WAIVER, THE REGIONAL CORPORATION WOULD ADMINISTER THE CLAIMS CONSISTENT WITH APPLICABLE FEDERAL LAW. THIS WAIVER IS PATTERNED

AFTER SECTION 14(g) OF ANCSA, AND THE REGULATIONS WHICH IMPLEMENT IT.

THE OTHER SIGNIFICANT ASPECT OF THE AMENDMENT CONCERNS ROYALTIES. THE AMENDMENT PROVIDES THAT IF ROYALTIES ARE REQUIRED FOR VALID MINING CLAIMS, THEN THE ROYALTY SHOULD BE PAID TO THE LANDOWNER WITH PARAMOUNT TITLE, THE ANCSA CORPORATION. IF ONLY A PORTION OF THE CLAIM LIES ON ANCSA LANDS, ONLY THAT PORTION WOULD HAVE ROYALTIES PAID TO THE ANCSA CORPORATION.

THE NOTION THAT THE REGIONAL NATIVE CORPORATION SHOULD RECEIVE REVENUES FROM A MINING CLAIM IS THE ONLY EQUITABLE SOLUTION, IRRESPECTIVE OF WHO ADMINISTERS THE CLAIM. CONGRESS RECOGNIZED THIS PRINCIPLE IN 1971 AT THE PASSAGE OF ANCSA, AGAIN IN SECTION 14(g) WHICH REQUIRES THE SAME TREATMENT FOR OTHER SIMILAR VALID EXISTING RIGHTS. THE NATIVE CORPORATION'S FINITE ANCSA LAND ENTITLEMENT (A FUNDAMENTAL ELEMENT OF THE SETTLEMENT OF ABORIGINAL CLAIMS IN ALASKA) HAS BEEN CHARGED FOR LANDS OF VIRTUALLY NO USE TO THE REGIONAL CORPORATION, YET OWNERSHIP OF THIS LAND COULD RESULT IN POSSIBLE ENVIRONMENTAL LIABILITIES FOR THE REGIONAL NATIVE CORPORATION FROM PAST, PRESENT AND FUTURE MINING OPERATIONS. FOR THESE REASONS, THE AMENDMENT

WOULD REQUIRE THE ROYALTIES BE PAID TO THE REGIONAL CORPORATION, IF PAYMENT OF ROYALTIES IS REQUIRED OTHERWISE TO BE PAID TO THE GOVERNMENT.

MR. CHAIRMAN, IT IS MY UNDERSTANDING THAT REVISED LANGUAGE HAS BEEN SUGGESTED BY THE DOI ALASKA TASK FORCE FOR THIS SECTION. THE REVISIONS ADOPT THE BASIC CONCEPTS OF THE ORIGINAL BILL SECTION WITH RESPECT TO ADMINISTRATION OF CLAIMS AND ALLOCATION OF POSSIBLE ROYALTIES AND PROVIDE SOME CLARIFICATIONS WITH RESPECT TO COURT JURISDICTION TO REVIEW ADMINISTRATIVE DETERMINATIONS AND THE TREATMENT OF FILING FEES. THESE REVISIONS ARE ACCEPTABLE TO AFN.

SECTION 5. SETTLEMENT OF CLAIMS ARISING FROM CONTAMINATION OF TRANSFERRED LANDS.

UNDER THIS SECTION, CONGRESS WOULD ORDER DOI TO DO A ANALYSIS OF CONTAMINATED LANDS THAT WERE TRANSFERRED TO THE ANCSA CORPORATIONS. DOI WOULD HAVE 18 MONTHS FROM THE DATE OF THE ENACTMENT OF THIS LAW TO SUBMIT THEIR REPORT TO CONGRESS WITH RECOMMENDED OPTIONS ON WHAT CORRECTIVE MEASURES TO MAKE ON THE CONTAMINATED LANDS THAT WERE TRANSFERRED TO THE ANCSA CORPORATIONS. SOME OF THE RECOMMENDED OPTIONS FOR SUCH CORRECTIVE MEASURES WILL INCLUDE LAND TRADES OR ACTUAL CLEAN UP OF THE

CONTAMINATED LANDS. THE FEDERAL AGENCIES WHO WERE RESPONSIBLE FOR THE CONTAMINATION OF THE LANDS PRIOR TO THE TRANSFERS OF SUCH LANDS TO THE ANCSA CORPORATIONS WOULD BE CHARGED WITH THE RESPONSIBILITY OF THEIR CLEAN UP SHOULD THIS OPTION IS TAKEN. DOI WILL NOT BE THE SOLE FEDERAL AGENCY CHARGED WITH THE RESPONSIBILITY OF CORRECTIVE MEASURES THAT WILL BE NECESSARY TO CLEANING UP OF THE CONTAMINATED LANDS THAT WERE TRANSFERRED TO THE ANCSA CORPORATIONS.

AFN AND THE DEPARTMENT OF THE INTERIOR AGREE THAT ANCSA CORPORATIONS, OR THEIR GRANTEES, LESSEES OR ASSIGNS WILL BE INDEMNIFIED FROM ANY LIABILITY FOR THE PRESENCE OF ANY HAZARDOUS SUBSTANCES ON LANDS CONVEYED TO ANCSA CORPORATIONS UNDER ANCSA IF THE LANDS WERE CONTAMINATED PRIOR TO THEM BEING CONVEYED TO THE ANCSA CORPORATIONS. THE INCLUSION OF THIS KIND OF LANGUAGE IS VERY IMPORTANT IN THIS AMENDMENT IN ORDER FOR DOI TO GAIN THE COOPERATION OF ANCSA CORPORATIONS WHEN THE DEPARTMENT OF THE INTERIOR IMPLEMENTS THIS SECTION.

THE PROPOSED LEGISLATIVE LANGUAGE IS ATTACHED FOR YOUR CONSIDERATION. AFN SUPPORTS THIS SECTION.

SECTION 6. AUTHORIZATION OF APPROPRIATIONS FOR THE PURPOSES OF IMPLEMENTING REQUIRED RECONVEYANCES.

14(C) IS A CONGRESSIONAL MANDATE TO THE VILLAGE CORPORATION TO RECONVEY CERTAIN TRACTS OF LAND TO THIRD PARTIES WHO ARE QUALIFIED TO RECEIVE THEM. THIS CONGRESSIONAL MANDATE MUST BE FUNDED THROUGH CONGRESS RATHER THAN USING ANCSA FUNDS TO IMPLEMENT THIS SECTION.

SOME OF THE VILLAGE CORPORATIONS HAVE NOT EVEN BEGIN TO IMPLEMENT 14(C) BECAUSE THEY DO NOT WANT TO DEDICATE SOME OF THEIR ANCSA FUNDS TO IMPLEMENT A CONGRESSIONAL MANDATE AND IN SOME INSTANCES, LACK OF FUNDS.

THE TITLE OF THE LANDS THAT ARE OWNED BY THE ANCSA CORPORATIONS WILL REMAIN CLOUDED UNTIL SUCH TIME THAT 14(C) RECONVEYANCES ARE COMPLETED. THIS AMENDMENT WILL SPEED UP THE PROCESS OF CLARIFYING THE TITLE OF THE LANDS THAT WERE SELECTED AND CONVEYED TO THE ANCSA CORPORATIONS. THE PROPOSED LEGISLATIVE LANGUAGE IS ATTACHED FOR YOUR CONSIDERATION. AFN SUPPORTS THIS SECTION.

SECTION 7. COMMUNITY NEEDS.

THIS SECTION HAS BEEN WITHDRAWN AT THIS TIME IN ORDER FOR THE NATIVE COMMUNITY AND THE STATE OF ALASKA TO WORK OUT SOME LANGUAGE THAT BOTH PARTIES CAN MUTUALLY AGREE TO. BOTH PARTIES AGREE THAT IF AND WHEN SUCH LANGUAGE IS ARRIVED AT, IT IS LIKELY THAT WE WILL COME BACK FOR ANOTHER SHOT FOR THIS AMENDMENT.

SECTION 8. ALASKA NATIVE ALLOTMENTS/ASRC LAND TRADES

THIS SECTION ALLOWS THE ARCTIC SLOPE REGIONAL CORPORATION WITH THE ABILITY TO TRADE SOME OF THEIR SUBSURFACE LANDS FOR THE SUBSURFACE OF NATIVE ALLOTMENTS, ON AN ACRE FOR ACRE BASIS, LOCATED WITHIN THE LAND SELECTIONS OF KUUKPIK CORPORATION. REVENUES DERIVED OUT OF THE SUBSURFACE ESTATE OBTAINED BY ASRC THROUGH THIS AMENDMENT WILL BE SUBJECT TO 7(i) DISTRIBUTIONS. AFN SUPPORTS THIS SECTION.

SECTION 9. OPEN SEASON FOR CERTAIN NATIVE ALASKAN VETERANS FOR ALLOTMENTS.

THIS AMENDMENT WILL OPEN THE NATIVE ALLOTMENT APPLICATION PERIOD FOR THE ALASKA NATIVE VETERANS WHO HAD SERVED IN ACTIVE DUTY IN THE UNITED STATES ARMED FORCES. IF THE ALASKA NATIVE VETERAN IS

DECEASED, THE HEIR OR HEIRS OF SUCH A NATIVE WOULD BE ABLE TO APPLY FOR A NATIVE ALLOTMENT ON BEHALF OF THE DECEASED NATIVE VETERAN. THE OTHER TERMS AND CONDITIONS OF THE NATIVE ALLOTMENT ACT OF 1906, THE LAW UNDER WHICH THE VETERANS WHO QUALIFY IN THIS PROGRAM WOULD PARTICIPATE, WILL REMAIN AS THEY ARE. AFN AND DOI AGREE THAT UNDER THIS AMENDMENT, THE ALASKA NATIVE VETERANS OR THEIR HEIRS, WHICHEVER IS APPLICABLE, WHO HAD SERVED IN ACTIVE DUTY BETWEEN JANUARY 1, 1970 TO DECEMBER 18, 1971, THE DATE OF THE PASSAGE OF THE ANCSA, WOULD BECOME ELIGIBLE TO APPLY FOR NATIVE ALLOTMENTS. WHILE THIS IS THE CASE, CONGRESS, IN ITS WISDOM, CAN CONSIDER OTHER QUALIFYING DATES FOR THE ALASKA NATIVE VETERANS, IF CONGRESS DETERMINES THAT SUCH A DIRECTION IS IN THE BEST INTERESTS OF THE ALASKA NATIVE VETERANS AND THEIR HEIRS.

BOTH THE DEPARTMENT OF THE INTERIOR AND AFN AGREE THAT THERE WILL BE STUDY DONE TO DETERMINE HOW MANY OTHER NATIVE VETERANS WOULD BECOME QUALIFIED IF THE OTHER DATES ARE CONSIDERED.

SECTION 10. LAPSED MINING CLAIMS. WITHDRAWN AND NO ACTION NECESSARY AT THIS TIME.

SECTION 11. TRANSFER OF WRANGELL INSTITUTE.

WITHDRAWN AND NO OTHER ACTION NECESSARY AT THIS TIME.

SHISMAREF AMENDMENT

AFN RESPECTABLY REQUESTS THE INCLUSION OF PROPOSED AMENDMENT ON BEHALF OF SHISMAREF NATIVE CORPORATION BE INCORPORATED INTO THIS SET OF ANCSA AMENDMENTS. THIS AMENDMENT WOULD PERMIT PROMPT CONVEYANCE OF AN ABANDONED AIRPORT LANDS IN SHISMAREF TO SHISMAREF NATIVE CORPORATION.

THE ABANDONED AIRPORT SITE WAS DEEDED BY THE UNITED STATES TO THE STATE OF ALASKA BEFORE ANCSA ON JANUARY 24, 1967, THUS THE LANDS LOCATED WITHIN THIS AIRPORT WERE NOT AVAILABLE FOR LAND SELECTIONS BY SNC AT THE TIME OF LAND SELECTION PERIOD.

THE LANGUAGE OF THE ORIGINAL PATENT TO THE STATE INCLUDED A REVERTER CLAUSE WHICH PROVIDED THAT OWNERSHIP OF THE LANDS IN THE AIRPORT WOULD AUTOMATICALLY RETURN TO THE FEDERAL GOVERNMENT IF THE SITE WERE NOT DEVELOPED FOR AIRPORT USE WITHIN THREE YEARS OF CONVEYANCE OR IF IT WERE TO CEASE TO BE USED FOR AIRPORT PURPOSES FOR A PERIOD OF SIX MONTHS. THE OLD AIRPORT WAS ABANDONED IN 1988 UPON THE

COMPLETION OF A NEW AIRPORT AT ANOTHER LOCATION. IN ORDER FOR THE REVERTER CLAUSE TO TAKE EFFECT, THE STATE OF ALASKA MUST DEED THE LAND BACK TO THE FEDERAL GOVERNMENT. THIS HAS NOT OCCURRED BECAUSE THE STATE OF ALASKA IS WAITING FOR DIRECTION FROM SNC ON HOW IT WANTS TO STATE TO PROCEED.

IF THE SITE WERE TO REVERT TO THE UNITED STATES NOW, IT WOULD COME UNDER THE MANAGEMENT OF THE U. S. FISH AND WILDLIFE SERVICE SINCE IT LIES WITHIN THE MARITIME NATIONAL WILDLIFE REFUGE. ITS USES WOULD BE SUBJECT TO VERY RESTRICTIVE REGULATIONS GOVERNING LAND USES OF REFUGES.

IN ORDER FOR SNC TO ACQUIRE THE LANDS LOCATED WITHIN THE OLD AIRPORT SITE, ASSUMING THESE LANDS ARE REVERTED TO U. S. FISH AND WILDLIFE, LENGTHY PROCESS OF LAND TRADE NEGOTIATIONS WOULD NECESSARILY TAKE PLACE. THE REGULAR PROCESS OF DOING THIS COULD TAKE YEARS AND THE EXPENSES INCURRED BY THE FEDERAL GOVERNMENT DURING THIS PROCESS ARE LIKELY TO EXCEED THE ACTUAL VALUE OF THE LANDS IN QUESTION. THE MOST COST EFFECTIVE PROCESS FOR BOTH THE FEDERAL GOVERNMENT AND SNC IS FOR CONGRESS TO LEGISLATIVELY TRANSFER THE LANDS LOCATED WITHIN THE OLD AIRPORT DIRECTLY TO SNC. CONGRESS HAS THE AUTHORITY TO DO THIS.

THE PROPOSED LEGISLATIVE LANGUAGE ATTACHED FOR YOUR
CONSIDERATION IS FULLY SUPPORTED BY AFN.

Charles Markell
August 23, 1994
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ATTACHMENT

~~§3 RATIFICATION OF CERTAIN CASWELL AND MONTANA CREEK NATIVE ASSOCIATIONS CONVEYANCES~~

~~Delete the penultimate sentence and substitute the following language therefor:~~

~~"The ratification of these conveyances shall not have any effect upon section 14(h) of the Alaska Native Claims Settlement act (43 U.S.C. 1613(h)) or upon the duties and obligations of the United States to and Alaska Native Corporation."~~

~~In addition, the following sentence should be added at the end of section 3:~~

~~"This ratification shall not be the basis for any claim to land or money by CNRI against the State of Alaska or the United States."~~

~~§4. MINING CLAIMS AFTER LANDS CONVEYED TO ALASKA REGIONAL CORPORATION.~~

~~Section 22(c) of Alaska Native Claims Settlement Act (43 U.S.C.) is amended by adding at the end the following:~~

~~"(3) This Section shall apply to lands conveyed to a Regional Corporation pursuant to this Act which are made subject to a mining claim or claims located under the general mining laws, as amended, including lands conveyed prior to enactment of this section. Effective upon the date of this act, conveyance to a Regional Corporation conveying fee or subsurface lands made subject to such mining claim or claims, the Secretary, acting through the Bureau of Land Management and in a manner consistent with section 14(g) of this Act [43 U.S.C. §1613(g)], shall transfer to the Regional Corporation administration of all mining claims determined to be totally within lands conveyed to that corporation. Any person holding such mining claim or claims shall continue to meet such requirements of the general mining laws and section 314 of the Federal Land Management and Policy Act of 1976 [43 U.S.C. 1744] as well as any amendments to either, except that any filings which would have been made with the Bureau of Land Management if the lands were within federal ownership shall be timely made to the appropriate Regional Corporation. The validity of any such mining claims or claims may be contested by the Regional Corporation, in the place of the United States. All contest proceedings and appeals by mining claimants of adverse decisions made by the Regional Corporation shall~~

Charles Markell
August 23, 1994
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be brought in federal district court for the district of Alaska. All revenues (other than administrative filing fees) from such mining claims shall be remitted to the Regional Corporation subject to distribution pursuant to section 7(f) of this Act [43 U.S.C. §1606(f)] except that in the event that the mining claim or claims are not totally within the lands conveyed to the Regional Corporation, the Regional Corporation shall be entitled only to that proportion of revenues reasonably allocated to the portion of the mining claim or claims so conveyed."

§5. SETTLEMENT OF CLAIMS ARISING FROM HAZARDOUS SUBSTANCE CONTAMINATION OF TRANSFERRED LANDS.

"Within 18 months of enactment of this Act, and after consultation with appropriate Alaska Native corporations and organizations, the Secretary shall submit to ~~the~~ Congress a report addressing issues presented by the presence of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §19601(14), on lands conveyed or prioritized for conveyance to such corporations pursuant to the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601 et seq.). Such report shall consist of:

- (1) existing information concerning the nature and types of contaminants present on such lands prior to conveyance to Alaska Native corporations;
- (2) existing information identifying the existence and availability of potentially responsible parties for the removal or amelioration of the effects of such contaminants;
- (3) identification of existing remedies; and
- (4) recommendations for any additional legislation that the Secretary concludes is necessary to remedy the problem of contaminants on such lands."

§6. AUTHORIZATION OF APPROPRIATIONS FOR THE PURPOSE OF IMPLEMENTING REQUIRED CONVEYANCES.

"There is authorized to be appropriated such sums as may be necessary for the purpose of providing technical assistance to Village Corporations established pursuant to ANCSA in order that they may fulfill ANCSA Section 14(c) reconveyance requirements. The Secretary may make funds available for distribution as grants to ~~Village~~ Corporations that maintain in-house planning and management capabilities."

ANCSA
referred
10-1-94
J. W. F. T.

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PROPOSED ADDITION TO SECTION 5 OF HR 3612.

Liability for Hazardous Substances. Notwithstanding any other provision of law, no Native Corporation organized under the Alaska Native Claims Settlement Act, 43 U.S.C. § 1601 et seq., or its grantees, lessees or assigns, shall be subject to liability for the presence of any hazardous substances on lands conveyed to the corporation under the Act if the lands were contaminated prior to conveyance. Nothing herein shall relieve a corporation, or its grantees, lessees or assigns, from liability for hazardous substances contamination caused by a corporation, or its grantees, lessees or assigns.

The following is a new language we feel should be substituted for Section 6 of HR 3612:

There is authorized to be appropriated such sums as may be necessary for the purpose of providing technical assistance to Village Corporations established pursuant to ANCSA in order that they may fulfill ANCSA Section 14(c) reconveyance requirements. The Secretary may make funds available as grants to ANCSA or regional non-profit Corporations that maintain in-house land planning and management capabilities.

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1 SEC. 8. NATIVE ALLOTMENTS.

2 Section 1431(o) of the Alaska National Interest
3 Lands Conservation Act (94 Stat. 2542) is amended by
4 adding at the end the following:

5 "(5) Following the exercise by Arctic Slope Regional
6 Corporation of its option under paragraph (1) to acquire
7 the subsurface estate beneath lands within the National
8 Petroleum Reserve—Alaska selected by a ^{Kuukpi} Village Cor-
9 poration, where such subsurface estate entirely surrounds
10 lands subject to a Native allotment application approved
11 under section 905 of this Act, and the oil and gas in such
12 lands have been reserved to the United States, Arctic
13 Slope Regional Corporation, at its further option, shall be
14 entitled to receive a conveyance of the reserved oil and
15 gas, including all rights and privileges therein reserved to
16 the United States, in such lands. Upon the receipt of a
17 conveyance of such oil and gas interests, the entitlement
18 of Arctic Slope Regional Corporation to in-lieu subsurface
19 lands under section 12(a)(1) of the Alaska Native Claims
20 Settlement Act (43 U.S.C. 1611(a)(1)) shall be reduced
21 by the amount of acreage determined by the Secretary to
22 be conveyed to Arctic Slope Regional Corporation pursu-
23 ant to this paragraph."

SHISHMAREF AIRPORT AMENDMENT

"(a) The Shishmaref Airport, conveyed to the State of Alaska on January 5, 1967 in Patent No. 1240529, is subject to reversion to the United States, pursuant to the terms of that patent for non use as an airport. In lieu of said reversion, the State of Alaska is hereby authorized to convey all its interests in said airport to the Shishmaref Native Corporation (SNC), the village corporation for the Native Village of Shishmaref, subject to any outstanding leases, licenses, permits, rights-of-way, or other valid existing rights. The State of Alaska shall certify to the Alaska State Office of the Bureau of Land Management (AK/BLM) that it has removed all solid waste and hazardous waste from the site prior to conveyance. The removal of solid waste shall not include removal of runways, other buildings, or permanent structures. Upon acceptance of title by SNC, the Native Corporation shall notify AK/BLM, and AK/BLM shall convey the mineral estate and other reserved interests to SNC. The United States shall not be liable for any contamination of the land caused by the State of Alaska or other persons, but shall have the right to join in any lawsuit to compel the removal of any solid waste, hazardous waste, or other hazardous materials. Such conveyance shall not be charged to the entitlement of SNC under any provision of the Alaska Native Claims Settlement Act (ANCSA).

"(b) If the State of Alaska has not exercised the authority granted in this Act within one year of the date of this Act or has not notified the United States Department of Transportation Federal Aviation Administration (FAA) that it does not intend to exercise such authority, the FAA shall proceed forthwith to exercise the reversionary rights in Patent No. 1240529 and to bring all necessary actions to compel the State of Alaska to remove all solid waste, hazardous waste or hazardous materials from the former airport site in accordance with all federal laws."

Mr. MILLER. Mr. Huhndorf.

STATEMENT OF ROY M. HUHNDORF

Mr. HUHNDORF. Thank you, Mr. Chairman.

My name is Roy Huhndorf. I am President of Cook Inlet Region Incorporated, one of the 12 Alaska-based regional corporations. I have submitted three sets of written testimony; two pertaining to sections in H.R. 3612, and the other pertains to the stock buyback legislation H.R. 4665.

First, with regard to H.R. 3612, Section 3 deals with the groups of Montana Creek and Caswell and would simply properly credit these two group corporations for lands they received, and this would cause a credit to be put properly into Section 14(h)(2) of ANCSA. This is more or less a housekeeping amendment. It is something that I think the BLM wanted to properly put in the conveyancing scheme in order for these two groups.

The second testimony, written testimony we have submitted deals with Section 11 which would return the Wrangell Institute to the United States. Mr. Chairman, we feel very strongly about this section. We acquired Wrangell in 1978 as part of our ANSCA entitlement. It was told to us at the time that the property contained no contaminants. We assumed the property under that premise.

It has turned out that the property is seriously contaminated and represents a major liability to the corporation. Fundamentally, we believe it is wrong that the United States should convey to a native corporation as part of their entitlement lands that turn out to be a major liability because of information—the information provided us at the time was incorrect, that is the lands were purportedly uncontaminated. We would urge the committee to adopt this amendment and include it in H.R. 3612.

Last, with regard to H.R. 4665, this is a provision that would allow the shareholders of Cook Inlet region to sell their stock back to the corporation. CIRI has a significant number of shareholders who desire to do this.

As you know, currently the state of the law is that this is an all or nothing provision, either the corporation shareholders completely unrestricted their stock to sale or they remain completely restricted. This would provide an escape valve, so to speak, that would allow the corporation to remain a native corporation, yet allow shareholders who desire to sell to sell back to the corporation.

This provision contains several safeguards. No one is compelled to sell. No directors or officers could sell any of the stock. The corporation would be the only entity that could buy stock, and the valuation generally would be done by an independent party and would provide for a valuation that is fair to both the sellers of stock and those who choose to remain in the corporation.

Essentially, that is the substance of my testimony on 4665, and we urge that the committee give this bill positive consideration.

Finally, we understand that H.R. 3613 dealing with the Kenai Native Association is before us. We have no comments about the substance of that transaction, except to say that basically we are a little chagrined by the impetus for that transaction and that is

Section 22(g) of ANCSA which places restrictions on what native corporations receiving lands in wildlife refuges can do with it.

It is a very unfair provision, and we realize it has been in the Settlement Act since 1971, but we think it is troubling not only to the native community but to the Federal agencies as well, since in the last 23 years there have been no regulations promulgated to implement that provision. So we can conclude, I think, fairly safely that the Federal agencies are also puzzled by what should be done with this section.

We would recommend, Mr. Chairman, at some time this be stricken out of ANCSA. It serves no useful purpose and works a fundamental unfairness on corporations that happen to have their cultural existence be within a wildlife refuge as so created by Congress in the recent times.

So that would be the only comment we would have on the Kenai Native Association, H.R. 3613.

Mr. Chairman that concludes my testimony. I would be happy to answer questions.

Mr. MILLER. Thank you.

[Prepared statements of Mr. Huhndorf follow:]

Statement of Cook Inlet Region, Inc.
on
Section 3 of HR3612
Ratification of Certain Caswell and
Montana Creek Native Associations Conveyances

Background:

The ANCSA group corporations of Caswell and Montana Creek placed their 14(h)(2) land selections in what was then proposed by the state of Alaska to be the Talkeetna Mountains State Park.

At roughly the same time, the state of Alaska, CIRI and the United States were negotiating the Cook Inlet Land Exchange agreement. Included in this three-way deal, were state-patented lands set aside in pools from which CIRI would make approximately 500,000 acres of selections. One of these pools, the Kashwitna Pool, was in the vicinity of the Caswell and Montana Creek selections.

In order for the state of Alaska to move Caswell and Montana Creek's selections out of the proposed state park area, the State agreed to expand the Kashwitna pool's acreage entitlement to include enough acreage to cover new Caswell and Montana Creek's selections and conveyances. Thus the Kashwitna pool, originally slated to provide for 15,360 acres of conveyances to CIRI only, was expanded to allow for 23,040 acres (11,520 acres per group) of additional conveyances for these two group corporations bringing the Kashwitna pool conveyances to a total of 38,400 acres.¹ Conveyances to the groups would be through a pass-through mechanism, employed by DOI in several other DOI, CIRI and village conveyance agreements, whereby CIRI would first receive the conveyances and then be responsible for reconveyances.

Since the Kashwitna Pool lands were closer to road corridors and contained state-owned land previously off-limits to ANCSA selections, Caswell and Montana Creek were very willing to abandon their previous selections in favor of accessing Kashwitna pool lands. They agreed to do so in the agreement dated February 3, 1976.

¹ The original CIRI/State agreement addressing the state pools contained the 15,360 acre CIRI-only conveyance amount for the Kashwitna pool. After adding in the Caswell and Montana Creek amounts (11,520 acres times two), the December 1975 version lists the Kashwitna pool as 38,400 acres. However, in the clarified version, dated August 31, 1976, the Kashwitna pool amount was listed as 38,040 acres, not 38,400 acres. CIRI can find no reason for this 360 acre difference. The change may be simply a typographical error resulting from transposition of the last three digits.

The Kashwitna Pool lands were conveyed to CIRI in the early 1980s. Subsequent to CIRI's receipt of title, Caswell and Montana Creek made their selections from the pool and CIRI has made the required reconveyances to each group. In accepting the deeds from CIRI, both groups acknowledged to CIRI that the 11,520 acres of Kashwitna pool lands constituted their full 14(h)(2) ANCSA entitlement.

Proposed Legislation:

The purpose of the legislation is to simply reconfirm the parties intent that conveyances made by CIRI in accordance with the February 3, 1976 Agreement from the Kashwitna Pool as set forth in the Cook Inlet Land Exchange agreement to the group corporations of Caswell and Montana Creek are in full satisfaction of each group's section 14(h)(2) ANCSA entitlement.

Other considerations:

No adjustment to CIRI's or to other regions 14(h) entitlements are necessary even though these are 14(h)(2) conveyances as the lands for conveyance were provided for by the state of Alaska from other sources.

The AFN Legislative Committee has over the years consistently supported this amendment, whether or not any adjustment in the section 14(h)(2) pools is taken. To all involved, it is simply not that big of an issue when contrasted with the beneficial settlement of these group's entitlements.

Finally, it is important to note that BLM, not CIRI has this requested provision. CIRI believes it has fulfilled its obligation to the groups as reflected by the acknowledgment from both groups that Kashwitna pool conveyances were in complete fulfillment of their ANCSA entitlements.

BLM wishes now to close the loop and secure a Congressional declaration that these conveyances are in fulfillment of the section 14(h)(2) conveyances of Caswell and Montana Creek group corporations. BLM should have no other purpose.²

To the extent this legislation does this, CIRI supports the provision.

² Typically, a provision such as this would also require a statement that such conveyances are to be considered ANCSA conveyances. In this case it is not necessary as the Cook Inlet Land Exchange agreement provides specifically that all conveyances to CIRI, villages, or groups (emphasis added) are to be considered ANCSA conveyances. The fact that the conveyances to Caswell and Montana Creek are the only group conveyances contemplated or made in the Cook Inlet Land Exchange corroborates the fact that the group conveyances out of the Kashwitna Pool were intended to be conveyances in-lieu of other ANCSA entitlements.

Statement of Cook Inlet Region, Inc.
on
Section 11 of HR3612
Return of Wrangell Institute to the United States

In 1976 CIRI agreed to accept federal surplus and excess properties as a portion of its ANCSA entitlement, rather than the federal lands proscribed by ANCSA. The federal government, the State of Alaska, CIRI and several interest groups saw this approach as one way to reduce competition for public lands in the Cook Inlet area, which is the most populous part of Alaska, and which has many federal withdrawals for military, park and environmental preserves.

The Wrangell Institute was built by the federal government in the 1930s and was operated by the BIA until about 1975 as an "Indian School". The Institute was also used by the U.S. Military in World War II for the relocation of Alaska Native people from the Aleutians. As far as we can determine, no entity other than the federal government has owned or used the property until it was transferred to CIRI.

The Wrangell property was appraised by GSA in 1977 for \$600,000, with approximately two-thirds of this amount ascribed to value of the land, and about one-third ascribed to the value of the several buildings that made up the Institute. This appraisal did not include any recognition of contamination by asbestos or other hazardous substances. In fact, other documents prepared at the time by DOI and GSA explicitly state that "no contamination" existed and there was "no need for decontamination".

After the Wrangell property was conveyed to CIRI, we leased portions of it to federal and state agencies for nominal rents, and also rented three small residential buildings to local residents, who then entered into contracts to purchase the houses for a total price of approximately \$200,000.

An appraiser retained by the buyers' bank discovered asbestos during an inspection of the properties, and all three pending sales contracts were subsequently canceled. Extensive asbestos contamination was found in every major structure. All tenants were relocated and the land surrounding the Institute was fenced and posted.

CIRI has maintained a very simple and reasonable position -- namely that the property had been built and operated solely by the federal government -- and that it had never been the intention of Congress that Native people would receive contaminated property in exchange for their aboriginal lands. After repeated requests that DOI cleanup the property, we were told that our efforts to bring the contamination of ANCSA lands conveyed to Alaska Natives to the attention of Congress "might hold all remaining ANCSA conveyances indefinitely".

In face of this threat, we requested assistance from the Alaska Delegation. And in both 1991 and 1992, legislation or an appropriation to clean up the Wrangell property was introduced in the Senate. But these were rejected by the Senate Appropriations Committee because of budget "scoring" limitations. During these efforts, DOI continued to voice concerns about

"precedent" and the "implications for all ANCSA conveyances", even though there has never been any question as to the source of the contamination, or the equities of a federal cleanup.

In late 1993, CIRI addressed the budget scoring problem by proposing that we simply return the contaminated portion of the property back to the United States, and that our original entitlement accounts be credited appropriately. Legislation was drafted which is now included in the ANCSA amendment package before you, and it was submitted to the Congressional Budget Office (CBO) late last year. The CBO scored the amendment without budgetary impact in a letter dated October 6, 1993.

The proposed amendment was then included in both the Senate and House packages for consideration by their respective committees with ANCSA oversight.

The amendment authorizes the return of the contaminated portion of the property (all the structures and approximately 10 acres) to the United States; and it recredits CIRI's entitlement accounts in an amount made up of three parts:

- a) An allocated portion of the original amount charges to CIRI's entitlement; this allocation is based on the GSA appraisal at the time, and some additional land value information gathered by the state of Alaska a few years later. This amount is \$382,305 as shown in the materials submitted to CBO.
- b) Reimbursement of CIRI out-of-pocket costs incurred in handling this property. Such expenses include fencing and other steps to contain the asbestos and to address public safety concerns, as well as legal and consultant costs, but do not include any internal CIRI costs such as staff time, travel, etc. As of late last year, these out-of-pocket CIRI expenses totaled \$119,471, as noted in a letter to CBO dated September 23, 1993.
- c) Interest on the principal -- the \$382,305 I mentioned a few minutes ago -- from the date the asbestos was discovered in late 1987, until the CIRI entitlement account has been restored. The interest rate used in this calculation is that for 5 year Treasuries in late 1987, and the total interest was calculated at \$245,497 at the time of CBO's review approximately a year ago. This interest is intended to compensate CIRI for some of the economic loss it has suffered since 1987 because it has had neither the use of the property nor the use of its entitlement to acquire other property. (An example of the economic loss is the \$200,000 we would have received upon the sale of the residential units. Another is that we have paid property taxes and other carrying costs.)

The proposed amendment strikes a fair balance. CIRI ends up with a reimbursement of its costs which can then be used to acquire a property very similar to the Wrangell property, but without asbestos and hazardous materials contamination, and the federal government receives back the property it had, owned and operated for the last 40 years.

TESTIMONY OF ROY M. HUHNDORF
PRESIDENT, COOK INLET REGION, INC.
ON H.R. 4665
BEFORE THE COMMITTEE ON NATURAL RESOURCES SUBCOMMITTEE ON
OVERSIGHT AND INVESTIGATIONS
SEPTEMBER 22, 1994

MR. CHAIRMAN, AND MEMBERS OF THE SUBCOMMITTEE, THANK YOU FOR GIVING ME AN OPPORTUNITY TO TESTIFY ON A MATTER OF SIGNIFICANCE FOR THE ALASKA NATIVE SHAREHOLDERS OF COOK INLET REGION, INC.

MY NAME IS ROY HUHNDORF AND IT HAS BEEN MY PRIVILEGE TO SERVE AS PRESIDENT OF CIRI FOR THE PAST NINETEEN YEARS. DURING MY TENURE AS PRESIDENT, THE BOARD OF DIRECTORS AND I HAVE STRIVED TO MAKE CIRI A SUCCESSFUL NATIVE ENTITY AS ENVISIONED IN THE ALASKA NATIVE CLAIMS SETTLEMENT ACT.

ALONG THE WAY, IT HAS BECOME VERY CLEAR TO ME AND TO THE OTHER MEMBERS OF THE CIRI BOARD OF DIRECTORS THAT, WHILE HEALTHY PROFITS AND EVER-INCREASING DIVIDENDS ARE IMPORTANT, CIRI'S DUTIES TO ITS SHAREHOLDERS ARE MORE THAN THIS. THE SOCIAL AND CULTURAL WELFARE OF OUR SHAREHOLDERS ARE ALSO OF GREAT IMPORTANCE. WE ARE PROUD OF OUR CIRI-SPONSORED SISTER NON-PROFIT ORGANIZATIONS THAT PROVIDE FOR THE NEEDS OF OUR SHAREHOLDERS THROUGH EDUCATIONAL, VOCATIONAL, HEALTH, AND CULTURAL SERVICES.

I AM HERE TODAY TO DESCRIBE FOR YOU ANOTHER PROGRAM, CIRI'S STOCK BUY-BACK PROPOSAL. WE BELIEVE THAT THIS PROPOSED MECHANISM WILL ADD YET ANOTHER TOOL TO BE USED BY THE CORPORATION TO FURTHER ADDRESS SHAREHOLDER NEEDS, WHILE AT THE SAME TIME PROTECT THE VERY EXISTENCE OF THE CORPORATION FOR FUTURE GENERATIONS OF ALASKA NATIVE SHAREHOLDERS.

PLEASE LET ME EXPLAIN.....

BY WAY OF HISTORY, CONGRESS ENACTED THE ALASKA NATIVE CLAIMS SETTLEMENT ACT IN 1971. UNDER THE PROVISIONS OF ANCSA, 6,262 ALASKA NATIVES ENROLLED TO BECOME MEMBERS OF COOK INLET REGION, INC., ONE OF THE TWELVE ALASKA-BASED REGIONAL CORPORATIONS ESTABLISHED BY THE ACT. EACH OF THESE ALASKA NATIVE OWNERS OF CIRI WERE ISSUED 100 SHARES OF STOCK IN CIRI AS REQUIRED UNDER ANCSA. CURRENTLY, ALL ANCSA STOCK, INCLUDING CIRI STOCK, CANNOT BE SOLD, TRANSFERRED OR PLEDGED BY OWNERS OF THE SHARES. RATHER, TRANSFERS CAN ONLY HAPPEN THROUGH INHERITANCE OR GIFTING (OR IN LIMITED CASES BY COURT DECREE).

CONGRESS HAS CONSIDERED THE NATURE OF ANCSA STOCK TWICE PREVIOUSLY. IN THOSE DELIBERATIONS, CONGRESS TRIED TO ACHIEVE A BALANCE BETWEEN ALLOWING INDIVIDUAL FREEDOM AND COLLECTIVE PROTECTIONS FOR THE MEMBERSHIP. TO ACCOMPLISH THIS, A STRICT MORATORIUM ON ALIENATION WAS MANDATED FOR THE FIRST TWENTY YEARS FOLLOWING THE ACT. THIS WAS FOLLOWED BY AN AUTOMATIC LIFTING OF RESTRICTIONS -- BY A "NO-HOLDS BARRED" RIGHT TO SELL STOCK IN THE PUBLIC MARKET.

AS THE YEAR 1991 APPROACHED, BRINGING WITH IT THE AUTOMATIC EXPIRATION OF THE RESTRICTION ON STOCK SALES, THE ALASKA NATIVE COMMUNITY GREW ALARMED ABOUT THE EFFECT OF THE POTENTIAL SALE OF NATIVE STOCK. MANY OF THE NATIVE CORPORATIONS, INCLUDING CIRI, ACTIVELY SOLICITED THEIR SHAREHOLDERS' VIEWS ON THIS CRITICAL MATTER, THROUGH MEETINGS, QUESTIONNAIRES, POLLING AND FORMAL VOTES. AS A RESULT, IN 1987 CONGRESS AGAIN ADDRESSED STOCK ALIENABILITY AND ENACTED LEGISLATION WHICH REFORMED THE MECHANISM GOVERNING STOCK SALE RESTRICTIONS. THIS WAS A FUNDAMENTAL CHANGE. UNDER THE 1987 AMENDMENTS, INSTEAD OF EXPIRING AUTOMATICALLY IN 1991, THE RESTRICTIONS ON ALIENABILITY CONTINUE AUTOMATICALLY UNLESS AND UNTIL THE SHAREHOLDERS OF A NATIVE CORPORATION VOTE TO REMOVE THEM. THUS, INDIVIDUAL RIGHTS AND COLLECTIVE PROTECTIONS WERE RECAST IN THIS NEW SCHEME.

THE 1987 AMENDMENTS ALLOW FOR RESTRICTIONS TO BE REMOVED ON A CORPORATION-BY-CORPORATION BASIS BY A MAJORITY VOTE TO DO SO BY EACH CORPORATION'S SHAREHOLDERS. HOWEVER, UPON A MAJORITY VOTE, ONCE AGAIN A "NO-HOLDS BARRED" FREEDOM TO SELL STOCK ON THE PUBLIC MARKET RESULTS. IT IS IMPORTANT TO NOTE THAT UNDER BOTH ANCSA AND THE 1987 AMENDMENTS, ONCE RESTRICTIONS ARE LIFTED NO MECHANISM EXISTS THAT CAN EVER RETURN NATIVE CONTROL AND OWNERSHIP OF THE CORPORATION.

HOW DOES THE CURRENT STATE OF THE LAW EFFECT CIRI SHAREHOLDERS? CIRI HAS CONDUCTED A NUMBER OF SPECIAL SHAREHOLDER MEETINGS AND SURVEYS --- AND EVEN FOCUS GROUPS --- TO ASCERTAIN AS FULLY AS WE CAN THE VIEWS OF ITS SHAREHOLDERS REGARDING THE ALIENATION RESTRICTIONS ON CIRI STOCK. TWO RESULTS HAVE CONSISTENTLY STOOD OUT IN THESE ASSESSMENTS.

FIRST, THE MAJORITY OF CIRI SHAREHOLDERS FAVOR MAINTAINING NATIVE OWNERSHIP AND CONTROL OF CIRI. THESE SHAREHOLDERS, WHOSE NUMBERS CONSISTENTLY REGISTER AT THE 70% TO 80% LEVEL, SEE THE ECONOMIC AND CULTURAL BENEFITS IN THE CONTINUATION OF NATIVE OWNERSHIP OF THEIR CORPORATION.

SECOND, A SIGNIFICANT PERCENTAGE, ALTHOUGH A MINORITY OF SHAREHOLDERS, FAVOR ACCESSING SOME (OR ALL) OF THE VALUE OF THEIR CIRI STOCK THROUGH SALE OF THAT STOCK. THESE SHAREHOLDERS HAVE, OVER THE YEARS, CONSISTENTLY REGISTERED THEIR DESIRE WITH CIRI TO SELL THEIR STOCK.

UNDER CURRENT LAW, THESE TWO LEGITIMATE BUT CONFLICTING CONCERNS CANNOT BE ADDRESSED, BECAUSE LIFTING RESTRICTIONS ON THE SALE OF STOCK IS AN ALL-OR-NOTHING PROPOSITION. IN ORDER TO ALLOW THE MINORITY OF SHAREHOLDERS TO EXERCISE THEIR DESIRE TO SELL SOME OR ALL OF THEIR STOCK, THE MAJORITY OF SHAREHOLDERS WOULD HAVE TO SACRIFICE THEIR IMPORTANT DESIRE TO MAINTAIN NATIVE CONTROL AND

OWNERSHIP OF CIRI. THIS IS BECAUSE ONCE RESTRICTIONS HAVE BEEN LIFTED, THERE IS NO WAY TO CONTROL THE PURCHASE OF STOCK BY NON-NATIVES.

IT STRIKES CIRI THAT THERE IS A MIDDLE GROUND, A THIRD OPTION THAT ALLOWS FOR RESTRICTIONS TO BE REMOVED IN A MANNER THAT DOES NOT PRODUCE TOO DRASTIC A RESULT. CIRI RECOGNIZES THAT RESPONDING TO THE DESIRE OF THOSE SHAREHOLDERS WHO WISH TO SELL CIRI STOCK IS A LEGITIMATE CORPORATE RESPONSIBILITY. MORE IMPORTANTLY, CIRI BELIEVES THAT THERE IS A WAY FOR CIRI TO ADDRESS THE NEEDS AND DESIRES OF BOTH GROUPS OF SHAREHOLDERS, THOSE WHO WISH TO SELL STOCK AND THOSE WHO DESIRE TO MAINTAIN NATIVE OWNERSHIP OF CIRI, SO THAT THE SALE OF STOCK WILL NOT COMPROMISE THE "NATIVENESS" OF THE COMPANY, NOR WILL IT JEOPARDIZE THE ECONOMIC FUTURE OF THE COMPANY FOR THOSE WHO CHOOSE NOT TO SELL. THE METHOD EMBODIED IN THE PROPOSED AMENDMENT IS ONE THAT OTHER COMPANIES ROUTINELY USE: THE "BUYING BACK" OF THEIR OWN STOCK.

CIRI ASKS CONGRESS' CONSIDERATION OF ITS PROPOSED STOCK BUY-BACK AMENDMENT TO ANCSA THAT WOULD AUTHORIZE CIRI TO PURCHASE CIRI STOCK VOLUNTARILY TENDERED BY ITS SHAREHOLDERS. THE REPURCHASE OF STOCK WOULD BE GOVERNED BY THE RULES AND PROCEDURES SET OUT IN THE PLAN THAT WOULD BE PUT BEFORE THE SHAREHOLDERS FOR A VOTE. THE PLAN WILL EMBODY THE FOLLOWING CONCEPTS.

1. EVEN AFTER THE LEGISLATION IS PASSED, ANY REPURCHASE PLAN MUST BE PUT TO A SHAREHOLDER VOTE AND APPROVED BY THE SHAREHOLDERS AS AN AMENDMENT TO THE ARTICLES OF INCORPORATION OF CIRI.
2. THE DECISION TO SELL STOCK TO CIRI BY INDIVIDUAL CIRI SHAREHOLDERS WILL BE STRICTLY VOLUNTARY.

3. THE COMPANY WILL BE REQUIRED UPON REPURCHASE OF THE STOCK TO CANCEL THE STOCK.
4. THE OFFER TO REPURCHASE WILL BE MADE BY CIRI ON THE SAME TERMS TO ALL HOLDERS OF THE SAME CLASS OR SERIES OF STOCK.
5. THERE WILL BE NO REPURCHASE ALLOWED EXCEPT THOSE PURCHASES CONDUCTED BY THE COMPANY. NO INDIVIDUAL, SHAREHOLDER, DIRECTOR, OR MEMBER OF MANAGEMENT WILL BE ALLOWED TO PURCHASE STOCK. IN THIS WAY, NATIVE OWNERSHIP AND CONTROL OF CIRI WILL BE MAINTAINED, AND NO INDIVIDUAL SHAREHOLDER WILL BE ALLOWED TO AMASS STOCK THAT HAS BEEN PURCHASED FROM OTHER SHAREHOLDERS.
6. NO DIRECTOR OR OFFICER OF THE COMPANY WILL BE ALLOWED TO TENDER STOCK FOR SALE TO THE COMPANY.
7. STOCK HELD BY CUSTODIANS, GUARDIANS, TRUSTEES OR OTHER SIMILAR PERSONS WILL NOT BE SUBJECT TO REPURCHASE.
8. DISTRIBUTIONS THAT ARE SET OUT IN ANCSA THAT ARE BASED ON SHAREHOLDER COUNT (SUCH AS SECTION 7(i)) WILL REMAIN UNAFFECTED BY THE SALE OF STOCK.
9. IN DETERMINING THE TERMS OF ANY PURCHASE OFFER, CIRI WILL BE REQUIRED TO OBTAIN THE OPINION OF A RECOGNIZED FIRM OF INVESTMENT BANKERS OR OTHER VALUATION EXPERTS, AND WILL BE ENTITLED TO RELY ON THOSE GOOD FAITH OPINIONS.

IN SUMMARY, THIS PLAN ALLOWS THOSE SHAREHOLDERS WHO WANT TO, TO ACCESS THE CAPITAL VALUE OF CIRI STOCK IN A WAY THAT PRESERVES NATIVE CONTROL AND OWNERSHIP OF CIRI. THE AMENDMENT CONTAINS SAFEGUARDS DESIGNED TO ENSURE THAT THE REPURCHASE WOULD BE CONDUCTED FAIRLY TO BOTH THE BUYERS AND SELLERS OF STOCK. NOTHING IN THE PROVISION WOULD PRECLUDE CIRI SHAREHOLDERS FROM UTILIZING FULLY THE PROVISION NOW EXISTING IN THE 1987 AMENDMENTS IF THEY SO CHOOSE. HOWEVER, I BELIEVE THAT IF CIRI IS GIVEN THE OPTION OF USING A LESS DRASTIC MEASURE TO MEET SHAREHOLDERS NEEDS, SO THAT SHAREHOLDERS DO NOT HAVE TO CHOOSE BETWEEN TOTAL RESTRICTION ON THE SALE OF THEIR STOCK AND ABSOLUTELY NO RESTRICTIONS, CIRI'S CHANCES OF REMAINING A NATIVE-OWNED ENTITY THAT IS WORKING FOR THE BENEFIT OF ITS ALASKA NATIVE SHAREHOLDERS AND THEIR DESCENDENTS FOR FAR INTO THE FUTURE ARE ENHANCED.

Mr. MILLER. Mr. Shively.

STATEMENT OF JOHN T. SHIVELY

Mr. SHIVELY. Yes, sir, Mr. Chairman.

My name is John T. Shively, Senior Vice President of NANA Development Corporation, which is a wholly-owned subsidiary of NANA Regional Corporation. For a start, I would like to thank Deborah Williams and members of the Department of Interior for the work they have done with AFN and others to try to get this legislation before you in a form that I think the committee can act upon.

We have actually a couple comments on H.R. 3612 and a couple on H.R. 4665. The main section we are interested in in H.R. 3612 is Section 9, the allotment section, which allows veterans to file for allotments.

This law was repealed back in 1971 with the passage of the Claims Act—and maybe a little brief history: The original Allotment Act was passed in 1906. Between 1906 and 1970, there were only about 200 allotments processed by the Federal Government. In the early—1969, 1970 and 1971, the Rural Alaska Community Action Program and others filed over 8,000 applications. However, there were some people serving in the military at the time that were not around to make their filings. And this legislation is designed to take care of that situation and allow them that opportunity now. We very much support that.

Terms of H.R. 4665, the bill, the CIRI buyback. A couple things we think the committee should keep in mind. Although this is just for CIRI, this is the first time something like this has been addressed by Congress, so it is in a certain sense, a precedent and might be tried by other corporations later. So how it is done this time is important. NANA fully supports CIRI in their request and we have from the time they first asked for that support last spring.

We have two suggestions to the committee. One is that in the valuation of the stock that provisions that were originally passed in Congress in 1987 for dissenters rights be included for the valuation of stock for CIRI. This would provide that lands that are subsistence lands, lands that aren't subject to taxation are undeveloped. Cemeteries, historic sites, lands of speculative value don't have to go into the base value of the stock.

We think the public policy reason for that is that, first of all, it is very difficult to get a value on these lands. Second, if you are going to make a cut as to who should receive the benefit from these lands, it should be the people that remained with the corporation, not the people that are leaving.

The second issue concerns Section (L) of this legislation, which provides that the sale of the stock will not affect the benefits from Federal programs. There are two types of Federal programs. One type is the sort of generic Indian programs like the Indian Health Service, and we would concur that for those programs the sale of stock should not affect the natives' eligibility. But there are other programs that are income-based, such as food stamps, and in those cases, we think the Congress may want to look at some kind of cap so that if the sale of the stock does give an individual a fair amount

of money and assets, that those programs do not go on for people who received a lot of money from the sale of the stock.

Mr. Chairman, we do appreciate the opportunity to testify. I know it is a very busy time of year and I would be glad to answer any questions.

Thank you very much.

[Prepared statement of Mr. Shively follows:]

TESTIMONY SUBMITTED BY
NANA REGIONAL CORPORATION
BEFORE THE U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON NATURAL RESOURCES
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS
RELATING TO H.R. 3612 AND H.R. 4665
SEPTEMBER 22, 1994

INTRODUCTION

My name is John Shively, and I am the Senior Vice President of NANA Development Corporation, a wholly owned subsidiary of NANA Regional Corporation (NANA), one of the thirteen regional corporations formed pursuant to the Alaska Native Claims Settlement Act (PL92-203, as amended). I am also a member of the Alaska Federation of Natives Legislative Committee. NANA appreciates the opportunity given us to testify on these bills.

Before we get into the substance of our testimony on H.R. 3612, we would like to express our appreciation to Deborah Williams, Secretary Babbit's Special Assistant in Alaska, who organized the dialogue between the Alaska Native community and the representatives of the Department of Interior so that we could come to some mutual agreement on most of the issues the Alaska Federation of Natives has suggested being addressed in this legislation. As this committee knows only too well, the Alaska Native Claims Settlement Act is, in every sense, a "living document", which seems to grow in volume and complexity on at least a bi-annual, if not an annual, basis. The Department and the Congress both should be commended for their willingness to make the amendments to the Alaska Native Claims Settlement Act which the Native community believe necessary for the laws continuing improvement.

H.R. 3612

Although NANA is supportive of all of the provisions of H.R. 3612, our prime interest is in Section 9 which relates to an "open

season" so that certain Alaska Native veterans can avail themselves of the opportunity to file for a Native allotment. A little history might be in order here. The original allotment act was passed in 1906, and between 1906 and 1970 the Bureau of Indian Affairs approved only a little over 200 allotment applications in Alaska, despite the fact that there were tens of thousands of Alaska Natives who were eligible for the program.

Late in 1969 and early in 1970, the Rural Alaska Community Action Program and Alaska Legal Services realized that the Native allotment law would most likely be repealed with the passage of the Alaska Native Claims Settlement Act. This prediction was ultimately confirmed when the Settlement Act passed in 1971. Therefore, these two organizations and others made a concerted effort to notify Alaska Natives of the allotment program and to assist qualified Alaska Natives in filing applications. Over 8,000 applications were ultimately filed.

Unfortunately for some Alaska Natives, they were in the service during this final push by Alaska Natives to claim a land right which had been theirs since 1906, but which most Alaska Natives had been unaware of because of the lack of forceful government education about this program.

Therefore, it seems logical to us that some kind of open season for Native allotments be authorized by Congress. We understand that the Department of Interior agrees with this position. The main point of discussion now seems to be whether this preference for Alaska Native veterans should go back to the Korean war, as is presently contained in the legislation, or should be confined to a more restrictive date, such as the one proposed by the Department (1970 and 1971). NANA believes that there is some middle ground here, and that the committee can work out some agreeable language between these two positions. NANA is particularly concerned about those veterans that served during the conflict in Vietnam, and

urges the committee, as a minimum, to take care of their potential claims.

H.R. 4665

H.R. 4665 is a bill introduced on behalf of Cook Inlet Region, Inc. (CIRI) to allow that corporation to buy back stock from its shareholders. This proposal is before the committee because stock in Native corporations is presently restricted unless a majority of the shareholders vote to lift those restrictions. CIRI's proposal represents a middle ground for them whereby some stock could be sold, but it could only be sold to the corporation and would then be canceled. This prevents the stock from going on the open market, and prevents the corporation from ultimately being controlled by non-Natives.

NANA is on record of supporting CIRI's legislation. Although it is not legislation we think is applicable in our own region, we recognize CIRI's particular needs and have therefore written a letter endorsing this legislation.

However, we would caution the Committee in one area. We believe there are certain pitfalls involved in the valuation of this stock for the purposes of the purchase by CIRI. This is an issue which is not new to Congress because it was dealt with in Public Law 100-241 which is a series of amendments to ANCSA which was passed by Congress in 1987. Section 9 of those amendments added a new Section 38 to ANCSA. Section (c) of Section 38 provided for valuation of the stock in the case of dissenters to certain actions which might have been taken by the corporation's shareholders. Paragraph 38(c) provides that when valuing stock in a Native corporation, certain lands such as cemeteries and historical sites, undeveloped lands exempt from real estate taxation and any land used for subsistence, or any land which the directors believe to be only "speculative value" shall be excluded from the valuation from

the stock of the corporation.

We recommend that the committee provide for similar language in the CIRI legislation. We do this because we believe that those Natives who continue as owners of the corporation, and, therefore, retain their Native ties to the original settlement, should not have these lands valued for the benefit of individuals who wish to leave the corporation and thus end their ties to the Native settlement. In addition, valuing these types of lands would be very difficult and potentially subject to very complex and expensive litigation. The addition of the language from the 1987 amendments would resolve these issues.

CONCLUSION

We recognize that the bills in front of this committee today are not among the most significant items that the Congress has to deal with before you adjourn. However, these issues are important to a number of Native organizations and Native individuals. We recommend that the committee make every effort to get these proposals adopted this year. Thank you very much for the opportunity to testify.

JS/sb/2294

Mr. MILLER. Thank you.

The good news is Don Young is here. The bad news is he has had a terrible morning.

Mr. YOUNG. Mr. Chairman, I apologize to my Alaskan constituents. I have been on the road for an hour and a half. For those in Alaska, with just a little bit of rain around here, everybody gets crazy, so I do apologize.

Mr. MILLER. It has been a great traffic week in here. I walk to work, so I don't have this problem.

But thank you very much for your testimony and for your work on that.

I think what we will do with respect to my questions on the technical corrections bill is just continue our discussions and see what we can do between now and the time the committee takes up consideration of the legislation since I think there is enough agreement there.

Let me move to the CIRC stock buyback bill for just a couple of questions.

Mr. Shively, I think you raised a good point on the exclusion with respect to other Federal programs. First of all, our committee doesn't have full jurisdiction to be able to do that. We could deal with it with respect to the Indian Health Service and programs within the jurisdiction of this committee, but we don't have jurisdiction with respect to nutrition programs, school lunch and food stamp programs that are within the jurisdiction of the Labor Committee and Agriculture Committee.

If we authorize the corporation to do this, we are then authorizing—we are saying this is okay under the law. What is the mechanism by which the corporation would then decide to go forward or not to do this or to change the terms and conditions? How is that set up within the corporation?

Is that a democratic process where the shareholders will then have to make a determination whether they want to accept this authorization and go forward with this plan?

Mr. HUENDORF. Mr. Chairman, first of all, once the legislation has passed the Congress, the second step would be for the shareholders to vote to amend their articles of incorporation to allow the corporation to engage in future stock buybacks. I would assume there would be several.

Unless and until the shareholders vote to do that, there cannot be and would not be a stock buyback program at CIRC. It would take 50 percent plus one vote of the voting members of the corporation to change the articles of incorporation to allow this.

Mr. MILLER. Can they also at that time make a determination as to how this stock would be valued, what assets would be included or not?

Mr. HUENDORF. It is possible, Mr. Chairman, that they could augment what the provision would contain here. For example, if Mr. Shively's amendments are adopted, that could be—those would be augmented. Fundamentally, I think we want to see a valuation process that is fair to both parties, and there are really two parties here, those choosing to stay with the corporation and continue on as shareholders—

Mr. MILLER. I understand that, but is that a determination that the current membership of the corporation now gets to make?

Mr. HUHNDORF. The law—

Mr. MILLER. That would be the argument whether it is fair or not but is it then their authority to make a determination as to how this would be valued?

Mr. HUHNDORF. The valuation of the stock would be done by an independent party we are proposing.

Mr. MILLER. I understand that. But what gets cranked into that base or doesn't get cranked into that base? Is the corporation free to decide that under the current arrangement?

Mr. HUHNDORF. The board of directors would engage a private consultant that is qualified to do such a valuation to do this valuation.

Mr. MILLER. And then after they do, the board in the name of the corporation could either accept that valuation and that arrangement or not?

Mr. HUHNDORF. The board would accept the valuation, Mr. Chairman—

Mr. MILLER. I am trying to make sure we are not predetermining anything here with the passage of this legislation as to how this would be carried out; this still remains a decision for the corporation to make?

Mr. HUHNDORF. Yes, it would, Mr. Chairman. We are organized under the laws of State and that authority is vested in the board of directors.

Mr. MILLER. Why is the buyout necessary?

Mr. HUHNDORF. First of all, because a large percentage of CIRI shareholders would like to be able to sell stock. Some of our surveys indicate as many as 30 percent of the shareholders would like to sell stock.

And second, we fear that if over time that number grows, we will eventually be faced with a vote to unrestrict the corporation, which is the current state of the law to sales for everyone, so it is sort of an all-or-nothing proposal. At the same time, about 80 percent of our shareholders would like to see the company remain as a native corporation, so we are trying to reconcile the desires of these two parties and we feel this is the best way to do that.

Mr. MILLER. That cannot be accommodated by the use of dividends or spinning off additional cash flows to the shareholders?

Mr. HUHNDORF. Not sufficiently, in our view, Mr. Chairman. Shareholders want to realize the value of their stock. And it is difficult to distribute a dividend and you would have to do that equally to all shareholders large enough to equate the size of the value of someone's stock in the corporation.

Mr. MILLER. Any other comments from anybody?

On the question of the allotments and the veterans, the anticipation is that the individual would have been able to file for an allotment had that been their right, but because of service they were not able to file?

Mr. SHIVELY. That is correct.

Mr. MILLER. But that allotment would become part of their estate and would run to their heirs?

Mr. SHIVELY. That is correct.

Mr. MILLER. But in some cases those individuals are deceased and the plan is to have the heirs stand in their place?

Mr. SHIVELY. Yes—

Mr. MILLER. Is it still a single allotment?

Mr. SHIVELY. It would still be a single allotment. If they had 13 kids, there will not be 13 allotments.

Mr. MILLER. And the 13 kids will have to figure out how to file when they get their act together?

Mr. SHIVELY. That is correct. And I think that the language that is being discussed with the Department, that confines the period quite a bit differently than the current draft of the bill, that the number of deceased people will be relatively minimal.

Mr. MILLER. Because their window is narrower.

Mr. SHIVELY. 1970 and 1971 is what they are discussing.

Mr. MILLER. What is the expectation in terms of the number of individuals?

Mr. SHIVELY. I don't know that we have a good count, but my guess is that you are talking—we think in the NANA region there are about 25 to 30, so my guess is you are talking about 150 or so statewide; 200, maybe. Now that of course would also have to meet all the original requirements, that is not an automatic 160 acres, they have to meet the other requirements of the 1906 land.

Mr. MILLER. And the lands eligible for their filing would be what lands?

Mr. SHIVELY. That is a question. It is interesting that largely right now they would be BLM lands. I assume that they would not be allowed to select conservation system units. If they were in lands currently conveyed to native corporations, my guess is there would be an attempt to do a trade with the Department.

Mr. MILLER. So it is basically under the terms and conditions that existed at that time, with some of the lands that may have been available are no longer available?

Mr. SHIVELY. That is correct.

Mr. MILLER. Thank you.

Mr. Young.

Mr. YOUNG. Thank you, Mr. Chairman.

First, let me ask unanimous consent for a statement by Julie Kitka to be submitted in the record on behalf of H.R. 3613.

[The information follows:]

Alaska Federation of Natives, Inc.

June 21, 1994

Honorable George Miller
Chairman
Natural Resources Committee
U.S. House of Representatives
1324 Longworth House Office Building
Washington, D.C. 20510

Dear Mr. Chairman:

On behalf of the Alaska Federation of Natives, Inc., I am writing to you to express our support for H.R. 3613, legislation which would resolve the concerns which have prevented the Kenai Natives Association, Inc. (KNA) from using their lands to benefit their people.

The Fish and Wildlife Service Alaska has negotiated a proposed land acquisition and exchange package involving KNA and Refuge lands in the Kenai National Wildlife Refuge. H.R. 3613 would, in effect, ratify implementation of the acquisition and exchange package and would resolve the long-standing bar to use of lands faced by KNA. The corporation was conveyed lands by the government in settlement of Native land claims but not allowed to make beneficial uses of those lands. As you know, legislation has been introduced to implement the package (HR 3613) by Congressman Young.

Mr. Chairman, for over fifteen years, KNA has actively sought to resolve these issues and make beneficial uses of its ANCSA lands. Now is the time to implement an agreement with KNA for the benefit of the Native shareholders and to meet the purposes of ANCSA. KNA is hopeful that the necessary agreements will be made promptly and kept. We fully share that hope and support their request and support H.R. 3613.

Sincerely,


Julie E. Kitka
President

JK/ps

cc: Diana Zirul, President/KNA
Lance Gidcumb, Esq.
Alaska Congressional Delegation

Mr. YOUNG. And second, again I apologize to this panel. Some things I cannot control, although some people think I control everything, unfortunately.

Julie, I understand the AFN met with the representatives of the Department of the Interior to address some of the Department's concerns of H.R. 3612. It is my understanding that the Department in cooperation with AFN has drafted alternative language for Section 4, Section 5, Section 6, Section 8 and Section 9 of H.R. 3612.

I concur with those proposed changes, except for the Department's proposed language for Section 9 of H.R. 3612, which would limit the native allotment applications process to those native veterans who were on active duty January 1, 1970 to December 18, 1971. I frankly think it is unfair for those Alaskan Native veterans who actively served in the military during the Vietnam War. I can understand the restrictions on the Korean veterans, I do have reservations on the exclusion of Vietnam veterans.

Most of us were not aware, and I have many people in my villages that served in Vietnam that were unaware, and I think we open that window if we can, Julie, and I don't know where the Department—and I see my Secretary of Interior representative here—why is one year narrow enough? Why not make it, say, activities 1968 to 1971 in that area of time?

Ms. KITKA. Congressman Young, earlier Deborah Williams testified on behalf of the Department that the administration doesn't have a provision on this section on the allotments, that there needs to be some further discussion between AFN and the Department of Agriculture and Interior on this provision, and we are going to try to resolve that in the next couple of days and bring that back to the committee.

Mr. YOUNG. OK. I am glad to hear that. Because to me, again that one window is kind of narrow and I think it would be more equitable if we were to broaden it to at least two years, four years or something to that effect. Again, as Mr. Shively says, the allotment has to meet all the criteria, this is not a free gift of 160 acres.

We fought this battle once back when we passed the Lands Act. We made a lot of allotments more readily acceptable than they were before because there was an intent on the Department to shut them off. With that understanding that both of you will sit down and work on it, I will be very pleased if we can work that out.

On all these pieces of legislation, Mr. Chairman, I do appreciate you having the hearings, too. I am concerned that we try to move them as rapidly as possible. We are going to have some filler space here on the Floor. If we can get these out and get them moving, it will help the process and get this done, especially the one with all three of them. The one with the Kenai Native group has been around and around, we have had hearings and hearings and hearings, and there have been arguments. I do believe we have got an agreement now that everybody has signed off on, and we have some question about the money factor.

I am well aware of that, but the authorization I think is crucially important to get these people satisfied and that they can go forth with their lives and Fish and Wildlife can go forward with its life, and we can settle these problems of sort of rounding off the rough-edges of the lands claim settlements.

Thank you, Mr. Chairman.

[Prepared statement of Mr. Young follows:]

Statement of
THE HONORABLE DON YOUNG

Committee on Natural Resources
Subcommittee on Oversight and Investigations

Subcommittee Hearing on H.R. 3612
A Bill to Amend the Alaska Native Claims Settlement Act
September 22, 1994

Mr. Chairman:

I'd like to thank you for holding this hearing on a bill that I introduced at the request of the Legislative Council of the Alaska Federation of Natives. I would also like to thank Julie Kitka and Nelson Angapak of AFN, Paul Kirton and Deborah Williams of the Department of Interior, John Katz and Jack Griffin of the Alaska Governor's office, and staff on the Natural Resources Committee for their work on this bill. Considerable time has been spent with regard to this bill since I introduced it last November. I plan to work with the Chairman to incorporate testimony received today in order to offer a substitute at mark up of this legislation.

I'd like to welcome our witnesses at this hearing on H.R. 3612, a bill to amend the Alaska Native Claims Settlement Act. In particular, I would like to welcome Secretary Babbitt (or his designee), Julie Kitka, President of the Alaska Federation of Natives, Roy Huhndorf, President and CEO of Cook Inlet Region, Incorporated, John Shivley of NANA Regional Corporation and Diana Zirul, President of the Kenai Native Association. It is always a pleasure to work with such outstanding Alaska Native leaders on issues which have a profound effect on the daily lives of Alaska Natives.

This bill is the result of the work of the Alaska Federation of Natives Legislative Council to address technical land issues which were not clear or readily defined at time of passage of the Alaska Native Claims Settlement Act of 1971. For instance, Section 9 would open a one-year season following enactment by Congress for Alaska Native veterans of the Korean conflict or the Vietnam era (or their heirs) to become eligible for an allotment not to exceed 160 acres under the terms of the May 17, 1906 Native Allotment Act. These veterans missed the original filing deadline due to their active duty in the military and I do not believe that they should be penalized for fulfilling their patriotic duty. This provision would rectify this gross inequity of our Alaska Native veterans with their native allotment application eligibility. I will not go into every aspect of the bill, because I do not want to keep our good Alaskans waiting. But I do want to mention that the bill will probably require additional "fine tuning" as a result of these hearings and further testimony we have received or will receive over the next couple of weeks. Further, we will hear about other possible amendments to the bill, and I hope we can keep an open mind about them. I would like to thank the Chairman for the open mind he has had on this issue so far.

Thanks again for holding the hearing, and welcome Alaskans.

Statement of
THE HONORABLE DON YOUNG

Committee on Natural Resources
Subcommittee on Oversight and Investigations

Subcommittee Hearing on H.R. 4665
A Bill to Amend the Alaska Native Claims Settlement Act
September 22, 1994

Mr. Chairman:

I would like to thank you for holding this hearing on H.R. 4665, a bill to amend the Alaska Native Claims Settlement Act. As you are well aware, Congress did not foresee many of the changes that Native Corporations have experienced since enactment of the Alaska Native Claims Settlement Act of 1971 (ANCSA). Cook Inlet Region, Incorporated (CIRI) was one of the thirteen regional corporations formed pursuant to ANCSA. They have been one of the more successful of the Native Corporations formed and have fulfilled their fiduciary responsibility in a very stable and conservative manner.

I introduced this bill at the request of Cook Inlet Region, Incorporated and have worked with the Alaska Federation of Natives (AFN), the State of Alaska and Department of Interior to obtain their comments with regard to the intent of this bill. ANCSA, as originally introduced, restricted the public sale of settlement common stock of shareholders of Native Corporations formed under ANCSA until the year 1991. As the 1991 deadline approached, Native Corporations and the Alaska Federation of Natives became increasingly concerned with the possible lifting of the restriction on sale of settlement common stock to individuals or entities other than "Natives," which would have altered the original intent of

ANCSA. In 1987, Congress amended ANCSA to allow restriction on the public sale of settlement common stock to automatically continue beyond January 1, 1992 until such time as 50% plus one of all outstanding settlement common stock votes to remove this restriction. Since that time, CIRC has held a series of polls and membership surveys to receive a consensus of its shareholders on the issue of the sale of its common stock. At the bequest of its shareholders, CIRC is seeking Congressional approval to buy back common stock from its shareholders. Once this stock is purchased by CIRC, it would automatically cancel these shares. This bill is intended to give CIRC, and only CIRC, this authority. I want to thank Roy Huhndorf for his leadership in this regard on behalf of his shareholders and ask that this subcommittee work with me and CIRC to address any concerns which may arise in this subcommittee hearing.

Again, thank you Mr. Chairman for holding this hearing on H.R. 4665.

**STATEMENT OF
THE HONORABLE DON YOUNG
COMMITTEE ON NATURAL RESOURCES
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATION**

**SUBCOMMITTEE HEARING ON H.R. 3613
THE KENAI NATIVES ASSOCIATION EQUITY ACT**

I would like to thank the Chairman for holding this Subcommittee hearing on H.R. 3613, the Kenai Natives Association Equity Act, and would like to take this opportunity to welcome Diana Zirul to this hearing.

The Kenai Natives Association (KNA) has waited since 1982 to resolve its land selection problem with property which is within the boundaries of the Kenai National Wildlife Refuge. KNA has reached a tentative agreement with the U.S. Fish and Wildlife with an exchange agreement on lands within this refuge. I believe that they have waited long enough for ratification of the agreement reached and believe they deserve to have this behind them. I urge my colleagues to support this legislation to allow KNA to go forth with their agenda.

I thank the Chairman for holding this hearing.

Mr. MILLER. Thank you.

Mr. Allard.

Mr. ALLARD. Mr. Chairman, I don't have any questions or comments.

Thank you.

Mr. MILLER. Thank you.

Let me just ask one other question here.

Mr. Huhndorf, obviously the decision to sell the stock is a serious decision, because at that point you are out of the corporation, correct?

Mr. HUHNDORF. Yes, Mr. Chairman. If you sell all of your stock, you are.

Mr. MILLER. This corporation has pretty substantial assets. Does the corporation have a means by which people who are in temporary financial problems can borrow against their stock or a financial arrangement for the members of that corporation?

Mr. HUHNDORF. No, Mr. Chairman, other than the dividend stream that CIRC provides. The original act prohibits anyone from pledging their stock in a borrowing situation.

Mr. MILLER. Even to the corporation itself?

Mr. HUHNDORF. Even to the corporation itself. We would have no resource and that might be unfair to other shareholders if people default on their loans from the corporation. Additionally, the board of directors of CIRC has decided not to be in the loan business since that would require considerably more overhead to police loans and generate probably bad will among the shareholders. Those who don't pay would have to be told they don't pay and should pay, so the board has just avoided this situation and has instead provided substantial dividends to our shareholders. We distribute from 35 to 50 percent of our net income each year as dividends to our shareholders.

Mr. MILLER. I am just concerned that people—we all do from time to time get into temporary financial straits. I am concerned about the decision-making process that is then irrevocable once it is made. What people need sometimes is a bridge from one side of the financial problems to the other. And I am just concerned that—if the only resource that is available is the sale of the stock, it obviously then has a very serious impact on their standing in the corporation.

Mr. YOUNG. Mr. Chairman.

Mr. MILLER. Yes.

Mr. YOUNG. Again, I hope—I know Mr. Huhndorf has done this, but the stock is actually eradicated once it is purchased by the corporation; is it not? There is no accumulation of stock, it is done away with; is that not true?

Mr. HUHNDORF. That is correct, the stock is retired and put out of existence.

Mr. YOUNG. And as Mr. Huhndorf has said, some people want to sell for reasons other than just financial straits. And the reason they can't lend, I think he stated, is the overhead, not only that they can't borrow on something, you don't really have the authority to sell, even if they defaulted on it, the corporation couldn't reclaim. So there would be no desire to or any need for the other stockholders to allow that to occur.

It is my borrowing, if I defaulted, you are the one that loses, not myself, because they can't touch my stock. That is the way the original act was set up.

Mr. HUHNDORF. A couple of things have kind of permeated our thinking, and one of them is we have to be fair to those who stay in as well as those who sell. We cannot overly pay for stock by those wishing to sell, because that would be unfair to those staying in, so we have a delicate balance here. We are very concerned with it. We are going to strive to achieve it.

And second, the act of selling stock is a voluntary one. No one will be coerced to sell stock. If they would like to sell, they can sell. Many people just want to sell. They have said, you know, you can give me dividends, but, you know, when can I sell my stock? That is a different thing. I want to sell my stock. And that is that. So we are trying to be responsive to that desire.

Ms. KITKA. Mr. Chairman.

Mr. MILLER. Yes.

Ms. KITKA. Specifically, in regard to the question of the status and the well-being of Alaska Natives and why shareholders may want to exercise that option, I would like to bring to your attention a recent Federal-State commissioned report that was just released to the Congress this year called the Alaska Native Commission's Report, which goes into the status of Alaska Natives. And that is a very in-depth report on both the political status, the economic status, and the health and socioeconomic status of Alaska Native people, that we hope that Congress will look at very seriously, hopefully, in this next Congress.

We are spending quite a bit of time next month at the AFN Convention debating and discussing the recommendations from this joint Fed-State commission, and are looking forward to bringing a package back to the Congress to try to work in the next Congress. Clearly, there are a lot of problems that we are facing, not to mention one of the most important ones is trying to build an economic future for our people.

So I think there are a whole lot of the broader issues at stake as far as native people, which if we can address, might be able to lessen the pressure on shareholders wanting to sell their stock, if we are able to address it in other ways. The economic well-being of many of our people, you know the poverty level is very high. There are a lot of serious issues and they are identified very eloquently in that Alaska Native Commission Report. So I hope that we can work with the committee in the next Congress in addressing some of those recommendations in a comprehensive manner.

Mr. MILLER. Thank you.

Thank you all very much for your testimony.

Ms. Williams, thank you very much for your involvement in all of this.

Ms. WILLIAMS. Thank you.

PANEL CONSISTING OF WILLIAM F. HARTWIG, ACTING ASSISTANT DIRECTOR FOR REFUGES AND WILDLIFE, U.S. FISH AND WILDLIFE SERVICE; DIANA ZIRUL, PRESIDENT, KENAI NATIVES ASSOCIATION, KENAI, AK; PAMELA A. MILLER, ALASKA PROGRAM DIRECTOR, THE WILDERNESS SOCIETY, WASHINGTON, DC; AND, JACK HESSION, ALASKA REPRESENTATIVE, SIERRA CLUB, ANCHORAGE, AK

Mr. MILLER. The next panel will be made up of Mr. William Hartwig, who is the Acting Assistant Director of Refuges and Wildlife, U.S. Fish and Wildlife Service; Ms. Diana Zirul, who is the President of Kenai Natives Association; Pamela Miller, who is the Alaska Program Director, Wilderness Society; and Mr. Jack Hession, who is the Alaska Representative of the Sierra Club from Anchorage.

Welcome to the committee. We will place your statements in the record in their entirety. And as I said at the outset, we are running very rapidly up against the point where I am going to have to leave this hearing to go to conference committee, so your cooperation would be appreciated.

We are going to begin with you, Mr. Hartwig.

STATEMENT OF WILLIAM F. HARTWIG

Mr. HARTWIG. Thank you, Mr. Chairman.

I will try to summarize our statement in a short period of time and per your request.

The Department supports the intent of this legislation, H.R. 3613. The Fish and Wildlife Service and Kenai Natives Association, Incorporated, have worked quite hard to make this exchange come to the point we are today.

As you are well aware, preliminary agreement has been reached between the two parties. Fish and Wildlife Service would receive approximately 15,545 acres of KNA land. KNA would receive 1,826 acres of Service land, a 5-acre site in the town of Kenai, and the subsurface, less oil and gas and coal, for the 1,826 acres of Service land, and in addition to 3,233 acres of land that they currently own surface rights. That would be subject to certain rights previously granted to Cook Inlet Region, Incorporated.

5,074 of the KNA lands covered by the proposal would be removed from the refuge system. Minor adjustments to the refuge wilderness boundary would be made both in addition, and withdrawal from wilderness.

Due to differences in value of the lands, particularly with the Swanson Road West parcel, it is necessary for this legislation to close that gap. That gap is about a \$7.5 million gap, as you are well aware of. The funds have not been found within our fiscal year 1995 budget and it is anticipated that we would have difficulty finding those funds in the near term.

The property subject to the exchange that we are speaking of today is very valuable to us from a resource basis in the State of Alaska. It does not compare with other lands within the Department's consideration in 1995 or the near term.

As prescribed by Public Law 102-458, we have submitted a report to Congress, which I believe you have received recently. We

were unable to forward legislation as requested with the earlier act and the report addresses the reasons why.

H.R. 3613 does provide for an equalization payment with accommodation of a cash payment in the surplus property account. Because of the provisions elsewhere in our Appropriations Act with pay-as-you-go provisions, the excess property or surplus property account would be treated the same as cash. Part of the reason for our delay is it is obvious we are trying to find a solution to closing that gap and the pay-as-you-go provision was the primary reason for that delay in trying to work that out.

In summary, I would like to say that the Department feels that the Kenai Natives Associations Equity Act fairly meets the interest of both the United States and KNA. Unfortunately, the Department's budget priorities do not include the funding necessary to provide the equalization payment to KNA that would be required to implement the exchange.

We continue to seek creative solutions to resolve this situation in a way in which pay-as-you-go costs would not be incurred, and look forward to working with the committee to this end.

We also have some technical concerns over the bill in which we could work with the committee staff.

Thank you again for this opportunity, Mr. Chairman, to appear before this subcommittee today.

Mr. MILLER. Thank you.

[Prepared statement of Mr. Hartwig follows:]

TESTIMONY OF WILLIAM HARTWIG, ACTING ASSISTANT DIRECTOR FOR REFUGES AND WILDLIFE, UNITED STATES FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS, HOUSE NATURAL RESOURCES COMMITTEE, REGARDING H.R. 3613, THE KENAI NATIVES ASSOCIATION EQUITY ACT OF 1993

September 22, 1994

Mr. Chairman, I appreciate the opportunity to testify today on H.R. 3613, the Kenai Natives Association Equity Act of 1993.

The Department supports the intent of this legislation. The bill generally reflects the preliminary efforts of the U.S. Fish and Wildlife Service (Service) and Kenai Natives Association, Incorporated (KNA), to come to agreement on a mutually beneficial exchange that would enhance the management of the Kenai National Wildlife Refuge and assist KNA in achieving economic viability.

The Service and KNA conducted negotiations pursuant to Public Law 102-458, enacted October 23, 1992. In October 1993, a preliminary agreement was reached by KNA and the Service's Regional Office in Alaska. Under that agreement, and under H.R. 3613, the Service would receive 15,545 acres of KNA land within the Kenai National Wildlife Refuge.

KNA would receive 1,826 acres of Service land, a 5-acre site in the town of Kenai withdrawn from the public domain and currently utilized by the Service. KNA would also receive the subsurface estate (less oil, gas and coal) to the 1,826 acres of Service land and to 3,233 acres of surface they already own within the refuge,

subject to certain rights previously granted to Cook Inlet Region, Inc., a Native Regional Corporation.

All 5,064 acres of KNA land covered by the proposal would be removed from the refuge and from the applicability of refuge regulations. Certain minor adjustments to the refuge wilderness boundary would also be needed, and various other actions would be taken. These are all reflected in H.R. 3613.

Due to differences in value of the lands, the preliminary agreement provided for an equalization payment to KNA ranging from \$7,488,000 to \$10,888,000. The disparity arose due to disagreement on the value of the tract known as "Swanson Road West," which is referenced in section 4(b)(1)(D) of bill. The Fish and Wildlife Service appraised this tract at \$4,060,000, while KNA's appraisal valued it at \$11,596,000.

KNA has stated that it will not accept less than \$7,500,000 for this land. This figure essentially splits the difference between the two appraisals.

Upon review of the preliminary agreement in Washington, it became apparent that funds were not available for the equalization payment. Despite extensive examination of the issue within the Department, we could not devise any reasonable scenario whereby this might change in the foreseeable future.

While acquisition of the KNA lands is a high priority in Alaska, they are not included in the Department's national land acquisition priorities; therefore, the Department's fiscal year 1995 Land and Water Conservation Fund budget request did not include funding in support of the exchange. We cannot offer any assurances that the KNA lands will be included in the Department's budget requests in the next few years.

As prescribed by Public Law 102-458, the Secretary therefore prepared a report to Congress describing why we were unable to forward a legislative proposal to implement an exchange. It is my understanding that the Committee has received a copy of the report.

H.R. 3613 appears to envision providing the equalization payment to KNA through a combination of a cash payment and the establishment (in section 6) of a surplus property account in the amount of \$6,457,000 "notwithstanding any other provision of law". However, despite references to a cash payment, no specific provision for such a payment is provided in the bill.

With respect to a property transfer, the Department's land exchange staff has recently identified several parcels of lands owned by BLM that might be suitable and attractive to KNA for a direct exchange, as opposed to a surplus property account. Creation of a property account would have budgetary implications under the "pay-as-you-go (PAYGO)" portion of the current budget agreement. Preliminary

inquiries with KNA representatives indicate their interest in pursuing this direct exchange approach as opposed to a surplus property account.

In summary, the Department feels the Kenai Natives Association Equity Act fairly meets the interests of both the United States and KNA. Unfortunately, the Department's budget priorities do not include the funding necessary to provide the equalization payment to KNA that would be required to implement the exchange. We continue to seek creative solutions to resolve this situation in a way in which PAYGO costs would not be incurred, and look forward to working with the Committee to this end. We also have some technical concerns over the bill, on which we can work with the Committee staff.

Thank you again, Mr. Chairman, for the opportunity to testify. I will be pleased to respond to questions.

Mr. MILLER. Ms. Zirul.

STATEMENT OF DIANA ZIRUL

Ms. ZIRUL. Thank you, Chairman Miller, Congressman Young and members of the committee. My name is Diana Zirul. And I am a member of the Kenaitze Indian Tribe and a shareholder in the Kenai Natives Association.

I am currently serving as the president of the board of directors of that corporation, and am here on behalf of the board of directors to express our appreciation for your time and consideration during this hearing and previous hearings.

I have provided copies of my written testimony for the record, and would like to take a moment to summarize that at this point.

As you know, we have been here before. With the prior assistance of the committee, a law has been passed which required negotiation between our corporation and Fish and Wildlife. We have completed that task and are now here for the final resolution of this matter.

The primary objective of the corporation has been and continues to be maintenance of the economic viability. Historically, our people—our shareholders had unrestricted use of the lands on the Kenai peninsula. With the passage of ANCSA, this use became restricted. KNA was designated as an organ corporation and was allotted a comparatively small amount of land, that being 23,000 acres.

We received no cash settlement. Most of this acreage had to be selected from within the confines of Kenai Wildlife Refuge. There continues to be 22(g) restrictions placed on this land which precluded us from making any economic use of lands. As a result, KNA started out with an economic disadvantage from the outset.

As you are, I am sure, aware, it is very difficult for any corporation to flourish under these circumstances, that is given no liquidity and restrictions on those assets that they do have.

Therefore, it has been next to impossible for us to accomplish what we believe to be the purpose behind ANSCA, and that is economic self-determination. The elders, and now my generation, have continued to contend with this problem. Over the past 20 years, we have struggled to negotiate various agreements that would allow us to use those lands in an economic fashion.

One of the—as a child—one of the things I would like to relate to the committee is the concern and the feelings of the shareholders, of how difficult it has been for us to go through this—these negotiation processes. We—I used to spend a great deal of time with my grandparents during the hunting season and fishing season, and so forth, on these lands in the peninsula, and we would be there with other members of the tribe.

There was a major sense of camaraderie that was developed at that point in time, sharing of the experience itself. And we continue to see shareholders return to the area for those times of the year, and I think that some of it is because of those feelings of camaraderie, and so forth. It is for this reason our agreement calls for a substantial retention of a portion of the land.

While we are reluctant to relinquish further rights to the lands that we do have, we recognize that it is necessary to trade a por-

tion of them in order to gain that liquidity and to ensure the economic future of the corporation.

As previously stated, achieving economic viability has been and still remains one of the main objectives of KNA. The corporation and its board of directors would urge you and your committee to assist us in the passage of this legislation along with the full funding necessary to carry out the terms of the agreement.

In coming to Washington this last week, I thought about the fact that it is a shame that some of the elders have not been, or who worked on this legislation and who have worked on these agreements in the past, are not here today to see this matter to a successful conclusion. It is the corporation's sincere desire that the remaining shareholders seize a quick resolution of this matter.

I think that it needs to be brought to finality. Our frustration level is maximized and our patience is exhausted. KNA and Fish and Wildlife, I believe, in hearing Mr. Hartwig's statement here, believe that this agreement is in the best interests of both parties.

And I thank you for your time today and would be happy to answer any questions.

Mr. MILLER. Thank you.

[Prepared statement of Ms. Zirul follows:]

TESTIMONY OF DIANA ZIRUL
PRESIDENT, KENAI NATIVES ASSOCIATION, INC.

PRESENTED TO THE
HOUSE NATURAL RESOURCES COMMITTEE
HEARING ON H.R. 3613
ON
SEPTEMBER 22, 1994

Chairman Miller, Congressman Young, and Members of the Committee, my name is Diana Zirul. I am a member of the Kenaitze Indian Tribe and a shareholder in the Kenai Natives Association, Inc. (KNA). I am currently a Director of that Corporation and serve as its President. I am accompanied today by Lance Gidcumb, our corporate counsel.

Initially, KNA would like to express its appreciation to this Committee for its assistance in securing the passage of Public Law 102-458. It has taken nearly two years to return with a report to Congress required by that law, but we are satisfied that we have been able to resolve most of our previous problems. As a direct result of P.L. 102-458, the Secretary of the Interior, through his agents at the U.S. Fish and Wildlife Service, met with KNA and seriously negotiated with a purpose to reach a mutual agreement for an exchange of interests. The agreement reached is in the best interests of both parties.

I would like to stress that we have finally reached an agreement with the Fish and Wildlife Service, after nearly 20 years of frustration and several agreements which never achieved proper authorization for implementation. From the perspective of

KNA, the agreement satisfies its main objective. That objective was to achieve economic self-determination as promised by the Alaska Native Claims Settlement Act (ANCSA). For the reasons detailed in the KNA testimony provided this Committee previously on April 2, 1991, on H.R. 4694, KNA has never been allowed a realistic opportunity to achieve sound financial stability. This bill will allow KNA to move forward in that direction.

The bill calls for KNA to receive \$4,431,000 cash using LWCF funds to acquire KNA lands identified as the "Kenai River Project," and also a Federal Excess Land Account to cover the cash equivalency balance for the lands it is returning to the United States. This immediate infusion of cash will allow KNA an opportunity to seek out and acquire a small business of some sort which can generate a cash flow and provide the possibility of jobs to shareholders. No corporation can exist without cash flow and income. The same is true for KNA. At the present time, KNA has virtually no income and it desperately needs this cash to continue to maintain economic viability. These funds represent the first and only cash settlement of Native Claims to us. As an "urban corporation" we received no funds under ANCSA. Our settlement was a comparatively small amount of land which the government then refused to allow us to use for our economic benefit.

During the prior hearing before this Committee on April 2, 1991, KNA responded to a question from the Chairman that it would consider a Federal Excess Land Account as partial consideration to an exchange. Since that time, and even since the agreement with the U.S. Fish and Wildlife Service was reached over one year ago, the rules governing those accounts have been in a state of change. At the time KNA entered into the agreement, it was contemplated that use of the account could be made in FY 96, or FY 97 at the latest. It is our current understanding that it now may not be available to KNA until well into the next century. This delay is not acceptable to KNA, and an alternative solution needs to be fashioned. KNA has had discussions with third parties that have expressed potential interest in purchasing the account, but the discounts are so steep because of the delays that KNA cannot seriously consider them. Time delays alone diminish the consideration going to KNA under its bargained agreement. Discounts for cash, which are impacted more severely as time delays increase, further diminish that consideration.

KNA has done its best to resolve as many issues as it possibly can. We have worked cooperatively with the Fish and Wildlife Service. We have worked with and received the support of the various environmental groups for this Agreement. The input, support and cooperation of Mr. Jack Hession of the Sierra Club and Mr. Alan Smith of the Wilderness Society are both appreciated. Further, the agreement could have not been reached

without the efforts of Ms. Dee Butler of the U.S. Fish and Wildlife Service. A special thanks from KNA goes to her for taking this matter seriously. Finally, it is sad that former President Katherine Boling did not survive long enough to see this legislation proceed to a successful conclusion, as she was a strong supporter of the agreement. I am sure you recall she testified in this room on behalf of KNA on the previous bill.

Our bargain called for KNA to receive \$4,431,000 in FY 95. That was the bargain we struck with the United States in October 1993. That is the money the Board believes necessary to acquire a small business as stated above. Originally, it was contemplated that this money would come from LWCF. We also note that the LWCF Coalition, the major environmental group coalition on land acquisition priorities, supported \$5.2 million from LWCF in FY 95 for acquisition funding, indicating the strong support of the Coalition for the immediate payment of cash to KNA for lands considered a priority. If the full funding is not forthcoming as bargained for, the consideration going to KNA is further diminished.

KNA is aware of the funding concerns associated with this acquisition and exchange. Unfortunately, we are not in a position to establish priorities and we do not control the checkbook. However, the Committee should recognize that KNA has been patient, very patient. KNA has over 550 shareholders who

are asking when will this merry-go-round finally stop. We seek your support of the bill, and for its funding.

We thank you, Mr. Young, for introducing this legislation and the law that brought us the agreement with the Fish and Wildlife Service and thank you, Mr. Chairman, for your consideration and assistance in bringing this matter again before this Committee.

I would be pleased to respond to any questions you may have.

Mr. MILLER. Ms. Miller.

STATEMENT OF PAMELA A. MILLER

Ms. PAMELA MILLER. Mr. Chairman, Congressman Young, thank you for the opportunity to be here. I serve as the Alaska Program Director for the Wilderness Society. We appreciate the long overdue need to resolve the interests of Kenai Natives Association. Such resolution, however, must be done in a context that also protects the Fish and Wildlife and the other purposes of the Kenai National Wildlife Refuge and the National Wilderness Preservation System. We are concerned with any proposals to remove lands from the Wilderness Preservation System or from the National Wildlife Refuge System as this bill would.

Therefore, it took us quite a bit of scrutiny to come to the conclusion that we believe this proposed legislation could meet these objectives of retaining the integrity of both the Refuge System and the Wilderness Preservation System so long as the bill is modified to add a small additional amount of wilderness.

We emphasize that this legislation deals with the unique situation with this land negotiation process and that it should not serve as a precedent for future land exchange negotiations or legislation where the issues of wilderness designation or application of ANSCA Section 22(g) are involved.

We believe that there is a loss of value when Congress chooses to undo the permanent protection that is granted lands under the wilderness system. And it is unclear from the report to Congress exactly how that value was determined by the Fish and Wildlife Service. At a minimum, there should not be an overall reduction within wilderness boundaries, as is the case with this bill.

We are pleased to see the wilderness expansion along the Kenai River for this tract. However, we believe in order to at least retain the minimum acre-for-acre exchange, that this wilderness boundary should be expanded to include both sides of the river.

And there is also a technical correction needed to include three islands in the river in the report to Congress. The Anchorage Daily News has pointed out in a recent series that the Kenai River is crumbling and we believe this additional wilderness designation would be an important step for the Fish and Wildlife Service to show its commitment to permanently protecting what is currently an intact section of river.

We are concerned about the precedent that could be set by removing lands from the refuge with boundary changes and do not take the removal of the patent restrictions under 22(g) lightly. At the same time, we appreciate the complexities that face the Kenai Native Association and the Fish and Wildlife Service in this negotiation process.

However, we disagree with the findings in the bill which state that the conveyance of lands and removing them from the boundaries of the refuge will not impact the purposes for which the refuge was established. Certainly, there will be activities on those lands which are incompatible with the refuge and which will affect the remaining wilderness in the system.

The legislative history shows that Congress was concerned about the effects of ANSCA on existing wildlife refuges which had already

been established because earlier Congresses had recognized how important the wildlife values there were.

In conclusion, we believe that the wilderness addition we have recommended will serve the public interest in this legislation. We would like to point out that it is a very small piece of additional wilderness that would be gained in light of the fact that 380,000 acres is still suitable to be designated as wilderness within the Kenai Refuge.

At this time, I would like to state we can support this bill. We will help it move through the Congress and help get money through the Land and Water Conservation Fund so long as the amount of wilderness is increased by this slight amount that we have recommended.

Thank you for the opportunity to comment on this proposed legislation.

Mr. MILLER. Thank you.

[Prepared statement of Ms. Pamela Miller follows:]



THE WILDERNESS SOCIETY

**STATEMENT OF PAMELA A. MILLER
THE WILDERNESS SOCIETY
REGARDING H.R. 3613, KENAI NATIVES ASSOCIATION EQUITY ACT,
TO THE SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS
COMMITTEE ON NATURAL RESOURCES, U. S. HOUSE OF REPRESENTATIVES
SEPTEMBER 22, 1994**

Mr. Chairman and members of the Committee, I serve as Alaska Program Director for The Wilderness Society. We appreciate this opportunity to testify before the committee on H.R. 4694, a bill to exchange lands and interests between the Kenai Natives Association, Inc. and the United States, and ask that our comments be included in the record.

We appreciate the long overdue need to resolve the interests of the Kenai Natives Association (KNA). However, such resolution must be done in a context that also protects fish and wildlife populations and their habitats and other purposes of the Kenai National Wildlife Refuge as intended by Congress in Section 22(g) of the Alaska Native Claims Settlement Act (ANCSA) and which preserves the integrity of the National Wildlife Refuge System and the National Wilderness Preservation System.

Any proposals to remove lands from the National Wilderness Preservation System and from the boundaries of the National Wildlife Refuge System, as this bill would, are of great concern to The Wilderness Society. After much scrutiny, we believe that the proposed legislation could meet these objectives if the bill is modified to increase the amount of designated wilderness so that there is an equal or greater acreage added than is removed from the system.

We emphasize that this legislation deals with the unique situation of this single land exchange negotiation and it should not serve as a precedent for future land exchange negotiations or legislation where the issues of wilderness designation or application of ANCSA section 22(g) are involved. We believe that the negotiations and report mandated by Congress pursuant to Public Law 102-458, enacted on October 23, 1992, resulted in this proposed legislation which better protects the public interest than earlier proposed exchanges and we are encouraged that there may finally be resolution of this difficult issue.

Wilderness For Congress to remove wilderness designation from any lands that it has deemed worthy of permanent protection deserves rigorous consideration. This alone is a loss of value because it erodes the integrity of the National Wilderness Preservation

System and this loss should be recognized in consideration of this exchange. At a minimum, there should not be an overall reduction within wilderness boundaries, as is the case with this bill. The Fish and Wildlife Service concluded in its Finding of No Significant Impact, and in its formal Compatibility Determination, that designation of the portion of the Stephanka tract south and west of the river and the small islands in the Kenai River as wilderness was a necessary condition of the exchange, and that this was necessary for the exchange to be compatible with the refuge's purposes.

We are pleased to see the wilderness expansion along the Kenai River for the Stephanka tract. However, we believe Congress should uphold the principle of acre-for-acre exchange at a minimum, and should, instead, use its powers to further expand the system. We urge the committee to expand the new wilderness boundary to the entire Stephanka tract on both sides of the river. This would result in a small net gain of wilderness, but one which is appropriate because the KNA lands to be removed from the refuge and the wilderness system will undoubtedly be transformed to subdivisions and other development, and so there will be negative effects extending to the adjacent existing wilderness. In addition to the change referred to above, one technical correction needed to the bill is that three small islands in the Kenai River also need to be added to the new wilderness in addition to the portion of the Stephanka tract south and west of the river. These islands were proposed for new wilderness in the Report to Congress.

As a recent series in the Anchorage Daily News entitled "Can the Kenai River be saved?" points out, one of the world's premier salmon rivers is "crumbling... one piece at a time."¹ Ironically, much more of the Kenai River used to be within the refuge boundaries prior to reductions in the 1960's. The newly designated wilderness along both sides of the river can help assure that the Fish and Wildlife Service permanently protects the integrity of this vital piece of the ecosystem. This wilderness addition would be small progress, however, towards what Congress should tackle, in light of the fact that the Fish and Wildlife Service found in its Wilderness Review that an additional 380,500 acres, or 19% of the Kenai Refuge, is suitable to be added to the wilderness system in the future.

Refuge boundary changes and provisions of ANCSA Section 22(g) We are deeply concerned about the precedent set by removing lands from the refuge with boundary changes and do not take removal of the patent provisions required by section 22(g) lightly. At the same time, we appreciate the complexities involved in resolving land status issues for the Kenai Refuge area, and believe that the proposed exchange, with the changes we have suggested regarding wilderness, is in this unique circumstance a reasonable way to achieve the purposes of ANCSA and the Alaska National Interest Lands Conservation Act (ANILCA).

¹ Tom Kizzia, Series "Can the Kenai River Be Saved?" September 4,5,6, 1994, Anchorage Daily News.

We disagree with the "findings" sections (3) and (4) in H.R. 3613 which state that the conveyance of lands, and removing them from within the boundaries of the refuge, will not impact the purposes for which the refuge was established. In the future, there will certainly be subdivisions and other land uses on these lands which are incompatible with the refuge purposes which is why it is necessary to alter the refuge boundary. In fact, if section 22(g) were not being successful in meeting Congress' goals of upholding standards of land management compatible with the refuge purposes, it is unlikely that this negotiated package including the proposal for revising the boundary and removing 22(g) patent provisions would have been crafted.

During consideration of ANCSA, Congress was concerned about the effects to wildlife values of existing National Wildlife Refuge System lands which had early on been recognized for their critical importance to wildlife, and therefore it included Section 22(g) in ANCSA.² The legislative history for ANCSA documents Congressional concern for the integrity of existing national wildlife refuges (see 117 Cong. Rec. H9787-H9788, daily ed., Oct. 20, 1971). The Interior Department's Assistant Secretary for Fish, Wildlife and Parks pointed out in a 1985 letter regarding 22(g), "in speaking in support of the conference committee's bill, Representative Udall noted that it contained a number of important conservation measures, including provisions designed to assure the continued protection of wildlife values on lands within the existing wildlife refuges which might be transferred to native ownership.... It would have made little sense and caused further inequities to impose in section 12(a)(1) the requirement for in lieu subsurface selections on regional corporations for all lands within the [National Wildlife Refuge System] NWRS the surface of which has been selected by village corporations if Congress had not intended to limit the economic uses to which pre-ANCSA range lands could be put by village corporations."³

We are concerned that the proposed removal of the lands from the refuge boundary will further fragment the habitats of the Kenai Refuge--a process that began with oil leasing in 1958. Fragmentation continued in 1964 when major areas along the western perimeter and along the Sterling Highway were removed from the refuge. Already, the Kenai Refuge has lost more than 70,000 acres--more than the maximum area the Department of Interior, in its earlier negotiations concerning Native selections in the refuge, determined could be lost to the refuge without major impairment of its

² ANCSA Section 22(g): "if a patent is issued to any Village Corporation for land in the National Wildlife Refuge System, the patent shall reserve to the United States the right of first refusal if the land is ever sold by the Village Corporation. Notwithstanding any other provision of this Act, every patent issued by the Secretary pursuant to this Act--which covers lands lying within the boundaries of a National Wildlife Refuge on the date of enactment of this Act shall contain a provision that such lands remain subject to the laws and regulations governing use and development of such Refuge."

³ Letter dated September 13, 1985 by William F. Horn, Assistant Secretary for Fish and Wildlife and Parks, Department of the Interior, to Senator Ted Stevens.

capacity to achieve its purposes.⁴ As well, the proposed legislation does not address the unresolved issues concerning other Native Corporation land and interests in Kenai Refuge, and therefore, it is only a first step to resolving management issues.

While we recognize that this bill will add extremely high value riparian lands along the Kenai River and Moose River to the refuge, we are concerned that most of the areas that would be removed from the refuge were shown as having high priority for acquisition by the Department of Interior in the 1990 Submerged Lands Environmental Impact Statement. The fact is, there are important wildlife values on the lands which will be removed from the refuge that will be lost due to development. However, we recognize that conveyance of the lands to FWS will result in positive management changes in certain circumstances. For example, the former private lands in the Stephanka Tract will be designated, and managed as, wilderness and the change to refuge ownership of the KNA tracts along the Moose River will allow fulfillment of the public recreation purposes of the refuge.

In conclusion, we can support this legislation so long as the amount of wilderness is increased, as we have suggested above, in order that there is not an overall reduction of designated wilderness area. It is time to resolve this situation for the Kenai Natives Association, and with this change, we believe H.R. 3613 is an appropriate way to do it.

Mr. Chairman, and members of the committee, thank you for this opportunity to provide our views on H.R. 3613. We also have some concerns about H.R. 3612 and wish to provide written comments on that legislation after the hearing.

⁴ See U.S. Fish and Wildlife Service, 1985, Kenai National Wildlife Refuge, Final Comprehensive Plan, Environmental Impact Statement and Wilderness Review: Public Review and Comments, p. 124, The Wilderness Society comments by William C. Reffalt, Director of Wildlife Refuge Program.

Mr. MILLER. Mr. Hession.

STATEMENT OF JACK HESSION

Mr. HESSION. Thank you, Mr. Chairman, Congressman Young.

I am Jack Hession, Alaska Representative of the Sierra Club in Anchorage, and I very much appreciate this opportunity to testify here this morning.

In summary, Mr. Chairman, we support enactment of this bill but we have some reservations about the Section 22(g) formula applied in this particular case. Let me give you some brief background, if I may, about 22(g). That was part of a balanced—an attempt to balance the national and the native interests when in 1971 Congress authorized native land selections within the refuges then in existence.

These are some of the finest refuges we have in Alaska, Mr. Chairman, the Kenai, Kodiak, the Old Clarence Road portion of what is now the Yukon Delta of the Arctic National Wildlife Refuge. These are first-class, I would say, world-class wildlife refuges. 22(g) was just one of the balancing features there.

There was, for example, a limitation on the number of townships that the villages could select within those refuges, and Congress provided in-lieu selections for those villages that were entitled to more than three townships. Similarly, the regional corporations could not select subsurfaces. We were given what were in-lieu deficiency rights elsewhere.

There was even a section called, I think, 22(e), that said for every acre selected in these existing refuges, another one had to be set aside elsewhere in Alaska. That last provision, by the way, was superseded by ANILCA, so it really probably didn't apply anymore. But my point is, for the conservation community, these provisions that I mentioned Section 22 of ANSCA, were fundamental to reaching I think an equitable solution to the problem of protecting these nationally significant refuges and at the same time recognizing the legitimate interests of the corporations.

Since then, as Mr. Huhndorf pointed out, there has been no attempt on either side to define what 22(g) really amounts to. We have been dancing around it for years, and now we come finally to—I think this is the first time that Congress has addressed this issue in legislation. I may be wrong on that, but in any event, the formula here that has been chosen is only one of three major ways we can address 22(g).

What the Department has essentially done in negotiating this, is to work out an agreement whereby the amount of land left in the refuge is substantially reduced in return for lifting these 22(g) restrictions, whatever they may be. No one seems to know. In this KNA case, it is roughly for every three acres returned to the refuge, one stays, but it is free of any limitations at all. It is fee simple.

And that is a matter of concern to us, Mr. Chairman, because in the case of KNA, it is a peninsula of land that extends up into the refuge, surrounded on three sides by refuge, including wilderness, and this land in the Kenai will be, I am sure, available for all sorts of development which may well impinge on surrounding refuge lands.

Our druthers here, Mr. Chairman, would be to utilize a different formula for the 22(g) cases that exist elsewhere in the refuge system and that would be to simply try to work out acquisitions using cash, buying interest in lands, for example, purchase of development rights or exchanging for other Federal lands and interests in lands elsewhere in Alaska or the Nation.

And we strongly recommend that despite the Department's reservations, that this committee continue to use the Land and Water Conservation Fund and the Federal Surplus Account, which the committee has used successfully here over the last several years. I think that formula would be preferable and satisfy both sides to this dispute.

In summary, Mr. Chairman, we recommend that you continue to explore these other avenues. And with respect to KNA, again, we support the bill, but we are somewhat worried about what could happen to 5,000 acres in the refuge. We would urge you to direct the Secretary to enter into a second round of negotiations with KNA to see if perhaps KNA might be interested in selling some development rights or conservation easements that would both satisfy their economic objectives and provide some protection for the refuge.

That concludes my testimony, Mr. Chairman. Thank you very much.

[Prepared statement of Mr. Hession follows:]

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STATEMENT OF JACK HESSION
ALASKA REPRESENTATIVE, SIERRA CLUB
ON H.R. 3613
Before the
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS
COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, D.C.
SEPTEMBER 22, 1994

Good Morning. I am Jack Hession, Alaska Representative of the Sierra Club. The Sierra Club is a national environmental organization with chapters in nearly every state, including Alaska. I appreciate this opportunity to present our views here this morning.

Summary

We recommend that the Subcommittee extend additional protection to the Kenai River by adding a very modest amount of wilderness to the package.

We find the negotiated resolution of the Sec. 22(g) issue unsatisfactory.

We urge the Subcommittee to utilize both the Land and Water Conservation Fund and a federal excess land account for acquisition of KNA lands.

Sec. 22(g)

H.R. 3613 would result in the return to the refuge of approximately 15,545 acres of KNA inholdings, and the removal of 1,826 refuge acres and 3,237 KNA acres from the refuge. With the exception of a reservation in federal ownership of oil, gas, and coal rights, the 5,054 acres of excluded lands would be in fee simple KNA ownership and free from the limitations of Sec. 22(g).

The return and exclusion of lands would not completely resolve the 22(g) issue. The U.S. Fish and Wildlife Service says \$7,448,000 would be needed to close the deal, while KNA argues that \$10,888,000 is necessary. The parties seek "a Congressional resolution of value."

The acquisition of 15,000 acres for return to the refuge is clearly a positive benefit. But the exclusion of the 5,054 acres free from Sec. 22(g) limitations worries defenders of the refuge, and should have also given pause to the U.S. Fish and Wildlife Service. The 5,054-acre tract fronts on about 4 miles of the

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Swanson River Road, and forms a chimney of private land extending into the refuge. This private tract would be surrounded by refuge land on three sides. Probable residential, industrial, and other commercial development could have adverse effects on the adjoining refuge lands, including contiguous wilderness.

Ideally, all of KNA's refuge inholdings would be acquired through cash purchase, or through an exchange for other non-refuge federal lands, interests in lands, or federal surplus lands and assets. We urge the Subcommittee to direct the Secretary to enter into negotiations with KNA for such possible acquisition.

We are opposed to a KNA-type solution for the other pre-ANCSA refuges with extensive inholdings subject to Sec. 22(g). In the KNA case, about 3 acres of 22(g) lands are acquired for every 1 acre free from 22(g) and excluded from the refuge. This or a similar ratio applied elsewhere could result in vast private tracts subject to all manner of developments that could be incompatible with refuge purposes.

Again, we prefer outright purchase wherever feasible, or acquisition via exchanges for other non-refuge federal land or interests in land, or for surplus federal lands and assets throughout the nation.

Wilderness

The bill would remove wilderness status from 623 acres in order to convey this acreage to KNA. This reduction in refuge wilderness would be partially offset by the designation of 592 acres of wilderness in a tract acquired from KNA. A net loss of wilderness of 31.5 acres would result.

This net loss of wilderness is unnecessary, as the tract acquired from KNA, the Stephanka Tract, totals 803 acres, or 211 acres more than the Service is proposing for wilderness. The 211 acres adjoins the north side of the Kenai River, while the 592-acre tract adjoins the south side.

We recommend that the 211 acres also be designated wilderness, plus three small islands in this stretch of the river. Although this action would result in a net increase in wilderness of 180 acres not counting the islands, the additional wilderness would offer increased protection to vital shoreline habitat. Elsewhere along the river outside the refuge, critically important riverine habitat is under heavy pressure from developers and is threatened by excessive use by anglers.

Acquisition methods

We understand that the Administration opposes an appropriation of funds for acquisition of KNA's 15,000 acres, whatever the amount finally settled on, and that the Administration also opposes the use of surplus federal lands and assets.

As suggested above, these two avenues represent, from our point of view, the preferred ways to take care of 22(g) and other proposed land acquisitions within the national conservation system units. Both methods have been used successfully by the Committee over the years. They avoid the problem described above, which is the continued presence of private lands whose development places refuge resources and values at risk. We think it is especially important that surplus federal lands and assets continue to be made available for acquisition purposes.

In the case of KNA, we recommend that the Subcommittee authorize the use of surplus federal lands and assets, as it has done in other similar cases in Alaska, perhaps in combination with a Land and Water Conservation Fund appropriation.

That concludes my testimony, Mr. Chairman. Thank you.

Mr. MILLER. Thank you. Thank you very much for your testimony. Mr. Hartwig, let me ask you a question. In terms of the gap that exists, have you considered whether or not an approach should be made to the trustees of the Valdez Fund?

Mr. HARTWIG. Mr. Chairman, we have just begun to look into that possibility. Certainly, as the committee recognizes, we would have to meet certain criteria on those lands, and certainly would have to have affected the species and the activities affected by the oil spill. We have in the Fish and Wildlife Service taken an initial look-see and have decided amongst ourselves that there might be some property within this area that could qualify for some of those funds.

We recognize that we have got several stops on the road to seeing if that will work. We obviously have to get back to the Exxon-Valdez Trustee Council who have to do the official determination as to whether these funds could apply, as well as coordination with Agriculture and NOAA.

Mr. MILLER. Our intent would not be to ask them to do something they shouldn't be doing. The question is whether they have been approached or whether this falls within their guidelines. OK. So that is being looked at.

Mr. HARTWIG. That is right. The answer is they have not been approached, we are looking at it informally at this time. It is something we could consider and approach at a later date.

Mr. MILLER. This doesn't bear on this particular proposal. But let me just say as the Chair of this committee, the time line for the development of this is very disappointing from the Service, and I can't believe that it was all driven by budget considerations as to whether or not money would be available, because that is always a problem. But we set out specific time lines in legislation, and Mr. Young and I worked together, and we are trying to get this on a timely basis. And here we are at the end of the session, and to the best of my knowledge, what we got now is a bootleg copy of the report. And that really isn't fair to the Alaska Native community that has been working hard on this, the Kenai folks. And it just doesn't build the kind of relationships that we want.

There are expectations. There is a need for this land. There seems to be general agreement that this is the right thing to do. I think that general agreement has been around for a considerable period of time. And now we are here in the next to last week of the session waiting for this report. I just want to say on the record that I am not happy about that.

Mr. Young.

Mr. YOUNG. Following up on that, Mr. Hartwig, I am confident that you weren't the one responsible. I do believe I know who is responsible. This is not the first time. So don't take that personally from the Chairman.

I am disappointed also because this has been around a long time, and I am just—I am disappointed. But I hope we can go forward, since it is a short period of time, that I mentioned, and if not, we can go on at a later time down the road and get this thing finalized.

But, Diana, in your testimony, there is a need for \$4.5 million. Is there still an agreement, if we cannot provide that level of funding this next year?

Ms. ZIRUL. I think that there is a real concern on behalf of the board of the directors and the shareholders in that we have been waiting for this for a long time. It has been 20 years.

We have come in good faith on several occasions to several discussions and agreements in the past. I think it is imperative that we receive that funding as soon as possible in order to ensure our economic viability. I think the tenacity of KNA has demonstrated that we are a viable corporation and we plan to continue.

Mr. YOUNG. Okay. Do you think the excess property account would help you out in this area or do you think it should be in this legislation?

Ms. ZIRUL. No, I am leery of the excess property account. But it certainly is something to consider.

Mr. YOUNG. You know, one of the things, Mr. Chairman, 22(g) has got to be finalized some day. And Mr. Hession and Jack and I have been around a long time, he never gives me credit for my Eagle Reserve down in Haines, but now they are not endangered, so that is no longer needed.

But, Jack, in all seriousness, this is a group that needs a solution. I hope that your group is starting to recognize that you can't have it all your way all the time. You know, I think if I had my way, I am going to eliminate 22(g), period.

We have another issue coming before this Congress in the future that is called Indian Land, Indian Country. Now if that is ever finalized and that is their land, that supersedes 22(g) and all other restrictions. They become self-governing with those lands.

So I hope you are looking down the road, because if you continue to be in an adversary role, both you and Ms. Miller, saying you support it, but we have reservations, you are delaying the process. And they have waited an awful long time, and that doesn't increase your credibility at all.

So I am just saying that Fish and Wildlife was late in their report. You guys now say you have some reservations, why don't we go back to the table. In the meantime, as Diana has mentioned, we have got people that have been working on this that are no longer with us, and that is not fair.

Mr. HESSION. May I respond to that?

Mr. YOUNG. Yes. I would be surprised if you didn't respond, but go ahead.

Mr. HESSION. First of all, we very much appreciate your efforts on behalf of the Eagle Reserve in Haines.

Mr. YOUNG. I got my thanks here.

Mr. HESSION. We are looking forward to working on you with similar things, such as Alaska Peninsula Wildlife Refuge Bill. It is yours.

Mr. YOUNG. My bill.

Mr. HESSION. I think I will sidestep the question of Indian Country at this point, if you don't mind. I thought I made it clear that we support enactment of this bill, Mr. Young.

Mr. YOUNG. With some reservations, Jack.

Mr. HESSION. Well, with reservations regarding the particular methodology or formula used in resolving the 22(g) question here.

As witnesses have said, and as the Chairman has emphasized, it is time to get this one behind us and move on. I was just trying to point out that it may be—the type of formula used here, the three-for-one formula, if I can call it that, as applied to some of these other refuges, would leave vast tracts vulnerable to essentially unrestrained development which probably is not in the interests of the subsistence users, for one thing, but also could impinge on the adjacent refuge lands. And in conclusion, I argued that the committee should continue to use Land and Water Conservation funding, and especially its creative use of the Surplus Federal Lands Account.

Mr. YOUNG. Again, Jack, we don't have any more money in the Land and Water Conservation. We are about \$4 or \$5 billion behind. We keep saying use that act, but we can't drill for any oil or gas, so we don't have any money.

Second, I go back to keep in mind who was here first? Sierra Club, Wilderness Society, Friends of Alaska, Trustees of Alaska, or the Alaskan Native people.

We have made that decision in 1971, that they were there first. And 22(g), and I have yet to figure out where that raised its ugly head. They were there prior to the wildlife refuges, not the wildlife refuges prior to them. And to deny them an economic basis is incorrect, and frankly, it is immoral.

Now, we don't have the money. Let's face it right now. We don't have the money in Fish and Wildlife. We have to have a direct appropriation to do that in the Water and Conservation Fund, so I am just asking that they try to encourage and get this back.

It does not set any precedent. Every time we do this, unless we eliminate 22(g), and this Indian land comes into effect, every time we have this type of situation, it has to come back to this Congress. What you need to do, both you and Ms. Miller, is try to say this is a group that has waited and suffered and actually lost, and support it, and you come out with a white hat. Right now, I think you are wearing a black hat. You may not like it, but I think that is what you are wearing.

Mr. HESSION. Mr. Chairman, if I can take my hat off briefly. If you don't have the money, Mr. Young, this bill is not going to go forward. This bill calls for finding the money to the——

Mr. YOUNG. We can appropriate the money with the authorization. That is the role of this Congress. We can do that.

Mr. HESSION. That is all we are suggesting you do.

Ms. PAMELA MILLER. May I just briefly respond?

Mr. MILLER. It has to be brief. I am now 10 minutes late out of this hearing.

Ms. PAMELA MILLER. Just to reiterate, that I do support this package, with the provision that slightly more wilderness be added so there is not a net loss of wilderness. And, yes, we think 22(g) is a big issue, but we want to support this deal.

Thank you.

Mr. MILLER. Mr. Hartwig, does the Department have a position on the Stephanka tract down on the river, in the inclusion of that?

Mr. HARTWIG. Yes, we do. I think this can help respond to the concerns you had. There is actually a net gain in wilderness when you take a look at lands that would be going into wilderness through the acquisition or the exchange, in this case, as well as the selections that would be relinquished, that would total to approximately 918 acres versus 623 that would be leaving wilderness.

Relative to the Stephonik tract with the wilderness and the island situation, we are not opposed to the islands themselves going into the wilderness, but we are opposed to the land that would be located north of the river, as that would be outside of the normal flow of what we have used in the past as the definition of the wilderness boundary and would be more difficult for us to manage around wilderness provisions.

Mr. MILLER. The big bend there in the river there, I was trying to figure out what is north of the river.

Mr. HARTWIG. It is above the top of the page of map. As you can see looking at map, it makes it fairly clear everything below the river or on the left side of the river, as you are looking at it, would be unified, would be managed with the same regime as the lands around it. Whereas those properties to the right or north of the river would be almost an island outside of the wilderness.

Mr. MILLER. All right.

Thank you. Thank you very much for your testimony.

Do you have any further comments or questions? We appreciate again your support of this legislation and your help in putting it together.

And with that, the committee will stand adjourned.

[Whereupon, at 11:13 a.m., the subcommittee was adjourned.]

APPENDIX

SEPTEMBER 22, 1994

ADDITIONAL MATERIAL SUBMITTED FOR THE HEARING RECORD

THE HONORABLE JAY DICKEY

Fourth District - Arkansas

Regarding

Subcommittee on Oversight and Investigations

Hearing on

Amendments to the Alaska Native Claims Settlement Act

September 22, 1994

Mr. Chairman, thanks for scheduling this hearing today on three pieces of legislation related to the Alaska Native Claims Settlement Act, the Alaska National Interest Lands Conservation Act, and the Kenai National Wildlife Refuge land exchange proposal.

These Alaska Native claims issues are new to me. I do know these issues have been difficult in the past as the Congress sought to balance the aboriginal land rights, subsistence needs and economic viability of Alaska Natives with natural resource protection. So, I look forward to reviewing the testimony and learning more about the issues of importance to Alaska Natives.

Thank you .

WALTER J. HICKEL
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
WASHINGTON, D.C.

September 21, 1994

George Miller
Chairman, Committee on Natural Resources
1324 Longworth House Office Building
Washington, DC 20515-6201

Congressman Don Young
Ranking Minority Member, Committee on Natural Resources
1329 Longworth House Office Building
Washington, DC 20515-6201

Dear Chairman Miller and Congressman Young:

Thank you for inviting the State of Alaska's comments on three bills that have been introduced by Congressman Young: H.R. 3612, to amend the Alaska Native Claims Settlement Act and for other purposes, H.R. 3613, the Kenai Native Association Equity Act, and H.R. 4665, to authorize Cook Inlet Region, Inc., to buy back Native corporation stock.

I. H.R. 3612

The State has worked closely with the Department of the Interior, the Alaska Federation of Natives, and other interested parties to reach consensus on the nature and scope of the amendments to ANCSA that these parties hope to see included in the final version of H.R. 3612. Based on the discussions the State has had over the past several months, we believe that general agreement has been reached on the changes to be suggested to many of the bill's provisions. Nevertheless, recognizing that the nature of the revisions to H.R. 3612, if any, rest ultimately with the Congress, the State submits the following comments on the original sections of the bill.

Chairman Miller
 Congressman Young
 September 21, 1994--Page 2

Section 1: Revocation of prior relinquishments.

The State opposes this provision. It is overly broad and would lead to conflicts between State and ANCSA selections. It would also reverse the current important trend toward greater certainty in land ownership in Alaska.

Section 2: Kageet Point Land Selection.

This section would permit Chugach Alaska Corporation to select, as part of its ANCSA land entitlement, certain lands within the Wrangell-St. Elias National Park. Chugach already owns the adjacent lands. However, because the lands are important for public access, recreation, and wildlife habitat, the State previously selected Kageet Point as a top filing over the existing Federal withdrawal. While the State normally would have priority should the land become available for selection, the State is willing to relinquish its top filing in favor of Chugach, subject to a site easement reserved to protect access to public trust lands.

Section 3: Ratification of Certain Caswell and Montana Creek Native Associations conveyances.

The State does not oppose this provision, subject to two qualifications. First, the provision should indicate that it does not create any liability on the part of the State of Alaska or the United States to claims by CIRI for additional land or money. Second, ratification of the conveyances should not affect the 14(h) entitlements of other ANCSA corporations.

Section 4: Mining Claims After Lands Patented to Regional Corporation.

The State supports the goal of bringing certainty to the administration of Federal mining claims located on Native lands. In our view, however, the Secretary's power to transfer the administration of a mining claim from the United States to a Regional Corporation should be limited to circumstances where both the mining claimant and the Regional Corporation have requested that the Secretary do so. Without this modification, the bill's current approach could jeopardize the terms of existing mining agreements,

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Congressman Young
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alter the settled expectations of claimants and investors, and raise concerns under the "takings" clause of the Fifth Amendment.

**Section 5: Settlement of Claims Arising From
Contamination of Transferred Lands.**

No objection.

**Section 6: Authorization of Appropriations For
the Purposes of Implementing Required
Reconveyances.**

No objection.

Section 7: Community Need.

The State and AFN have discussed the State's concerns regarding this section, and have agreed to work together to develop a mutually acceptable alternative. Until that alternative is developed, we believe this section should be withdrawn, and we understand that AFN concurs in this suggestion. However, because the original language has been submitted to the subcommittee, and the State's position on that language has been requested, we include our comments below.

The first subsection of this provision would place upon the municipality or the State in trust the burden of proving that every parcel requested by the municipality is necessary for the community's future use, and would relieve the Village Corporation of any obligation to convey a particular parcel unless the burden is met.

The State objects to this provision for a number of reasons. First, it would create a new "needs" test that places an unfair burden on municipalities that have not yet reached 14(c)(3) settlements. Second, it treats unfairly those Village Corporations that have entered into such settlements under the existing law. Third, because it is hard to prove that the anticipated expansion of a community would require use of a specific parcel, the burden this provision would create is one that, as a practical matter, may be too difficult to meet. The provision also raises significant concerns under the "takings" clause of the Fifth Amendment, and is inconsistent with

Chairman Miller
Congressman Young
September 21, 1994--Page 4

Congress' original intent of ensuring that municipalities have an adequate land base to meet present and future needs.

The second subsection of the proposed amendment also causes us serious concern. Essentially, it provides that if the municipality or the State in trust cannot prove a need for more than 1,280 acres, and if no agreement is reached with the Village Corporation, then the corporation can satisfy its obligations by transferring 1,280 acres of its choosing.

This amendment gives ANCSA Corporations an undue advantage in negotiating land settlements with municipalities or with the State in trust. The purpose of section 14(c)(3) is to provide land necessary for community use and expansion. Differing views of what is necessary should be reconciled through the negotiation process. Congress recognized this when it amended ANCSA in 1980 to allow the parties to agree on an amount less than 1,280 acres.

The proposed amendment would remove any incentive for a Village Corporation to negotiate a settlement under section 14(c)(3), and would leave to the corporation virtually unfettered discretion to determine which lands to transfer, even if those lands are totally unsuitable for community use or expansion. Again, this is contrary to Congress' original intent and rewards those Village Corporations that have not entered into 14(c)(3) settlements to date.

Finally, we object to this provision because it is designed to resolve the pending litigation between the Seldovia Native Corporation and the State in Seldovia's favor. In our opinion, resolving this litigation under the guise of a general technical amendment to ANCSA is not appropriate.

Section 8: Native Allotments.

This section would allow the Arctic Slope Regional Corporation (ASRC) to obtain the subsurface estate of certain village lands within the National Petroleum Reserve-Alaska. The State supports this provision, on the condition that the current language be amended to reflect that only those lands selected by the Kuukpik Corporation are involved. We understand that ASRC concurs in this change.

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Section 9: Open Season for Certain Native Alaskan Veterans for Allotments.

We understand that DOI will request that this section be redrafted to limit the veterans eligible for new allotments to Native Alaskans on active duty during 1970 and 1971. The State supports this change.

Section 10: Lapsed Mining Claims.

No Objection.

Section 11: Transfer of Wrangell Institute.

No objection.

Shishmaref Airport Lands.

The State has received notice of another amendment requested by AFN relating to the transfer of certain lands to the Shishmaref Native Corporation (SNC). The lands at issue were conveyed to the State by the Federal government for use as an airport. Subject to certain conditions, the patent provides that the lands revert to the United States in the event they are no longer used for that purpose. The old airport site was abandoned in 1988, and the City of Shishmaref now would like these lands for community expansion.

The State fully supports transfer of the subject lands to SNC so that the lands might be reconveyed to the City of Shishmaref under ANCSA section 14(c)(3). However, the new language submitted to the subcommittee is of considerable concern to the State for a number of reasons. On its face, the language represents an ill conceived attempt by the United States to absolve itself of liability for its contamination of the lands and to unfairly place that liability upon the State. Moreover, while the proposed language was allegedly developed to overcome certain administrative complexities between BLM and the Fish and Wildlife Service, in reality it creates other, more intractable barriers. Statutory annulment of the reverter clause and Federal authorization of a direct transfer from the State to SNC would not work. Alaska's Constitution and statutes generally permit conveyances of State lands to private entities like SNC only after completion of an elaborate land planning process, and

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Congressman Young
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only upon receipt of fair market value after all interested parties have had an opportunity to bid.

In other words, the suggested language would impose significant administrative obligations upon the State, and would require SNC to compete with others willing to pay for the property, in order to accomplish what is, at bottom, the Federal government's responsibility to provide an adequate land base to SNC. In our opinion, this approach is burdensome and needlessly complex.

The State has been and remains willing to return the lands to the United States so that DOI may transfer the acreage to SNC. All that is required here is congressional authorization for the Secretary to transfer the lands to SNC under ANCSA notwithstanding other provisions of law relating to the management of National Wildlife Refuges.

II. H.R. 3613

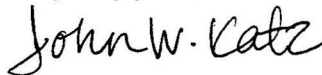
No objection.

III. H.R. 4665

No objection.

Thank you for considering the State's views. We look forward to working with the committee and affected parties to resolve the problems that we and others have identified.

Very truly yours,



John W. Katz
Director of State/Federal Relations
and Special Counsel to the
Governor

cc: Senator Ted Stevens
Senator Frank Murkowski

The Honorable George Miller
U.S. Congress
Natural Resources Committee

September 21, 1994

We understand that your committee will be receiving testimony regarding HR-4665 which if approved, would enable Cook Inlet Regional Corporation shareholders to sell their stock which was initially granted to them under the auspices of ANCSA.

When Congress passed ANCSA, it was considered to be an "experimental" approach to resolve Native American Land Claims issues because of the dismal failures of passed attempts including our Indian reservation systems.

While ANCSA was a noble attempt by Congress to resolve Native American Land Claims issues in a fair and equitable manner, it too has been fraught with problems. I am certain that your committee has been made painfully aware of the fact that our shareholders are no better off today than they were when ANCSA was passed. It is also evident that the only people who profited from the passage of ANCSA corporations were the attorneys, accountants and the management personnel of the ANCSA corporations.

One of the major flaws inherent in ANCSA, we believe, is that it forced Alaska Natives to operate their organizations in a non democratic framework. Alaska Natives have traditionally managed their tribal entities by means of consensus, if not by direct democratic procedures. ANCSA require the corporations to function under corporate laws and procedures.

The corporate laws and procedures allow for cumulative voting. There is no law or regulation which inhibits an incumbent Board of Directors from spending whatever it takes to ensure that their slate of candidates remain in power and reap the benefits. ANCSA corporations are the most influential contributors and managers of Political Action Committees. In Alaska they effectively control the outcome of all statewide political elections. ANCSA corporations can retain as many attorneys as needed to keep their so called dissidents in courts until they eventually prevail.

We understand that the ANCSA corporation that we belong to (Cook Inlet Region) is supporting this proposed legislation. We also understand that the CIRI Board members and management staff have been issuing each other substantial number of "non-voting" shares of CIRI stocks because of their so called good deeds on our behalf. Should your Committee and Congress allow our shareholders to sell our CIRI stock, I trust that you would not allow our corporate leaders to rip us off anymore than they already have.

In closing, I urge you and your committee to pass legislation that would enable us to sell our stocks and thereby finally benefit from the passage of ANCSA. We would also appreciate it if you can ensure that any NOL's received by CIRI is distributed directly to the shareholders and those of us who sell original stock.

If you or your staff wish for us to elaborate on any of these points, please contact us.

Sincerely,



Frank & Nettie Peratrovich
P.O. Box 460
Darrington, WA 98241

**STATEMENT OF JACOB ADAMS
PRESIDENT, ARCTIC SLOPE REGIONAL CORPORATION**

**BEFORE THE HOUSE SUBCOMMITTEE
ON
OVERSIGHT AND INVESTIGATIONS
OF
THE COMMITTEE ON NATURAL RESOURCES**

**HEARING ON H.R. 3612, H.R. 4753 AND H.R. 4665
BILLS TO AMEND
THE ALASKA NATIVE CLAIMS SETTLEMENT ACT AND
THE ALASKA NATIONAL INTEREST LANDS CONSERVATION ACT**

September 22, 1994

My name is Jacob Adams, and I am the President of Arctic Slope Regional Corporation ("ASRC"). I wish to address this Committee on section 8 of H.R. 3612, a bill that contains various technical amendments to the Alaska Native Claims Settlement Act ("ANCSA") and the Alaska National Interest Lands Conservation Act. Section 8 of this bill proposes to amend section 1431(o) of the Alaska National Interest Lands Conservation Act to permit the conveyance to Arctic Slope Regional Corporation of certain federal oil and gas interests where ASRC's subsurface estate entirely surrounds lands subject to a Native allotment.

Under the original provisions of ANCSA, Village Corporations were entitled to receive title to the surface estate of lands surrounding the Native Villages, and Regional Corporations generally were entitled to receive title to the subsurface estate of these lands. On the North Slope, however, within the National Petroleum Reserve-Alaska ("NPRA"), ASRC was denied the right to

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receive the subsurface estate beneath Village Corporation lands within the boundaries of NPRA. Instead, ASRC was permitted, under section 12(a)(1) of ANCSA, to select "in lieu" subsurface estate beneath federal surface estate in unreserved, vacant and unappropriated public lands elsewhere on the North Slope of Alaska.

In section 1431(o) of the Alaska National Interest Lands Conservation Act, if lands in NPRA within seventy-five miles of lands selected by a Village Corporation were opened for purposes of commercial development of oil and gas, ASRC was provided the option to acquire the subsurface estate beneath these Village Corporation lands by exchanging to the United States, on an acre-for-acre basis, subsurface estate originally obtained pursuant to section 12(a)(1) of ANCSA. In the early 1980's, oil and gas leasing occurred in NPRA, thus triggering the right of ASRC to exercise its section 1431(o) option. ASRC exercised its option to acquire the subsurface estate beneath lands within NPRA selected by the Village Corporations for the Villages of Nuiqsuit and Wainwright. Upon the exercise of its option under section 1431(o), ASRC received subsurface estate that is coterminous with the surface estate that each of these Village Corporations received pursuant to the provisions of ANCSA.

Under ANCSA, each Village Corporation in NPRA receives title to the surface estate of a specified amount of land surrounding

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the Native Village. However, pursuant to the Alaska Native Allotment Act of May 17, 1906, as amended, individual Natives had a right to receive title to allotments, or small parcels of land, on which they had established historic use and occupancy. In conveying these allotments to individual Natives, the federal government often reserved to the United States all right, title and interest to any oil and gas resources that may exist in these lands. Thus, in a situation in which a Village Corporation receives a conveyance of all of the surface estate surrounding an allotment, and ASRC receives the subsurface estate beneath the Village Corporation lands, the oil and gas resources beneath the allotment parcel becomes an isolated federal holding completely surrounded by Native lands. These isolated federal holdings of reserved oil and gas are difficult to manage and thus become an administrative nightmare.

Under the provisions of section 12(a)(1) of ANCSA, ASRC is entitled to receive a certain portion of its land entitlement as subsurface estate only. In these lands, ASRC receives an interest only in the subsurface estate, with title to the surface estate remaining in the United States. Similar to the isolated federal holdings beneath Native allotment lands, these "split estates" also cause difficulty in administration.

The proposed amendment now before your Committee would permit ASRC, at its option, to relinquish to the United States a

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portion of its entitlement to subsurface estate under section 12(a)(1) of ANCSA in exchange, on an acre-for-acre basis, for the reserved oil and gas interests of the United States beneath Native allotments within NPRA that are entirely surrounded by Native Corporation lands. Through the exercise of this option, ASRC would acquire these isolated tracts of subsurface estate where ASRC already has title to all of the surrounding subsurface estate, thereby eliminating isolated tracts of federal oil and gas interests. By reducing ASRC's remaining entitlement under section 12(a)(1) of ANCSA, the number of acres of "split estates" on the North Slope will also be reduced. The proposed amendment is limited by its terms to the acquisition by ASRC of reserved federal oil and gas interests beneath Native allotments within NPRA.

During review of the proposed amendments set forth in section 8, the State of Alaska raised a concern about the scope of the application of the amendment as originally proposed. In order to address these concerns, ASRC (in agreement with representatives of the State of Alaska and the Department of the Interior, including representatives of the Bureau of Land Management) has proposed to limit the application of the proposed amendment to the lands within NPRA selected by the Village Corporation for the Village of Nuiqsuit. Attached to this statement is a copy of a proposed amendment to section 8 that would specify that the amendment applies only to lands selected

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by Kuukpik Corporation, the Village Corporation for the Village of Nuiqsuit.

In short, section 8 of H.R. 3612 is a non-controversial, technical amendment to ANCSA and the Alaska National Interest Lands Conservation Act that will benefit both ASRC and the federal government by eliminating unnecessary administrative burdens. Thank you for your attention and prompt action on this matter.

PROPOSED AMENDMENT TO H.R. 3612

On page 8, line 8, delete "a Village", and insert in lieu thereof "Kuukpik".

WRITTEN STATEMENT OF THE BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, SUBMITTED FOR THE RECORD, FOR THE HEARING BEFORE THE HOUSE NATURAL RESOURCES SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS, ON H.R. 4665, A BILL "TO AMEND THE ALASKA NATIVE CLAIMS SETTLEMENT ACT, AND FOR OTHER PURPOSES."

September 22, 1994

"We submit a written statement for the record on H.R. 4665, a bill "To amend the Alaska Native Claims Settlement Act, and for other purposes."

In 1971, the Alaska Native Claims Settlement Act (ANCSA) was enacted to extinguish the claims of Alaska Natives to most of the State of Alaska. The settlement recognized title to 44 million acres of land to be held for Native Corporations and approximately \$1 billion in monetary compensation for the loss of the remaining lands. Under ANCSA, 12 geographic regions were created with five incorporators authorized under each region. Each regional corporation was formed under the laws of Alaska to conduct business for profit and was managed by a board of directors. Alaska Natives, living on the date of enactment, were issued stock in the corporations and the right to vote in elections for the board of directors and on other issues of importance to the stockholders.

ANCSA provided that for a period of 20 years Native corporation stock could not be sold, transferred, pledged, subjected to a lien or judgment execution, assigned in present or future or otherwise alienated; and could only be transferred through inheritance or in limited cases of court decree. In 1987, Congress amended the restrictions on stock sale, instead of expiring at the end of 20 years (1991), the stock restrictions on alienability would continue automatically until the shareholders of a Native corporations voted to remove them.

H.R. 4665 amends ANSCA, authorizing the Cook Inlet Regional Corporation, with approval of the shareholders, to offer shareholders a repurchase of corporation stock from those who want to sell their stock to the corporation.

Our understanding is that the Cook Inlet Regional Corporation has conducted a poll of its shareholders and found them to be in favor of this action. Once legislation is passed, the bill provides that the issue will be put to a formal vote of the shareholders for their approval. In light of this, we have no objection to the passage of H.R. 4665.

This concludes our written statement for the hearing record.

**The Kenai Natives Association, Inc.,
and
U.S. Fish and Wildlife Service
Negotiated Exchange/Acquisition Package**

**In Response to
Public Law 102-458**

**Kenai Natives Association, Inc.
The Tangent Building, Suite 203
215 Fidalgo Street
Kenai, Alaska 99611**

and

**United States Department of the Interior
Fish and Wildlife Service - Region 7
1011 East Tudor Road
Anchorage, Alaska 99503**

PUBLIC LAW 102-458

REPORT TO CONGRESS

Pursuant to Public Law 102-458 (Act), enacted October 23, 1992, the Secretary of the Interior and Kenai Natives Association, Inc. (KNA), were mandated to negotiate an agreement for the exchange/acquisition of interests in lands belonging to KNA and under the jurisdiction of the U.S. Fish and Wildlife Service (Service) in Alaska. Further, the Act directed that independent third party appraisers value the interests under consideration. The Service and KNA each contracted for appraisal services by December 1992. Appraisal instructions were written by the Service and were reviewed and accepted by KNA. Two appraisal issues, the effects on value of Alaska Native Claims Settlement Act Section 22(g) and the effects on value of split estates (surface and subsurface), lack market data from which to draw value conclusions. It was decided that properties located within the Kenai National Wildlife Refuge (Refuge) would be appraised as fee simple estates, less coal, oil, and gas rights, a condition typical in the local market. It was determined that the value of the two appraisal issues lacking market data would be negotiated by the parties and would be subject to approval by Congress.

Due to the complexity of and number of parcels involved in the appraisal assignment, the appraisal process was not completed until mid-April 1993. The appraisal review process was completed in August. Pursuant to the Uniform Relocation Assistance and Land Acquisition Policies Act of 1970, a single appraisal was approved for use by the Service in negotiations. The Service's contracted appraisal was deemed to be more consistent with Uniform Appraisal Standards for Federal Land Acquisitions.

During the appraisal period, the parties met numerous times to discuss issues and clarify goals. Formal negotiations began August 17, 1993. On September 8, 1993, the Service and KNA reached agreement on an acquisition/exchange package, which is summarized below as well as on the opposing page fold-out and on a map at the conclusion of the report.

According to legislative history, the Act's intent is to assist KNA in achieving economic viability. To that end, approximately 5,064 acres of land currently subject to Refuge laws and regulations will be removed from the Refuge to allow development for and by the KNA shareholders. Of the acreage needed, approximately 1,826 acres are currently under Service jurisdiction and will be transferred to KNA. The remainder of the lands to be removed from the Refuge is surface estate patented to KNA. The Service's subsurface estate (less coal, oil, and gas) underlying the 5,064 surface-estate acres will be transferred to KNA subject to Cook Inlet Region, Inc.'s, rights under Public Law 94-204 Section 12(b). A value of \$750,000 was

negotiated for the subsurface estate and the removal of lands from the Refuge. Congressional approval is needed for removal of lands from the Refuge and for the negotiated value.

The 1,826 acres of government lands to be transferred to KNA are mostly uplands vegetated with mature and intermediate stage forest. Lynx, coyote, snowshoe hare, wolf and moose occur on these lands. Wolf and lynx den in the area. The patented KNA lands that would no longer be subject to Refuge laws and regulations are adjacent to the government parcel and contain similar habitat and wildlife.

Of the 1,826 acres of government lands to be transferred to KNA, approximately 624 acres are in a designated wilderness area. Congressional authorization is needed for the removal of lands from a wilderness area.

United States Survey 1435, a 5.42-acre site withdrawn by Executive Order for use as a headquarters site by the Service and located in the City of Kenai, will transfer to KNA. Congressional authorization is needed for the transfer.

Additionally, the Service will do what is required to nominate KNA's Stephanka Tract, which contains archaeological remains of the original Kenaitze Indian settlement, to the National Register of Historic Places. The costs attributed to this effort were determined by the Service and accepted by KNA. Finally, the Secretary is responsible for conducting land surveys and contaminants surveys, acquiring title policies, and recording of title documents. These are no cost benefits to KNA.

The Service will benefit by having approximately 14,338 acres of KNA interim conveyed or patented lands returned to the Refuge. Kenai Natives Association, Inc., relinquishes all selections, which include about 1,207 acres of waived remaining entitlement. The corporation has not prioritized the location of its remaining entitlement within the selected lands. Lands returning to the Refuge contain high value riparian habitats, wetlands, and forested uplands--habitat important to bald eagles, neotropical migrants, moose and caribou populations, as well as other mammals, e.g., lynx, coyote, bear, and wolf, and to staging and nesting trumpeter swans and other waterfowl. The lands include important watersheds for rivers and streams supporting valuable sport and commercial fisheries in the Kenai Peninsula. The value of the selected, remaining entitlement was extrapolated from the approved appraisal. The value needs congressional approval.

Approximately 326 acres of KNA's relinquished selections are in designated wilderness, while 592 acres of KNA interim conveyed lands lying south and west of the Kenai River are adjacent to a wilderness boundary. We recommend those 592 acres be included in the designated wilderness area. Congressional authorization is needed to add lands to the wilderness area.

Finally, KNA will grant an easement to the Service for a radio communications repeater site, located on Service lands to be transferred to KNA, for as long as the site is used for that purpose.

Although there were differences in land values between the Service and KNA appraisals, KNA accepted the approved market value of all parcels under consideration save one, the KNA-Swanson River Road West Tract. The disparity in the valuation of this particular tract is significant. The Service is required by law to deal in terms of the approved appraised value of \$4,060,000. The KNA appraisal valued the tract at \$11,596,000. Kenai Natives Association, Inc., feels it cannot accept less than \$7,500,000 for the tract. A congressional resolution of value is needed.

Subject to resolution of value for the KNA-Swanson River Road West Tract, we feel the negotiated package fairly meets the interests of both the United States and KNA. However, as seen in the summary chart on the fold-out page at the beginning of this report, the exchange results in a cash equivalency payment to KNA. The Service does not have funding available to consummate the negotiated exchange/acquisition. We look to Congress for further guidance in implementing Public Law 102-458.

Katherine W. Boling
 Katherine W. Boling, President
 Kenai Natives Association, Inc.

October 6, 1993
 Date Signed

Molly W. Beattie
 Molly Beattie, Director
 U.S. Fish and Wildlife Service

23 August 94
 Date Signed

A Summary of
The Kenai Natives Association, Inc., and U.S. Fish and Wildlife Service
Negotiated Exchange/Acquisition Package

U. S. Fish and Wildlife Service Receives:

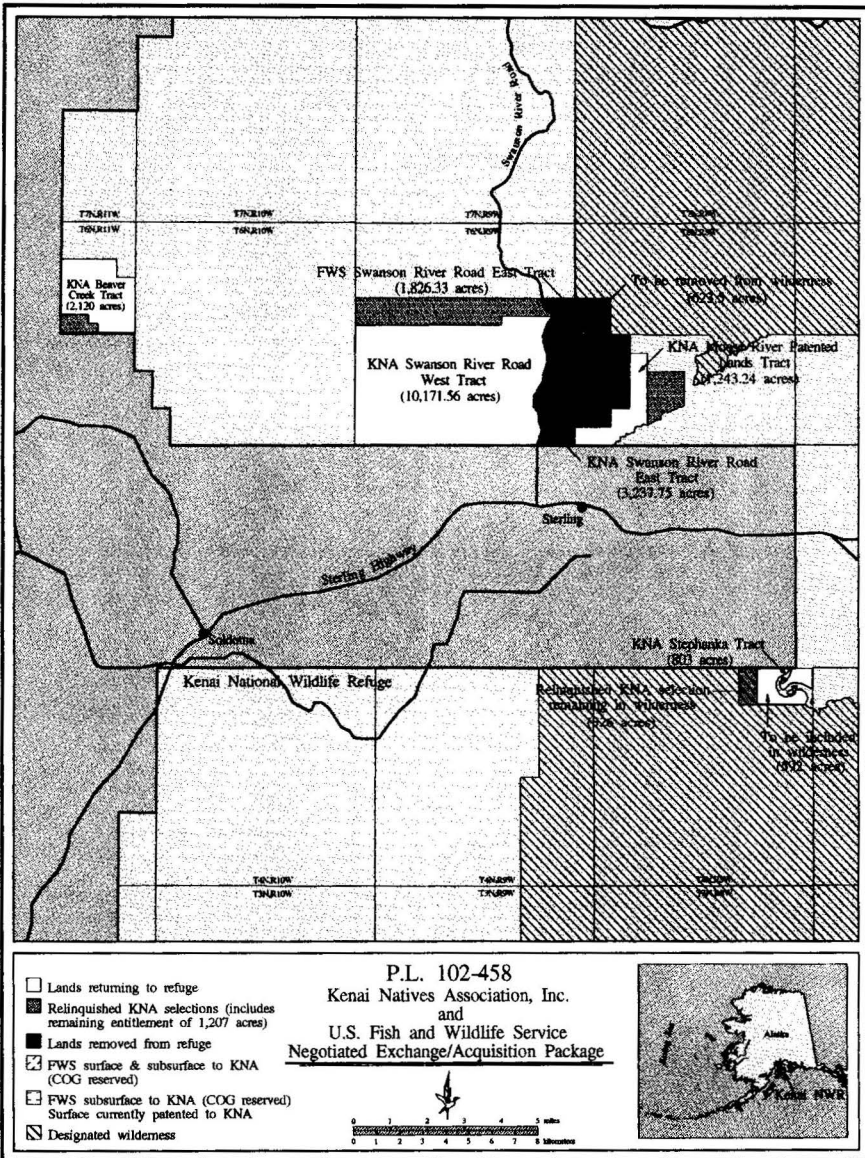
	Acres	Value	KNA's Requested Value
Stephanka Tract ¹	803	\$3,262,000	
Moose River Patented Tract	1,243	572,000	
Beaver Creek Tract	2,120	597,000	
Swanson River Road West Tract	10,172	4,060,000 ²	\$ 7,500,000 ²
KNA's Remaining Entitlement	1,207	556,000 ³	
Communications Repeater Site Easement	<1	10,000	
TOTALS	15,545	\$9,057,000	\$12,497,000

Kenai Natives Association, Inc. Receives:

Swanson River Road East Tract ⁴	1,826	\$ 597,000	
U.S. Survey 1435 ⁵	5	247,000	
National Register of Historic Places Nomination		15,000	
Remove Land from Refuge and Subsurface Estate (Less Coal, Oil, and Gas) ⁷		750,000 ⁶	
TOTALS	1,831	\$1,609,000	\$1,609,000

Cash Equivalency		\$7,448,000	\$10,888,000
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- 1 Approximately 592 acres of this tract are recommended for inclusion in wilderness. Congressional approval is needed.
 - 2 KNA did not accept FWS appraised values for this tract; the parties agreed to submit the two values to Congress for a decision.
 - 3 Value extrapolated from approved appraisal.
 - 4 Approximately 624 acres of designated wilderness lie within this parcel. Congressional action is needed to remove these lands from the refuge wilderness.
 - 5 U.S. Survey 1435 is withdrawn by Executive Order.
 - 6 Removal of lands from the refuge needs Congressional approval.
 - 7 Includes the subsurface estate now owned by the United States under the Swanson River Road East Tract (1,826 acres) and KNA retained patented lands (3,238 acres).



Alaska Federation of Natives, Inc.

September 23, 1994

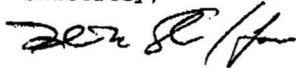
Congressman George Miller, Chairman
House Natural Resources Committee
Longworth Office Building
Independence & New Jersey Avenue
Washington, DC 20515
VIA FAX MAIL: 202-225-6128

Dear Congress Miller:

The intent of this letter is to clarify the position of the Alaska Federation of Natives, Inc. (AFN) on the Cook Inlet Region, Inc.'s (CIRI) legislation on **Transfer of Wrangell Institute**. AFN SUPPORTS this proposed legislation and urges Congress to pass this legislation during this Congressional session.

Thank you for your kind consideration. If you have any questions concerning this letter, please do not hesitate to contact me at AFN at 907-274-3611.

Sincerely,



Julie E. Kitka
President



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

SEP 23 1994

Honorable George Miller,
Chairman, Committee on Natural Resources
United States House of Representatives
Washington, D.C. 20510

Dear Mr. Chairman:

This letter responds to your request for the views of this Department with respect to H.R. 3612, To amend the Alaska Native Claims Settlement Act.

The bill contains eleven technical amendments to the Alaska Native Claims Settlement Act (ANCSA) (43 U.S.C. 1601 et seq.), as amended) proposed by the Alaska Federation of Natives (AFN). This letter summarizes the positions of the Department on each of the amendments, in order. We are providing testimony to the Subcommittee on Oversight and Investigations at the hearing on September 22, based upon the positions in this letter.

1. RESCISSION OF RELINQUISHMENTS

This proposed amendment has been withdrawn by AFN. Accordingly, we recommend that this section be deleted from the bill. It is our understanding that the State of Alaska strongly opposed this provision.

2. KAGEET POINT

This amendment has also been withdrawn by AFN. We support that withdrawal and recommend that this section be deleted from the bill.

This amendment related to a request by Chugach Alaska Corporation (Chugach) to acquire a peninsula which lies west of the western boundary of Chugach's land selections within Icy Bay. The peninsula is within Wrangell-St. Elias National Park and Preserve. The total acreage is approximately 400 acres. This piece of land was not withdrawn for selection by Chugach.

The parcel is within a wilderness designation area of the Wrangell-St. Elias National Park and Preserve. In the 1986 National Park Service Protection Plan, this parcel was identified for land protection. Specifically, this is land where protection of scenic quality is important and development would adversely affect the park resources. The plan states:

The lands east of Icy Bay contain prime mountain goat habitat and are part of the scenic foreground to Mount

St. Elias, a major scenic feature. Industrial development of these lands by Chugach Alaska would be highly disruptive to the scenic and wildlife values.

Under the Cape Yakataga Planning effort for the last three years, the state has identified the Kageet Point area as a highly important habitat and recreational area. The State has given this area its highest level of protection in the planning effort and has stated that no development should occur there in order to protect the wilderness and recreation qualities of the area. The State has requested that the area be closed to mineral entry.

The ice and water immediately adjacent to Kageet Point is highly productive for harbor seals and other marine mammals.

Accordingly, we agree with AFN that this technical amendment should be withdrawn from further consideration.

3. RATIFICATION OF CERTAIN CASWELL CREEK AND MONTANA CREEK CONVEYANCES

In 1974, Montana Creek Native Association, Inc. (MCNA) and Caswell Native Association, Inc. (CNA) withdrew their applications for village status then pending before the Department. Instead of applying for a withdrawal and selecting lands, the two groups and Cook Inlet Region, Inc. (CIRI) entered into an agreement. CIRI conveyed 11,520 acres to each group. Under the Department's regulations, each group would have been eligible for a maximum of 7,680 acres. CIRI has requested that the conveyances from it to the groups be ratified by Congress and that the groups' lands be treated as lands conveyed pursuant to ANCSA. This amendment would make the lands eligible for fire protection under section 22(e) of ANCSA, 43 U.S.C. 1621(e), and eligible for a land bank status under section 907 of the Alaska National Interest Lands Act (ANILCA), as amended.

The Department supports the ratification of CIRI's transfer if two clarifying sentences are added to the amendment, set forth immediately below.

First, the ratification of these conveyances should not adversely impact the 14(h) entitlements of other ANCSA corporations. In other words, the 14(h) entitlements to the other ANCSA corporations should not be reduced as a result of this amendment. It is our understanding that AFN concurs with this analysis. Accordingly, we have proposed the following language, as the penultimate sentence of the amendment:

The ratification these conveyances shall not have any other effect upon section 14(h) of the Alaska Native

Claims Settlement Act (43 U.S.C. 1613(h)) or upon the duties and obligations of the United States to any Alaska Native Corporation.

Second, we believe the amendment should not give rise to any liability on the part of the United States or the State of Alaska. Therefore, we have proposed the following language to insulate the United States and the State of Alaska from that possibility, as the last sentence of the amendment:

This ratification shall not be the basis for any claim to land or money by CIRI against the State of Alaska or the United States.

To summarize, if two sentences are added to the amendment -- sentences that will protect the United States, the State of Alaska, and other ANCSA corporations, we support the amendment.

4. MINING CLAIMS AFTER LANDS PATENTED TO REGIONAL CORPORATION

When lands were patented to the regional corporations under the provisions of ANCSA sections 11(a)(1), 11(a)(2) and 16, they were conveyed "subject to valid existing rights." This included valid mining claims. Under the holding in *Alaska Miners v. Andrus*, 662 F.2d 577 (9th Cir. 1981), miners were not compelled to file for patent on such claims, but by failing to apply for a patent in the time permitted by ANCSA, mining claimants lost the right to obtain a patent to their mining claims from the federal government. Accordingly, BLM has taken the position that after the transfer of title it cannot accept FLPMA filings on such mining claims, nor has BLM been willing to accept annual rental payments. This has created confusion about mining regulatory authority over these mining claims.

The purpose of this amendment is to clarify who has mining regulatory authority over these claims. Under the amendment, the regional corporations are explicitly given the authority to regulate the mining claims under the mining laws of the United States, as such laws are amended. Adoption of this legislation would have the desired effect of bringing clarity to the relationship between the miner/inholder and the Regional Corporation.

The Department supports an amendment to ANILCA on this subject. However, we propose substitute language, which we believe is more explicit than that which is currently proposed in H.R. 3612 and more clearly gives management authority to the Regional Corporations. We endorse this substitute amendment, which is as follows:

This Section shall apply to lands conveyed by interim conveyance or patent to a Regional Corporation pursuant to this Act which are made subject to a mining claim or claims located under the general mining laws, as amended, including lands conveyed prior to enactment of this section. Effective upon the date of this act, the Secretary, acting through the Bureau of Land Management and in a manner consistent with section 14(g) of this Act, 43 U.S.C. 1613(g), shall transfer to the Regional Corporation administration of all mining claims determined to be entirely within lands conveyed to that corporation. Any person holding such mining claim or claims shall meet such requirements of the general mining laws and section 314 of the Federal Land Management and Policy Act of 1976, 43 U.S.C. 1744, as well as any amendments to either, except that any filings which would have been made with the Bureau of Land Management if the lands were within federal ownership shall be timely made to the appropriate Regional Corporation. The validity of any such mining claim or claims may be contested by the Regional Corporation, in the place of the United States. All contest proceedings and appeals by mining claimants of adverse decisions made by the Regional Corporation shall be brought in federal district court for the District of Alaska. Neither the United States nor any federal agency or official shall be named or joined as a party in such proceedings or appeals. All revenues from such mining claims received after passage of this Act shall be remitted to the Regional Corporation subject to distribution pursuant to section 7(i) of this Act, 43 U.S.C. 1606(i), except that in the event that the mining claim or claims are not totally within the lands conveyed to the Regional Corporation, the Regional Corporation shall be entitled only to that proportion of revenues, other than administrative fees, reasonably allocated to the portion of the mining claim or claims so conveyed.

5. SETTLEMENT OF CLAIMS ARISING FROM CONTAMINATION OF TRANSFERRED LANDS

Native corporations have selected and the United States has conveyed lands which contain contaminants. The nature of the contamination may come in various forms including residue from abandoned upstream mining operations, and in many cases substances now considered contaminants were not so considered at the time of the transfer.

AFN contends that it is unfair for the regional corporations to shoulder the entire burden of cleaning up contaminated sites where the contamination is not the fault of the Native corporations. However, we have insufficient information at this time to best address this issue.

We are strongly opposed to the proposed amendment as drafted, which would put an untenable burden on the federal government. Accordingly, the Department proposes a substitute amendment to provide for a study conducted by the Department, in concert with the Department of Agriculture, and a report to Congress addressing issues raised by the presence of hazardous substances on Native owned lands, including the applicability of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601 et seq.)

The Department is presently discussing our proposal with other Federal agencies, including the Department of Agriculture. The Administration urges the Committee to defer action on this section until we have submitted our proposed language.

6. AUTHORIZATION OF APPROPRIATIONS FOR THE PURPOSE OF IMPLEMENTING REQUIRED RECONVEYANCES

ANCSA section 14(c) requires village corporations to reconvey certain land within their patented selections. The problems associated with the reconveyance of lands to individuals and municipalities within the village patents are complex and technically difficult.

This proposed amendment would constitute an authorization for appropriations to provide technical assistance to villages for section 14(c) reconveyances.

The Department supports this provision amended to read as follows:

There is authorized to be appropriated such sums as may be necessary for the purpose of providing technical assistance to Village Corporations established pursuant to ANCSA in order that they may fulfill ANCSA Section 4(c) reconveyance requirements. The Secretary may make such funds available for distribution as grants to Village Corporations or other ANCSA non-profit corporations that maintain in-house land planning and management capabilities.

It is our understanding that AFN concurs with these changes.

7. COMMUNITY NEED

This proposed amendment has been withdrawn by AFN; accordingly, we recommend that it be deleted from the bill. It is our understanding that the State of Alaska strongly opposed this amendment.

8. NATIVE ALLOTMENTS

Two native allotments in the National Petroleum Reserve - Alaska (NPR-A), totalling less than 240 acres, are surrounded by lands conveyed to the village corporation of Nuiqsut. The subsurface estate under Nuiqsut village lands has been conveyed to Arctic Slope Regional Corporation (ASRC) pursuant to Section 1431(o) of Alaska National Interest Lands Conservation Act. In the absence of this amendment, the United States is expected to own the oil and gas estate under the two allotments.

This amendment would permit conveyance to ASRC of the federally owned oil and gas estate under the Native allotments for the purpose of consolidating subsurface interests in the area and eliminating isolated tracts of public land. Any oil and gas recoverable from the Native allotment subsurface would, in all likelihood, have only a limited market in Nuiqsut. The lands have not been deemed valuable for coal. The State of Alaska has consented to the transfer of the reserved minerals to the Corporation. Furthermore, this amendment would not result in a net loss of subsurface estate to the United States.

We support this technical amendment. One final note, it is agreed by all parties that the language in H.R. 3612 should be amended to delete the words "a Village" and substitute the word "Kuukpik" (the name of the ANCSA corporation at Nuiqsut) in the first sentence of proposed Section 1431(o)(5).

9. OPEN SEASON FOR CERTAIN NATIVE ALASKAN VETERANS FOR ALLOTMENTS

The Alaska Native Allotment Act of 1906 was repealed by ANCSA on December 18, 1971. During 1970 and 1971, a concerted effort was made by the Bureau of Indian Affairs, Ruralcap and Alaska Legal Services to notify as many Alaskan Natives as possible of the upcoming repeal and the need to apply for an allotment. Individuals who were otherwise entitled to apply for an allotment but who were on active military duty during 1970 and 1971 may have been deprived of an opportunity to apply for such allotments.

The Administration has concerns with this section and is still reviewing recommendations to address these concerns. We urge the Committee to defer action on section 9 until this review is complete.

10. LAPSED MINING CLAIMS

It is our understanding that this proposed amendment has been withdrawn by AFN. We strongly concur that this amendment should be deleted from the bill. Regional corporations may only select unappropriated and unreserved lands; therefore, Regional

Corporations could not select valid mining claims. Certain mining claims that had valid mineral discoveries during the land selection period (1971-1975) but were declared abandoned and void for administrative reasons after 1975, have now lapsed. Some of these lapsed mining claims are located within the boundaries of national parks and national wildlife refuges in Alaska. This amendment would have given the Native corporations the ability to acquire and develop those mineral resources even though the lapsed mining claims were located within the boundaries of national parks and national wildlife refuges.

For numerous compelling reasons, existing laws were purposefully written to ensure that lapsed claims within parks and refuges did not automatically pass to Native interests. This previously achieved balance, as set forth in section 22(c)(2)(A) of ANCSA, should not be disrupted.

11. TRANSFER OF WRANGELL INSTITUTE

The Wrangell Institute was originally withdrawn in 1956 for the administration of Native Affairs. That use terminated with the passage of ANCSA. The property was excessed by BIA to GSA in 1975 and subsequently 31 acres were transferred to the City of Wrangell. In 1977 CIRI requested that the remaining 140 acres be made available for selection. CIRI was issued a revocable license on May 11, 1977. In August 1978, this land and the buildings thereon were the subject of an interim conveyance to CIRI.

This amendment would cause ten acres of that conveyance together with the structures to be returned to the United States. CIRI also wants to preclude liability for the risks associated with contamination contained in the buildings located on these ten acres. CIRI is seeking a credit to its property account in excess of \$800,000 for a building and land that, at the time of transfer, were estimated by CIRI to be worth approximately \$380,000. CIRI is asking for legal and other expenses incurred and interest, among other costs. In addition to the costs of supplementing the CIRI property account, the U.S. would have to assume the liability for the clean up of the property which would include the destruction and removal of all buildings on the property which have deteriorated since the cessation of maintenance by CIRI.

Review of the situation presented by the Wrangell Institute leads us to conclude that the fact pattern posed, i.e., conveyance to a Native corporation of uncontaminated property in which asbestos products were properly used in construction and properly maintained at the time of conveyance, is not unique to CIRI. Furthermore, it is specifically the Department's position that the asbestos was not a pollutant at the time of transfer because it is our understanding that it was not friable. CIRI had the

option of containing the asbestos as opposed to abandoning the building, but did not do so. It is our understanding that the asbestos became friable after the building was abandoned. Furthermore, CIRI had the opportunity to evaluate the Wrangell property prior to selecting it, and held a revocable license to the property for over one year prior to conveyance.

The Department cannot support the relief sought for CIRI. Under the facts we do not believe CIRI is entitled to the relief sought, and to do so would require relief for others similarly situated. We are not in a position to assume that very extensive liability at this time. It is the Department's understanding, for example, that there are over 200 other conveyed buildings which contained nonfriable asbestos. We do not believe that as a matter of law the United States must reimburse CIRI for lost opportunity and all of its other costs, or to hold them harmless. For these reasons, and because it is not feasible to reimburse all entities to whom the United States has conveyed buildings that contained nonfriable asbestos, we do not support this amendment. It is our understanding that GSA also opposes this amendment for numerous similar reasons.

Although we do not support section 11, the Department does support reviewing the Wrangell Institute situation in the context of the section 5 contamination study discussed earlier in these comments. We believe that this is the more appropriate course of action under the circumstances.

This concludes our comments. Thank you for the opportunity to comment on H.R. 3612.

The Office of Management and Budget advises that it has no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,



Bonnie R. Cohen
Assistant Secretary,
Policy, Management, and Budget

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