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ALASKA NATIVE LAND CLAIMS

HEARINGS

BEFORE THE

COMMITTEE ON INTERIOR AND INSULAR AFFAIRS UNITED STATES SENATE

NINETY-FIRST CONGRESS

FIRST SESSION

ON

S. 1830

A BILL TO PROVIDE FOR THE SETTLEMENT OF CERTAIN LAND CLAIMS OF ALASKA NATIVES, AND FOR OTHER PURPOSES

AUGUST 7 AND 8, 1969

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ALASKA NATIVE LAND CLAIMS

THURSDAY, AUGUST 7, 1969

U.S. SENATE,
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
Washington, D.C.

The committee met at 10:35 a.m. in room 3110, New Senate Office Building, Senator Henry M. Jackson (chairman) presiding.

Present: Senators Henry M. Jackson, Clinton P. Anderson, Alan Bible, Frank Church, Frank E. Moss, Quentin N. Burdick, Lee Metcalf, Mike Gravel, Gordon Allott, Len B. Jordan, Paul J. Fannin, Clifford P. Hansen, Ted Stevens, and Henry Bellmon.

Also present: Jerry T. Verkler, staff director; Stewart French, chief counsel; William J. Van Ness, special counsel; Charles Cook, minority counsel; Daniel Dreyfus and Denny Miller, professional staff members.

The CHAIRMAN. The committee will come to order.

Today's hearing is a continuation of the committee's earlier hearing on S. 1830, the Alaska Native Claims Settlement Act of 1969. At the April 29 hearing, the Department of the Interior, the State of Alaska, and the Alaska Federation of Natives all indicated that additional time was needed to prepare specific proposals and recommendations.

Over 3 months have now passed, and I hope that today the witnesses will be able to discuss S. 1830 in specific terms.

The Department of the Interior submitted supplemental views on July 25 together with draft legislation which incorporates their recommendations. This measure was introduced on August 4 by Senator Allott, the committee's ranking minority member, as an amendment in the nature of a substitute to S. 1830.

The committee has been informed that the Alaska Federation of Natives and their attorneys are now prepared to discuss specific recommendations to S. 1830. I am hopeful that Governor Miller and the representatives from the State of Alaska are also prepared to make specific recommendations on this legislation and to discuss what role the State should play in a final legislative settlement.

Since the hearing of April 29, 1969, additional reports on this legislation have been received from the Air Force for the Department of Defense, and the Civil Service Commission. They will be included in the hearing record at this point.

(The reports referred to follow:)

DEPARTMENT OF THE AIR FORCE,
Washington, D.C., August 2, 1969.

Hon. HENRY M. JACKSON,
Chairman, Committee on Interior and Insular Affairs,
U.S. Senate.

DEAR MR. CHAIRMAN: Reference is made to your request to the Secretary of Defense for the views of the Department of Defense with respect to S. 1830, 91st Congress, a bill "To provide for the settlement of certain land claims of Alaska natives, and for other purposes." The Department of the Air Force has been assigned responsibility for expressing the views of the Department of Defense on this bill.

The purpose of this bill is to provide the means for a fair and just settlement of all land claims by natives and native groups of Alaska. This would be accomplished (1) by conveying to native individuals lands occupied and used by them for homes, businesses, fishing, hunting and trapping camps, and reindeer husbandry; (2) by making land grants to native communities for community use and expansion; (3) by establishing the Alaska Native Commission to conduct hearings, and by establishing a Fund and a Native Development Corporation to invest funds and provide for the lending of funds for the construction of homes and other purposes that would promote the economic development of the natives. In addition, the bill provides for compensation for native rights in lands previously withdrawn by the United States or selected by Alaska under the Statehood Act, makes provision for the disposition of certain minerals relative to the Mineral Leasing Act, and provides for the protection of subsistence resources.

The Department of the Air Force, on behalf of the Department of Defense, is in complete accord with the general purposes to be achieved through the enactment of this legislation.

The Department of Defense has numerous military installations throughout Alaska located on public lands that have been withdrawn, reserved, or otherwise restricted from further appropriation under the public land laws. It is necessary that the integrity of these lands be preserved in the interest of national defense. The exception in Section 8(a)(1) with respect to lands withdrawn for national defense purposes other than petroleum reserve numbered 4 would appear to recognize this interest. However, in order to assure that public lands used for defense purposes by means other than withdrawal, such as by special use permit or notation on the public land records, are also excepted, it is suggested that line 11, page 16, be revised to read "State of Alaska, except lands withdrawn or otherwise reserved for national defense." Paragraph (2) of Section 8(a) should also be revised by the insertion of "withdrawn or otherwise reserved for national defense as" between "lands" and "described" in line 8 on page 25 of the bill.

Section 12 provides for the disposition of minerals encompassed within the scope of the Mineral Leasing Act. Paragraph (b)(1) authorizes the Secretary of the Interior with the concurrence of the Secretary of Defense to dispose of deposits of coal, phosphate, sodium, potassium, oil, oil shale, gas or sulphate within naval petroleum reserve numbered 4 subject to such conditions as may be prescribed by him by regulation. The Department objects to provisions of paragraph (b)(1) to the extent that it provides for the disposal of oil, oil shale and gas from naval petroleum reserve numbered 4. This naval petroleum reserve, among others, was established to preserve such deposits to meet future national defense requirements.

It is believed that the question of disposal of any or all of these naval petroleum reserves should be addressed, if that is necessary, separately and not in legislation such as this bill which is addressed primarily to the settlement of claims. It is recommended that the following specific amendments to S. 1830 be made.

(A) On page 3, line 19, change the period to a comma and add: "nor to effect a change in the petroleum reserve policy reflected in sections 7421 through 7438 of title 10, United States Code."

(B) On page 31, line 16, following the word "estate", insert: ", except oil, oil shale, and gas on lands within naval petroleum reserve numbered 4."

(C) On page 34, line 20, delete the phrase "oil, oil shale, gas," and, following the word "sulphur", insert: ", but not oil, oil shale and gas,"."

(D) Further amend Section 8(a)(1), on page 16 to make it consistent with the amendments recommended above.

In addition to the foregoing, it is noted that section 10(g) of the bill requires the Secretary of the Interior to convey the mineral estate, including oil and gas

reserves, to the corporation to be established by the bill with respect to any surface patent issued on naval petroleum reserve numbered 4. It is considered that the Secretary of the Navy must be able to condition patents to the surface rights so that the grantee will not interfere with the oil and gas deposits. To accomplish this, it is recommended that on page 33 of S. 1830 a new subsection (1) be added to Section 10 as follows:

"(1) All patents of lands or interest therein under this section included within naval petroleum reserve numbered 4 shall be issued by the Secretary with the concurrence of the Secretary of the Navy, and shall contain such conditions as are necessary to prevent interference with the use and protection of the oil and gas rights reserved to the United States."

We understand that the Department of the Interior proposes to limit the disposal of minerals in Naval Petroleum Reserve Numbered 4 to only those minerals which are subject to the mining laws of the United States. We would have no objection to such a limitation, provided that there is no interference with the use and protection of the oil and gas rights reserved to the United States.

These comments or recommendations on behalf of the Department of Defense have been limited to those provisions of the bill which have a direct bearing upon current activities or existing installations of the Defense establishment in the State of Alaska.

The enactment of this bill could have an impact on the budgetary requirements of the Department of Defense. However, the extent of any such impact cannot be determined at this time.

This report has been coordinated within the Department of Defense in accordance with the procedures prescribed by the Secretary of Defense.

The Bureau of the Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this report to the Committee.

Sincerely,

(Signed) PHILIP N. WHITTAKER,
Assistant Secretary of the Air Force, Installations and Logistics.

U.S. CIVIL SERVICE COMMISSION,
Washington, D.C., August 4, 1969.

Hon. HENRY M. JACKSON,
Chairman, Committee on Interior and Insular Affairs,
U.S. Senate.

DEAR MR. CHAIRMAN: The Civil Service Commission is volunteering this report on S. 1830, a bill "To provide for the settlement of certain land claims of Alaska natives, and for other purposes."

Among other things, S. 1830 would establish the Alaska Native Commission to carry out the purposes of the bill. The Commission would stay in existence for a period of ten years after enactment.

In addition, there would be established an Alaska Native Development Corporation which will not be an agency or establishment of the United States Government. Employees of the corporation would not be regarded as Federal employees for any purpose.

The Civil Service Commission calls attention to the last sentence of section 4(a) of the bill. This section provides that the laws and regulations on conflicts of interest which apply to Federal employees generally shall not apply to the appointed members of the Alaska Native Commission.

The Civil Service Commission strongly opposes this exception to the conflicts of interest provisions of law, can think of no valid reason which would possibly justify it, and therefore recommends that the sentence be deleted.

added on line 13 of page 7, between the word "chapter" and the number "53", as follows:

51 and subchapter III of chapter

The Bureau of the Budget advises that from the standpoint of the Administration's program there is no objection to the submission of this report.

By direction of the Commission:

Sincerely yours,

(Signed) ROBERT E. HAMPTON,
Chairman.

The CHAIRMAN. On March 5, 1969, I wrote a letter to Boyd Rasmussen, Director, Bureau of Land Management, and William Pecora, Director, Geological Survey, requesting information on the range of estimates of the revenues to be received from mineral production on Federal lands in the State of Alaska over the 10-year period 1970 to 1980. The letter and the information received will be printed at this point.

(The data referred to follow:)

MARCH 5, 1969.

Mr. BOYD L. RASMUSSEN,
Director, Bureau of Land Management,
Department of the Interior,
Washington, D.C.

DEAR MR. RASMUSSEN: I would appreciate it if you would furnish me with a high, low and probably range of estimates of the revenues to be received from mineral production on Federal lands in the State of Alaska over the ten-year period, 1970 to 1980. Your estimates should include rents, royalties and bonus-bid revenues.

This information is needed in connection with the Senate Interior and Insular Affairs Committee's consideration of legislation on the Alaska Native land claims. I have enclosed for your use and information a copy of a "Report on a Proposed Legislative Settlement" which was prepared by the Federal Field Committee for Development Planning in Alaska. Your estimate should reflect the impact which these recommendations would have on revenues. For example, one of the recommendations of the Federal Field Committee is that the Naval Petroleum Reserve No. 4 should be opened for competitive leasing.

This same request is being made of Mr. William Pecora, Director, Geological Survey. You may wish to coordinate your activities in the preparation of these materials.

I would appreciate it if you would have this information prepared by March 17, 1969.

With best regards,
Sincerely yours,

HENRY M. JACKSON, *Chairman.*

Enclosure.

MAY 26, 1969.

Mr. WILLIAM T. PECORA,
Director, Geological Survey,
Department of the Interior, Washington, D.C.

DEAR MR. PECORA: I would appreciate it if you would furnish me with a high low and probable range of estimates of the revenues to be received from mineral production on Federal lands in the State of Alaska over the ten-year period, 1970 to 1980. Your estimates should include rents, royalties and bonus-bid revenues.

This information is needed in connection with the Senate Interior and Insular Affairs Committee's consideration of legislation on the Alaska Native land claims. I have enclosed for your use and information a copy of a "Report on a Proposed Legislative Settlement" which was prepared by the Federal Field Committee for Development Planning in Alaska. Your estimate should reflect the impact which these recommendations would have on revenues. For example, one of the recommendations of the Federal Field Committee is that the Naval Petroleum Reserve No. 4 should be opened for competitive leasing.

This same request is being made of Mr. Boyd Rasmussen, Director, Bureau of Land Management. You may wish to coordinate your activities in the preparation of these materials.

I would appreciate it if you would have this information prepared by March 17, 1969.

With best regards,
Sincerely yours,

HENRY M. JACKSON, *Chairman.*

Enclosure.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., June 27, 1969.

Hon. HENRY M. JACKSON,
Chairman, Committee on Interior and Insular Affairs,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: I am sending to you a report prepared by the Geological Survey and the Bureau of Land Management which you requested by letters of March 5 and May 26 to those agencies.

The report provides basic information on potential mineral production from Federal lands in Alaska.

Sincerely yours,

WALTER J. HICKEL,
Secretary of the Interior.

Enclosure.

POTENTIAL REVENUES FROM FEDERAL LANDS IN ALASKA FROM MINERAL PRODUCTION

Basic estimates consist of a high, low and probable estimate of mineral revenues from Federal lands on a year-by-year basis for the period 1970 through 1979 (see attached tables).

To provide some indication of the impact of the proposals of the Federal Field Committee for Development Planning in Alaska on future mineral revenues, the total estimated revenues shown in the attached tables have been classified into leasable locatable mineral categories. Additionally, the leasable mineral revenue figure for each year has been segregated into three sub-categories—revenue from Petroleum Reserve No. 4; revenue from the Alaskan Outer Continental Shelf; and revenue from other onshore activity.

The fourth and final table attached shows mineral revenue on a year-by-year basis, broken into its component parts of rents, royalties, and bonuses.

The total mineral revenue for the entire ten year 1970–79 period under the low, high, and probable estimates is as follows:

Low estimate	$2,887,500,000
Probable estimate	4,246,500,000
High estimate	5,731,500,000

While it is estimated that the revenues for the 10-year period will fall within this range, it should be recognized that the values which undrilled oil and gas properties will bring when leased are subject to great uncertainties. At this time, geological knowledge of potential Alaskan oil and gas basins is relatively limited. Revenues from Alaskan leasing could be substantially affected by decisions on import policy, decisions on tax policy, success or lack of success of exploration in the Canadian Arctic and elsewhere, changes in operating and liability regulations on the OCS, the outcome of efforts to solve the Arctic transportation problem, and many other factors which can not be evaluated.

Therefore, while it is likely that revenues for the 10-year period will fall within the range given above, it is conceivable, although we do not think it probable, that if actual conditions develop differently than the assumptions used in these calculations, actual revenues could be very considerably higher than the high estimate.

It should be pointed out that these are gross revenue figures; under present legislation 90 percent of on-shore mineral revenue reverts, excluding Naval Petroleum Reserve No. 4, to the State of Alaska. Of course, all revenues from Outer Continental Shelf will be paid to the U.S. Treasury. Those are separately identified in the attached tables.

Both the Department of the Interior and the Department of Defense are now in the process of independently evaluating the potential value of Naval Petroleum Reserve No. 4. Until those detailed evaluations are completed and available for comparison, any estimate pertaining to that Reserve must be considered preliminary and tentative.

The general and specific assumptions and methodology used in calculating each category of mineral revenue shown in the attached tables are given below.

I. GENERAL ASSUMPTIONS AND METHODOLOGY—APPLY TO ALL CATEGORIES

A. Constant 1968 prices.
B. No further State selections after 1969.
C. Native claims settled—not an issue.
D. Leasing activity renewed by 1970.

II. SPECIFIC ASSUMPTIONS AND METHODOLOGY

A. Locatable minerals

1. Low estimate based on least squares extrapolation of past data.
2. Probable estimate based on least squares extrapolation of past data plus specific inputs based on judgment. These include production estimates for copper, nickel and mercury.
3. High estimate based on extrapolation of past data assuming a higher rate of growth in the future plus specific inputs based on judgment. These include production estimates for copper, nickel and mercury.
4. A five percent royalty rate levied on all output as recommended by the Federal Field Committee for Development Planning in Alaska.
5. Continuation of material sales.
6. No development of iron resources because of Australian activity.

B. Leasable Minerals

1. Petroleum Reserve No. 4

(*a*) The reserve will be open to competitive leasing.
(*b*) Transportation problems to and from the North Slope will be solved.
(*c*) Natural gas production will be of little or no importance during the 1970–79 period due to remoteness from markets.
(*d*) Lease sales are for lands having the greatest prospective value for oil or gas. This is estimated at 1.2 to 1.5 million acres.
(*e*) Rental is $2 per acre and leases expire in five years if not in a producible status.
(*f*) Royalty rate is 12½ percent. Actual rate may be higher if appropriate legislation is enacted.
(*g*) High rate assumes continued success in finding oil on North Slope and within Petroleum Reserve No. 4. Probable recoverable reserves equivalent to two Prudhoe Bay fields.
(*h*) Low rate assumes the drilling of nonproductive oil tests within Petroleum Reserve No. 4 or nearby. Probable recoverable reserves equivalent to no more than one Prudhoe Bay field.
(*i*) Estimates based on current available information.

2. Other Onshore

(*a*) Low and probable oil revenue projections based on least squares extrapolations of past data using different time length base periods.
(*b*) High oil revenue projection based on an accelerated growth rate to 1973, with growth after 1973 modified to create a Gompertz type growth rate.
(*c*) All gas revenue projections based on a second degree parabola approach for different time periods, with the applicable time period in each projection constrained by alternative evaluations of the future growth of Alaska's domestic and manufacturing marekts. The later years of each projection were developed on a growth rate basis.
(*d*) All new onshore oil and gas activity will take place under a competitive leasing system.
(*e*) All new coal production will result from the issuance of exploration permits.
(*f*) The average of total oil and gas rental income for the last five years from the State of Alaska will remain a relatively constant figure during the 1970–79 period.
(*g*) Rentals from coal lands will represent only a minor part of total rental income.

3. Alaskan Outer Continental Shelf

(*a*) Gulf of Alaska lease sale will be held as scheduled during December 1969, and is included in the estimates for 1970.
(*b*) During the 1970–79 period four other lease sales will be scheduled. Three of the sales will be for 500,000 acres each. The fourth will be a drainage sale of approximately 100,000 acres.

(*c*) Normal OCS rentals will apply—$3 per acre for regular lands and $10 per acrs for drainage lands.

(*d*) Normal time—lag between discovery and first production of three to five years.

(*e*) Royalty rate is 16⅔ percent.

TABLE 1.—LOW ESTIMATE OF MINERAL REVENUES[1] FROM THE STATE OF ALASKA LOCATABLE MINERALS AND LEASABLE MINERALS FROM THE OCS, PETROLEUM RESERVE NO. 4, AND OTHER ONSHORE AREAS 1970–79

[Millions of dollars]

	Locatable	OCS	Petroleum reserve No. 4	Other onshore	Total mineral revenue
Year:					
1970	$2	$102	$201	$100.0	$405.0
1971	2	1	1	100.0	104.0
1972	3	177	1	103.5	284.5
1973	3	2	353	103.5	461.5
1974	3	107	4	103.5	217.5
1975	3	11	5	107.0	126.0
1976	3	122	16	107.0	248.0
1977	3	33	378	107.0	521.0
1978	3	147	39	110.5	299.5
1979	4	56	50	110.5	220.5
Total	29	758	1,048	1,052.5	2,887.5

[1] Includes rental, royalty, and bonus income.

TABLE 2.—PROBABLE ESTIMATE OF MINERAL REVENUE[1] FROM THE STATE OF ALASKA: LOCATABLE MINERALS AND LEASABLE MINERALS FROM THE OCS, PETROLEUM RESERVE NO. 4, AND OTHER ONSHORE AREAS 1970–79

[Millions of dollars]

	Locatable	OCS	Petroleum reserve No. 4	Other onshore	Total mineral revenue
Year:					
1970	$2	$178	$276	$130.6	$586.6
1971	3	2	1	134.1	140.1
1972	3	253	1	134.1	391.1
1973	3	3	453	137.6	596.6
1974	4	212	5	137.6	358.6
1975	4	21	8	141.1	174.1
1976	4	212	20	141.1	377.1
1977	4	54	532	144.6	734.6
1978	5	369	58	144.6	576.6
1979	5	80	78	148.1	311.1
Total	37	1,384	1,432	1,393.5	4,246.5

[1] Includes rental royalty and bonus income.

TABLE 3.—HIGH ESTIMATE OF MINERAL REVENUES[1] FROM THE STATE OF ALASKA: LOCATABLE MINERALS, AND LEASABLE MINERALS FROM THE OCS, PETROLEUM RESERVE NO. 4, AND OTHER ONSHORE AREAS, 1970–79

[Millions of dollars]

	Locatable	OCS	Petroleum reserve No. 4	Other onshore	Total mineral revenue
Year:					
1970	$2	$252	$351	$164.7	$769.7
1971	3	2	1	164.7	170.7
1972	3	353	1	168.2	525.2
1973	3	3	553	171.7	730.7
1974	4	367	6	171.7	548.7
1975	4	25	10	175.2	214.2
1976	5	348	24	178.7	555.7
1977	5	61	737	178.7	981.7
1978	6	579	77	182.2	844.2
1979	6	93	106	185.7	390.7
Total	41	2,083	1,866	1,741.5	5,731.5

[1] Includes rental, royalty, and bonus income.

TABLE 4.—TOTAL MINERAL REVENUE[1] FROM THE STATE OF ALASKA, BY RENTAL, ROYALTY, AND BONUS INCOME, 1970–79

[In millions of dollars]

Estimate	1970	1971	1972	1973	1974	1975	1976	1977	1978	1979
Low:										
Rent	8.0	7.0	8.0	9.0	9.0	8.0	8.0	8.0	8.0	7.0
Royalty	57.3	57.3	59.3	60.3	66.3	73.3	95.3	118.3	144.3	166.3
Bonus	339.7	39.7	217.2	392.2	142.2	44.7	144.7	394.7	147.2	47.2
Total	405.0	104.0	284.5	461.5	217.5	126.0	248.0	521.0	299.5	220.5
Probable:										
Rent	9.0	8.0	9.0	10.0	10.0	9.0	9.0	9.0	10.0	8.0
Royalty	82.0	84.0	84.0	86.0	98.0	112.0	140.0	175.0	211.0	245.0
Bonus	495.6	48.1	298.1	500.6	250.6	53.1	228.1	550.6	355.6	58.1
Total	586.6	140.1	391.1	596.6	358.6	174.1	377.1	734.6	576.6	311.1
High:										
Rent	9.0	8.0	9.0	10.0	10.0	9.0	9.0	9.0	10.0	8.0
Royalty	106.7	108.7	109.7	111.7	129.7	143.7	182.7	218.7	267.7	313.7
Bonus	654.0	54.0	406.5	609.0	409.0	61.5	364.0	754.0	566.5	69.0
Total	769.7	170.7	525.2	730.7	548.7	214.2	555.7	981.7	844.2	390.7

[1] Rent and bonus figures represent income from leasable minerals only. Royalty figures represent income from the production of leasable minerals calculated at the appropriate royalty rate plus income from the production of locatable minerals calculated at the 5-percent royalty rate recommended by the Federal Field Committee for Development Planning in Alaska.

The CHAIRMAN. The Chair would request that to the greatest extent possible, witnesses should endeavor to summarize their positions and avoid repetition of previous testimony. As everyone is aware, we have held extensive hearings on this problem both here and in Alaska. It will help to expedite the hearing today if in the oral presentations, wherever possible, witnesses would present a synopsis or summary. Of course, each witness can place in the record at length whatever supplemental views—even if it duplicates previous testimony—they care to present. It is in the interest of the proper conservation of time that the Chair makes that suggestion.

Our first witness this morning is the Honorable Walter J. Hickel, Secretary of the Interior. We are delighted, Mr. Secretary, to have you with us this morning, and we welcome your comments.

Secretary HICKEL. Thank you, Mr. Chairman.

Senator STEVENS. Mr. Chairman.

The CHAIRMAN. The Senator from Alaska.

Senator STEVENS. Mr. Chairman, I have a brief statement I would like to make before the Secretary begins.

The CHAIRMAN. Go right ahead.

STATEMENT OF HON. TED STEVENS, A U.S. SENATOR FROM THE STATE OF ALASKA

Senator STEVENS. I am most grateful to the chairman and to our ranking minority member for their courtesy in introducing the amendments suggested by the administration to S. 1830. It is also my understanding that following this hearing there will be placed in the hearing record a draft of a bill to incorporate the suggestions of the Alaska native groups. And it is most important in my mind that we all have available actual amendments to one bill—and that is S. 1830—so that we can proceed as quickly as possible to resolve the differences in the suggestions presented to the committee.

I think it is important again to note the number of Alaskans who are here to assist the committee in its consideration of this measure, which is so important to all of the people of Alaska. We have worked together on this matter in a spirit of bipartisan cooperation which I am certain will continue.

It is important for us to keep foremost in our minds that we are attempting to substitute the judgment of the Congress for that of the court system in attempting to resolve this problem, which has so long hampered the development of our Alaska native people and the resources of the State of Alaska.

The land freeze which was imposed by the last administration, and has been continued by this one at the specific request of this committee, will expire at the end of this Congress. I am hopeful that we will be able to resolve the issue during this Congress, and on behalf of all Alaskans I want to again publicly thank the chairman and all the members of this committee for their efforts on behalf of our people.

We are also grateful to all of the foundations and private individuals who have given so freely of their time to help us on this problem.

Senator GRAVEL. Mr. Chairman.

The CHAIRMAN. The Senator from Alaska.

Senator GRAVEL. I also have a statement, Mr. Chairman.

The CHAIRMAN. You may proceed.

Senator GRAVEL. Thank you, Mr. Chairman.

STATEMENT OF HON. MIKE GRAVEL, A U.S. SENATOR FROM THE STATE OF ALASKA

Senator GRAVEL. Mr. Chairman, it is my belief that these hearings today of the Interior and Insular Affairs Committee will bring the U.S. Senate significantly closer to passing into law an Alaska Native Land Claims Act. It is my understanding that during these hearings we will be presented with the detailed positions of the Alaska Federation of Natives, the Department of the Interior, and the State of Alaska. If this is indeed the case, and even though there may be irreconcilable differences among those positions and differences even among those and other groups and concerned agencies who will also submit testimony. I feel that the time has arrived at the conclusion of these hearings to begin committee and Senate action of a positive nature on this issue. It is the responsibility of this committee then to sift and weigh the testimony presented here and in the past and ultimately present to the full Senate a piece of legislation which reflects the real desires and rights of Alaska natives and also recognizes the responsibility of this body to all of the citizens of Alaska and the Nation.

I have expressed in the past and reiterate here my feeling that the native people of Alaska have a legitimate grievance which may be asserted in litigation. It is in the best interests, however, of the native people, the State of Alaska and the Nation that their claims be acted upon legislatively in the Congress. I look forward to these hearings in anticipation of gaining the kind of information and knowledge which will enable the U.S. Senate to act fairly and quickly toward resolution of this long standing and meritorious grievance.

The CHAIRMAN. Secretary Hickel, you may proceed.

STATEMENT OF HON. WALTER J. HICKEL, SECRETARY OF THE DEPARTMENT OF THE INTERIOR; ACCOMPANIED BY FRANK BRACKEN, LEGISLATIVE COUNSEL; MITCHELL MELICH, SOLICITOR; HARRISON LOESCH, ASSISTANT SECRETARY, PUBLIC LAND MANAGEMENT

Secretary HICKEL. Thank you, Mr. Chairman.

First I would like to introduce those that are up here with me. On my left, Mr. Melich, my Solicitor, and on my immediate right, Frank Bracken, Legislative Counsel, and on the far right, Harrison Loesch, Assistant Secretary of Public Land Management.

Mr. Chairman, I have a very detailed statement here that I would like to submit for the record, and a general statement, much shorter, that I would like to read.

The CHAIRMAN. The detailed statment will be included following your summary statement. You may proceed with your statement.

Secretary HICKEL. Mr. Chairman and members of the Senate Interior and Insular Affairs Committee:

I know that you, Mr. Chairman, and the committee, are extremely interested in helping bring about a just, fair, and equitable solution to the claims of the Alaska natives.

It has been a pleasure to work with you and to witness the determined efforts which you are putting forth to reach this goal and speed and wisdom.

Consequently, I am genuinely pleased to be here today, and to have this opportunity to discuss with you the Interior Department's proposal for the settlement of the Alaska native claims which has recently been introduced by the chairman and the ranking minority member of this committee as an amendment to S. 1830.

We hope by the enactment of this legislation to achieve full opportunity for Alaskan natives.

In the words of the title of this bill, "S. 1830, as amended," would "provide for the settlement of certain land claims of Alaska natives, and for other purposes."

However, these technical words really don't tell the whole story, as the chairman and other members of this committee are deeply aware, from their intense interest in this problem.

We have witnessed social and economic progress on such a grand scale in recent decades that man's vocabulary can hardly provide enough adjectives to honor these achievements.

At the same time roughly 20 percent of the population of the State of Alaska—its Eskimo, Indian, and Aleut citizens—has faced economic and social conditions so limited—and so depressed—that Ambassador Sargent Shriver, while he served as head of the Office of Equal Opportunity, called their condition "worse than anything I ever witnessed in Appalachia."

Just over 100 years ago, our Nation acquired from Russia title to the vast and mysterious land we know as Alaska.

But since that time, we have failed to meet the moral obligations which should have gone hand-in-hand with the legal obligations of that purchase.

Alaska's native citizens have received far more promises than positive action to really solve problems.

Passage of this legislation will be the major step in fulfilling these past promises—the ultimate effort in meeting both our moral and legal responsibilities to these forgotten Americans.

As you recall, at the time of my confirmation hearings before this committee, the question of native land claims was thoroughly discussed. I made it clear that I consider it the responsibility of the Secretary of the Interior and Congress to resolve the native land claims question as quickly as possible.

Because of the intensive—and cooperative—efforts of all those involved in this matter, we are moving toward that goal.

We are demonstrating together that we want to solve problems, instead of creating new ones.

Mr. Chairman, we are prepared today to examine in detail the provisions of our proposed amendments to S. 1830.

But first I would like to consider the provisions of the Interior Department's proposal—not as the Secretary of the Interior—but as one of 200 million individual Americans.

I am convinced that we have sometimes attempted to solve the problems facing our native Americans by forcing on them policies not of their design.

Far too often we have failed to give adequate consideration to the strong and vibrant cultures of the various peoples represented.

We have smothered their cultures with our own ignorance, and this ignorance has been witnessed on a grand scale in Alaska.

This must be changed—and it can only be changed by listening to the Alaskan natives, and by treating them as equal partners—not as junior partners.

We have adopted a full partnership approach to the preparation of the measure before you for consideration today.

Proof of this full partnership is clearly evident in this room today—we have natives, Senators, lawyers, and administration executives meeting together—to consider together—to solve problems together.

Mr. Chairman, this bill should bring full and final settlement of all native land claims against the United States in Alaska.

It will also terminate claims pending before the Indian Claims Commission.

But most important, it will do these things fairly, and it will bring great new opportunities to our native Alaskans—rather than stifle them.

A major provision of this legislation is the section establishing a three-man Federal Commission—to be known as the Alaska Native Commission—which will work in Alaska—with Alaskans—to see that every native receives all of the benefits to which he is entitled under this legislation.

The legislation also establishes an Alaska Native Development Corporation, and provides that it will be responsible for promoting the economic development of the Alaska natives to the fullest extent possible.

To do this, we need one essential ingredient: Money.

We consider the sum of $500 million to be a generous yet equitable settlement of Alaska's native land claims. The language of our proposal, which has the full support of this administration, guarantees to the Alaska natives that the full $500 million will be paid in equal

installments to the Alaska Native Development Corporation over a period of 20 years.

We provide for a method of permanent appropriation which will accomplish this objective.

Land is also a vital need for the Alaska natives, and that need has been recognized in this legislation.

The legislation provides for the withdrawal of public land for all the native villages involved in this settlement, with the withdrawal to include the township enclosing the villages, plus the townships that are contiguous to each village.

Within a period of 1 year from the effective date of the withdrawal, each native village will be entitled to select—from the eight contiguous townships—an area equivalent to one additional township.

The legislation also provides that in addition to the surface rights the locatable minerals shall be patented to the villages.

From the land withdrawn and selected, the Secretary is authorized to patent up to 10 million acres to the native villages for subsistence use and expansion. We should recognize that many Alaska natives still depend on the land for subsistence, and will continue to do so in the future.

We also propose that each Alaska native shall receive a patent of the surface and locatable minerals for the land upon which he resides.

In summary, Mr. Chairman, the Interior Department's proposal combines a cash and land grant settlement for the Alaska natives.

The cash portion of this settlement is paid to the Alaska Native Development Corporation and the benefits will be realized by each Alaska native through his ownership of 10 shares of stock in this corporation. Over the period of time the opportunities and prospects for a statewide corporation of this magnitude to contribute to the economic development of the Alaska natives is far reaching.

The land grant portion of this settlement provides that each native village will be entitled to receive up to 46,080 acres of land which will cover the surface and locatable minerals surrounding the village. In addition, each Alaska native will be entitled to a patent of up to 160 acres which will include the surface and locatable minerals to the land on which he resides if he does not reside in the township area patented to a village.

It is the Department's feeling that all natives, whether living within or outside a metropolitan area, should share in the land settlement as well.

For this reason, we have also provided that all adult Alaska natives living outside the withdrawn area shall be entitled to the surface rights of up to 160 acres in those areas designated by the Secretary for that purpose.

The Department feels that the combination of these two methods of settlement provide an equitable solution to the native land claims in Alaska.

These men, women, and children—now citizens of this Nation—have lived on this land since time immemorial. If this Government is to meet its commitment to these citizens we must get on with the job at hand.

To do that we need this bill, for it is not a mere promise—it is action—it is what President Nixon meant—I believe—when he said:

America's Indian and Eskimo citizens want—and rightly seek—many things . . . many of them long denied. But they cannot fully achieve them in this society until the economic stepping stones of meaningful and productive opportunity are laid in place.

Thank you, Mr. Chairman. I will be glad to answer any questions concerning this legislation.

The CHAIRMAN. Mr. Secretary, suppose that as a part of the settlement the Congress make provision for a certain portion of the oil and gas receipts in the Outer Continental Shelf to be turned over to the corporation, with a specific ceiling on the amount in terms of dollars that would be available. In other words, in trying to put together the whole package you provide for land and you provide for cash payments and you also grant an election to the natives as to whether or not they might want to include in that settlement an option that they could exercise to obtain certain portions, and I do not know what it should or would be, of the oil and gas receipts from the Outer Continental Shelf. Alaska, as we know, has 60 percent of the Outer Continental Shelf of the United States. The information I have is that there is a great potential in this area. Would you care to comment on that?

Secretary HICKEL. Mr. Chairman, I would be glad to. This had been proposed as an idea once before by my predecessor, and I think that our position is that the Outer Continental Shelf in Alaska has not yet been explored. Its real potential is unknown. We think like you, and rightfully so, that this has great potential, but any percentage of receipts is an unknown figure. It could be any figure that you and I might want to arrive at. It could be a hundred million, it could be a billion over time.

We thought it would be more equitable and the Federal Government would know once and for all how much this is going to cost, if we could agree on a flat cash settlement, and then the natives themselves would know how to plan for the next 20 years. It was for that reason that we wanted to have a fixed amount so the natives could plan how to use this money over the next 20 years, and $500 million was arrived at. That was one of the criteria by which we arrived at the $500 million, along with others, which I would be glad to explain to you if you like.

The CHAIRMAN. Well, I know the Budget Bureau had raised the question earlier about an unlimited arrangement with no minimums or maximums. This they objected to. They wanted a ceiling on it. But I want to explore the possibility of utilizing this as an income source in the future. It is true, to some extent, uncertain, and I am not suggesting that it be a final settlement, but it might be a means of sustaining the natives over a period of time and giving them a permanent stake and share in Alaska's mineral development.

I raise this question because this week or next week, in the next 10 days, the United Nations is once again considering a proposed draft convention or treaty to make available a portion of what might be a part of the Outer Continental Shelf for the undeveloped areas of the world.

Now, and we have yet to define our boundary line on the Outer Continental Shelf, and it seems to me that we have underdeveloped people in Alaska, the natives. They deserve some consideration. I personally want to explore this matter very carefully. I have come to no conclusion on this, but it would be a rather peculiar situation if

we take a portion of the Outer Continental Shelf and turn it over to a United Nation's entity for underdeveloped nations and do not give any consideration to the Alaska natives. Now, Alaska contains 60 percent of our Outer Continental Shelf: I am raising this question and trying to be provocative. We have some distinguished witnesses in the audience and maybe they will want to think about it a little bit, inasmuch as this matter is before the United Nations in a preliminary form once again.

Senator Allott?

Senator ALLOTT. Thank you, Mr. Chairman. I am very happy that we are making progress on this very important bill.

In particular I want to join with those remarks of the chairman concerning the Outer Continental Shelf, and I would hope that before we conclude this we might have the observations of Dr. Orlo Childs, president of the Colorado School of Mines, who made a very enlightened presentation to the Public Land Law Review Commission a few weeks ago as to what he considered to be a logical resolution of where the Outer Continental Shelf limits should be, and where they should lie. Like the chairman, I am concerned that through the United Nations we might undertake to utilize the resources of our own Outer Continental Shelf to help the undeveloped nations of the world when we have a lot of development to do not only in Alaska but in the whole country. I am sure that all of these matters will be clearly aired here.

The CHAIRMAN. And I want to add, too, that there is a large element of speculation with regard to lands proposed to be turned over to the natives. The income that might be obtainable, whether it be from oil and gas receipts, or mining operations, is subject to conjecture. It is in this area of the bill that we want to consider the possible utilization of receipts—oil and gas receipts from the Outer Continental Shelf—as a means, of one portion at least, of a settlement.

Senator Anderson, do you have any questions at this time?

Senator ANDERSON. What did we acquire from the Russians?

Secretary HICKEL. What did we acquire?

Senator ANDERSON. Yes.

Secretary HICKEL. Well, I think it is probably a legal question, or requires a legal answer, but I would think that we acquired rights and title to Alaska in the purchase from Russia in 1867. This is what is being contested by the Alaska natives. We acquired all surface and mineral rights, in essence and I think we probably thought we acquired fee simple title to Alaska. But as was pointed out to me, we recognized the original rights in the purchase agreement.

The CHAIRMAN. Senator Jordan?

Senator JORDAN. Thank you, Mr. Chairman.

Mr. Secretary, first I would like to know how we determine who is a valid, bona fide Alaska native.

Secretary HICKEL. Well, in the bill we have pointed out that they must have a quarter native blood, and then beyond that to be fair, so that we did not disenfranchise any native person. The Commission would determine who qualifies as a native. I would like to point out and digress a moment. In years past, it has not been too long ago, there were not any birth records and so in many cases it might be difficult to prove who would have aboriginal rights and who would not.

So, we have spelled out in the bill that the Commission will hear appeals from persons claiming aboriginal rights and they will determine who will qualify as an Alaska native, other than someone who has a quarter degree native blood.

Senator JORDAN. Are the records being kept in a way now that that can be accurately determined?

Secretary HICKEL. Yes, Senator. But, for those who have lived there for many years there may be no record.

Senator JORDAN. Why did you depart from your participation in the program before and settle now on a program for cash and land distribution only?

Secretary HICKEL. Well, Senator, as I testified before this committee a couple of months ago, at that time I stated that we supported the $500 million cash settlement. At no time did we support a percentage settlement.

Senator JORDAN. As I understand your land program would call for the awarding to each town or to each village the township upon which they reside in.

Secretary HICKEL. Yes.

Senator JORDAN. And in addition, an additional township to be selected by the members of the village from the eight contiguous townships surrounding the township of their residence?

Secretary HICKEL. That is right, Senator.

Senator JORDAN. What constitutes a village, how many people?

Secretary HICKEL. I think we have listed roughly 196 villages that would qualify under this act.

Senator JORDAN. 196 villages?

Secretary HICKLE. Yes, and the land grant is up two townships. It would depend on the size of the village and its location. In some areas more land is required for subsistence. For example, more will be needed in the central part of Alaska, than for example, in the southeastern part of Alaska.

Senator JORDAN. Irrespective of the size of the village, the upper limit on the land would be 46,080 acres?

Secretary HICKEL. Right.

Senator JORDAN. Two townships?

Secretary HICKEL. That is right, and in the southeastern, the Tlingit-Haida villages, that is down in the southeastern part of Alaska, they are limited to one township.

Senator JORDAN. As I understand it, then, over a period of 20 years, each Alaska native would qualify for a cash payment of nearly $10,000?

Secretary HICKEL. About $5,000.

Senator JORDON. $500 million and 53,000 natives?

Secretary HICKEL. You are taking the value of the stock. We took the $500 million over 20 years and discounted it by 4⅝ percent.

Senator JORDAN. For present value?

Secretary HICKEL. Yes, because they will not get it all until the end of 20 years. It comes out to about $5,000 per native.

Senator JORDAN. The present value would be only about half of what it would be at maturity?

Secretary HICKEL. Yes. It would be worth about $322 million on a discount basis.

Senator JORDAN. In addition to that, each native is entitled to 160 acres?

Secretary HICKEL. Up to 160 acres, if he is not living in a village.

Senator JORDAN. With the full mineral rights?

Secretary HICKEL. Not oil and gas, the locatable minerals.

Senator JORDAN. The locatable minerals, the hardrock minerals?

Secretary HICKEL. Right.

Senator JORDAN. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. The Chair is going to turn over the chairmanship to Senator Metcalf, who conducted the hearings previously, both here and in Alaska. Senator Metcalf has spent a lot of time on this matter, and I will ask him to resume the chairmanship.

Senator Bible?

Senator BIBLE. Thank you, Mr. Chairman. I do not know whether the question is properly directed to Secretary Hickel or someone on his staff, but whatever final form this particular bill takes, and whether there is a $500 million payment or not, my concern is with section 7(h) of the bill, which in effect makes an appropriation of $24,250,000 for fiscal year 1971 and then $25 million for each of the 19 years thereafter.

Now, as a member of the Appropriations Committee—Senator Allott, the ranking minority member of this committee is also a member of that committee, and I think we are the only two that are on both the Interior and the Appropriations Committees—I know the great difficulty that has been encountered in the past in making firm commitments of this kind. We have always run into problems and there are some exceptions, but generally, the Appropriations Committees, both in the Senate and perhaps more in the House, are jealous of their prerogatives. They do not want you to bypass the appropriations process.

On the other hand, I am equally led to the idea that whatever final determination the Congress makes it should be something that Alaska natives can rely on faithfully. We just have too many examples of passing congressional acts that are not implemented or properly carried out by the appropriations process, and one of the best examples is the impacted aid bill, in the educational area. There we have told school districts that we will appropriate a certain amount of money each year, but we do not do it. They plan their budgets and they make their plans in accordance with a commitment which the Federal Government makes, but which is not carried out by the dollars that go into the commitment.

The thing that intrigues me and concerns me is this. Does the Budget Bureau, or has the Budget Bureau given you complete clearance on this method of handling the payment of $500 million?

Mr. HICKEL. Yes, they have.

Senator BIBLE. Has this been discussed with the Chairman of the Appropriations Committee of the Senate and the House?

Secretary HICKEL. No, it has not. I only took it to the executive branch in terms of the Bureau of the Budget. Feeling that the Congress could do what they wanted to, I have not discussed it with the chairmen of the Appropriations Committees.

Senator BIBLE. Well, I raise that simply as a caveat, because whatever evolves from these hearings, certainly the Congress of the United States should not be misleading anyone.

Secretary HICKEL. Correct.

Senator BIBLE. And if we say we are going to pay $500 million into this corporation, then we should be prepared to do so, and not 5 years or 10 years from now say, well, this year we are not going to make that payment. We have found this time and time again in our legislative and appropriations processes, and I simply commend it to you for your further examination and attention because it is just a question of fair dealing and honesty. I think this can very well be a sticky point as you move along in trying to work out a fair solution to this problem, and I suggest that to you.

Thank you, Mr. Chairman.

Secretary HICKEL. Thank you.

Senator METCALF (presiding). Senator Stevens.

Senator STEVENS. Thank you, Mr. Chairman.

Secretary Hickel, I do not have the provision, but it is my understanding that the recommendation has been made that all reserves be revoked as a position of the administration. Is that right?

Secretary HICKEL. Yes, all of the existing reserves.

Senator STEVENS. I am concerned——

Secretary HICKEL. Except the Metlakatla.

Senator STEVENS. Metlakatla is excepted?

Secretary HICKEL. Right.

Senator STEVENS. There is also the Tyonek Reservation and some other reservations, and with the permission of the chairman I would like to put them in the record at this point, but I would like to have your feeling about preserving the reservations that presently have oil and gas rights of the Alaska native people such as the Tyoneks. Now, they have long-term contracts on some of those gas reserves there that are being used for the generation of power that now provides the power to the platform and inlets, and I understand there are some contracts that are in the Venetie area, also. I may be wrong about the reserves there, but there is one of the reserves up north that has some contracts on it, and I would like to be able to preserve the rights of the native people that presently have leaseable minerals, at least.

Secretary HICKEL. Those will be protected. Those are not touched.

Senator STEVENS. Thank you very much.

Thank you. I will pass any further questions at this time.

Senator METCALF. Senator Church.

Senator CHURCH. Mr. Secretary, would this bill create a precedent, a pattern, a standard to which other Indian Tribes elsewhere in the country might later aspire, if it is enacted by the Congress? If so, why so; and if not, why not?

Secretary HICKEL. Well, Mr. Chairman, thank you, Senator. I will try to answer that.

I think there is a unique situation here in the Alaska settlement. I think in the various native settlements of the "South 48" so to speak, it was handled in a different manner. Some were settled by the Court of Claims. However we think that the Alaskan situation, whether

there there is a legal claim or not, and I am not going to judge, at least there is a moral claim, could be expedited and done by legislation which otherwise might take many, many years to do through the Court of Claims. We thought that due to the fact that the settlement had taken so long, the legislative route was an expeditious way to settle a very difficult problem. Does that answer the question you had in mind?

Senator CHURCH. Well, I would like to know, when you referred to the Alaskan situation as being unique as compared to the situation that confronts other Indians, how and why is it unique?

Secretary HICKEL. Pardon?

Senator CHURCH. How and why is the situation confronting the Alaska Indians unique as compared to that which confronts other Indians?

Secretary HICKEL. Mr. Chairman, yes, Senator, I will try to remember the legal reasons. I think it was in the registration of the claims that expired in 1949. Is that right, Senator? Would you like to address yourself to that, or do you remember that?

Senator STEVENS. If I may respond to that, the problem was in terms of registration of claims and any advice that was available to the Alaska natives at that time. It is felt that they did not have the proper advice, the full advice in order to protect their rights at that time. They did not really start protecting their rights until the State started selecting lands under the Statehood Act, after we achieved statehood, and these claims really arise as protests to state selections in the first instance, and the uniqueness of this is that Congress in 1884 and again 1900, and again in the Statehood Act specifically stated that Congress reserved the right to itself, the right to determine the nature and the extent of the Alaska native rights to land and other rights that they might have, such as fishing rights.

We believe that this is unique. It is 102 years now since the acquisition of the Territory and now the State, and that if we injected this into the judicial process it could well be another 25 years, and the need is very acute now. I think this is a summary of the uniqueness of this as compared to other claims which have been pending over the years, and these were not really well defined, I do not think, until probably 1959, after statehood.

Secretary HICKEL. And if I might say, Mr. Chairman, also Senator, that in the "Lower 48" there were treaties and there were other methods on reservations which were not in Alaska, and as the Statehood bill itself says, the Congress shall address itself to this problem.

Senator CHURCH. You have had no reservations in Alaska; have none now?

Secretary HICKEL. Well, I think there are two small ones, the Metlakatla is one, which was a group that came in from Canada in Southeast Alaska, and it is on an island, and the Tyonek Reservation is the other, which I cannot recall the size, about 26,000 acres, I think. But, that is all.

Senator CHURCH. Will this bill have the effect of creating reservations by setting over land to the villages?

Secretary HICKEL. No, Senator. That is what we are trying to get away from.

Senator CHURCH. How would this land be held? It will not be held in trust by the Government?

Secretary HICKEL. No.

Senator CHURCH. And the patent land and the full fee will go to the Indian people?

Secretary HICKEL. That is right, and they can dispose of that land any way they wish. It will be a common ownership in the village, whatever that village might be, but they have the right to do whatever they want to with the land.

Senator CHURCH. Would the land be taxable?

Secretary HICKEL. Yes.

Senator CHURCH. And would it be owned by the village, by the entity of government that controls and governs the village?

Secretary HICKEL. But they would have the full authority to do whatever they wanted to do with it.

And I might point out, the individual would own his land that he was living on, that piece, whatever it might be. It would be like a city. There would be public lands, and private lands, and even the public lands they would have complete control over.

Senator CHURCH. Would every Indian under the contemplation of this bill have a right to at least 160 acres of land or only those that lived outside of the village area?

Secretary HICKEL. That is right; those that might be living in a city or in some other place.

Senator METCALF. Would the Senator yield?

Senator CHURCH. Yes.

Senator METCALF. But this is not analogous to allotments that were made to Indian lands in the 48 States so that it would not be held in trust and under the control of the Bureau of Indian Affairs? This would be land in fee?

Secretary HICKEL. That is right.

Senator CHURCH. Now, for those individual natives living in the village, you said that each one would have land that he would own separate from the village?

Secretary HICKEL. Well, it would be in the complex of the township or two townships. It would be in that area, but he would have title to the spot he lived on.

Senator CHURCH. And does the bill prescribe the size of the allotment to each individual within the village?

Secretary HICKEL. The Commission will determine that.

Senator CHURCH. The Commission will determine that?

Secretary HICKEL. Yes.

Senator CHURCH. What concerns me is that we do not proceed in a way that would create again the kind of heirship problems that plague other Indian people. I suppose we avoid that by avoiding the trust ownership; is that correct?

Secretary HICKEL. That is right, Senator.

Senator CHURCH. Now, as to the stock that each native is to own in the development corporation; is that stock alienable?

Secretary HICKEL. Not for 20 years, not until after the Federal Government has paid in the full amount of money.

Senator CHURCH. And after the 20-year period, then what may the individual owner do with the stock?

Secretary HICKEL. Anything that he would want to do with it, Senator. It would be his private ownership.

Senator CHURCH. To sell it? Could he sell it to any non-Indian?

Secretary HICKEL. Yes. He coud just trade it as any other stock that he might have.

Senator CHURCH. It would be just like any other kind of property and he would be totally free at that time to do as he pleases?

Secretary HICKEL. That is right, and there would be no Government regulations. He would be free to sell it—or do anything that he wanted to do.

Senator CHURCH. Now, if this bill passes will that end the jurisdiction that the Bureau of Indian Affairs may have in Alaska over Indian people?

Secretary HICKEL. It would not do it legally, but I think as a practical thing they would not be involved in society and in the mainstream of everything that happened. Therefore, the reason for an agency such as the BIA in Alaska, would not be necessary after the passage of this act, and this is one of the things that I think is good.

Senator CHURCH. Do you not think that it might—well, I agree on that. As a matter of fact, it seems to me that it might be wise to include in this legislation some provision that would make it clear that this is meant to be a solution for the Indian problem which will remove the Bureau of Indian Affairs from further jurisdiction and control over the Indian peoples of Alaska.

Secretary HICKEL. Well, Senator, we have not gone into that. It might be something to think about. But, we think as a practical matter, at the end of 20 years we should have a very ongoing entity, and the reason for BIA, which is there now, would just not be there.

However, the BIA will assume, and will continue to have the responsibilities of education during this period of time.

Senator CHURCH. What happens to the stock owned by an Indian who dies within the 20-year period? How does it pass, who probates the estate?

Secretary HICKEL. Well, he could will it, as anyone could will it. It could pass on to his heirs, if he so wished that.

Senator CHURCH. What about the probate, does that come within the jurisdiction of the ——

Secretary HICKEL. I did not hear the first part of the question.

Senator CHURCH. What about the probate? Would that come within the jurisdiction of the regular probate courts; would that be subject to the Bureau of Indian Affairs control?

Secretary HICKEL. No, the Bureau of Indian Affairs really will not have anything to do with this corporation, nothing whatsoever. The act establishes a three-man commission, a presidentially appointed commission.

Senator CHURCH. But, to get back to my question, if an Indian were to die within the 20-year period without a will——

Secretary HICKEL. It would be a regular probate.

Senator CHURCH. It would be a regular probate, just as any other citizen?

Secretary HICKEL. Like any other person.

Senator CHURCH. Any other person?

Secretary HICKEL. Any other person.

Senator CHURCH. I think that is all I have, Mr. Chairman.

Senator METCALF. Senator Gravel.

Senator GRAVEL. Thank you, Mr. Chairman. The Senator from Idaho has raised some interesting points, particularly, the relationship of this settlement to the dissolution of the BIA, particularly as it involves the functions in the State of Alaska.

I would like to make a statement concerning the philosophy of control between the original bill, S. 1830 and the administration's present bill. I can see that for 20 years the control would be vested not in the hands of the Alaska natives, but would repose finally with the Commission and then with the Secretary of the Interior for that full 20-year period. If I remember your opening statement correctly, philosophically you support the transfer of as much responsibility into the hands of the native people as possible.

Now, I wonder if we could reconcile this difference. I feel it is a very important point since actual control rests with the Federal Government and not with the natives.

Secretary HICKEL. Well, thank you, Senator. I think those are interesting points, but one observation: The Secretary of the Interior would not be involved in the Commission and the Commission cannot be removed except for cause.

Senator GRAVEL. If I could just make one point.

Secretary HICKEL. Yes.

Senator GRAVEL. As I read the bill, the filing of the articles of incorporation and any amendments for the Alaska Native Development Corp. are approved by the Alaska Native Commission and then by the Secretary of the Interior. There could be an inference here that any changes in the articles of incorporation, which go to the center of whatever can happen to this corporation, must meet with the final approval of the Secretary and not the Alaska natives.

Now, the articles are approved by the Commission and the Secretary and they do not become operable. An inference could be made that any change in the articles could rest solely with the Commission and the Secretary. The Alaska Native Development Corp. for the 20-year period is controlled by a President-appointed, five-man majority of the nine-man board, the four remaining members being elected by the stockholders, so that is a point.

Now, the other bill had a mechanism wherein there was no approval necessary for the Secretary of the Interior for the articles of incorporation, and there is a mechanism in this bill which would in essence give control to the Commission and the five President-appointed board-members.

Secretary HICKEL. I can explain that.

Senator GRAVEL. Please do.

Secretary HICKEL. Yes. Our bill has an ongoing commitment from the Federal Government for 20 years, and as long as the Federal Government is paying this money in every year we felt that it should have some guidelines and some say-so. But yet, at the same time the Commission members will be subject to the same rules regarding conflict of interest as any other Federal employees.

So, those three Commissioners could have no conflict of interest, to serve on the Commission.

Senator GRAVEL. Well, I do not hold the management of Indian Affairs by Indians as a conflict of interest by any definition. The point that I am making is that for 20 years, through indirection or direction there is nothing of substance that can be done by this Corporation, without the approval of the Secretary of the Interior or the Commission.

Secretary HICKEL. That is not true.

Senator GRAVEL. Well, then——

Mr. BRACKEN. I think there is some confusion here, Senator, between the Commission and the Board of Directors of the Corporation. As far as the Commission is concerned, the President will appoint three Commissioners, as the Secretary pointed out, and it is our feeling that these Commissioners should be subject to the normal conflict of interest regulations because they will be determining who qualifies as a native, what land the native will be entitled to, and that sort of thing.

As far as the Board of Directors is concerned, the President will appoint five of the nine members of the Board of Directors and the natives will elect the remaining four. It is only with respect to the filing of the original articles of incorporation and any amendments that the Secretary will have any control, so to speak. The reason, as the Secretary pointed out, was that the executive branch, or the administration, wanted to retain control of the Board of Directors is that the $500 million will be paid in under our arrangement, on a guaranteed arrangement over a 20-year period; because of this fact, the administration should then have the control as far as the Board of Directors was concerned.

Senator GRAVEL. Well, that is exactly the point that I am making. That is that there is a difference of philosophy here between the two bills, and the point of difference is that the control under the initial bill is placed into the hands of the natives in a very short period, 3 years.

Under the proposal that you are now making, real control is not given the Alaska natives until 20 years have expired, in essence a generation.

Secretary HICKEL. But, Senator, the other bill did not go on for 20 years. That bill only went for 10 years and cut off at the end of 10 years.

Senator GRAVEL. Well, for whatever reason, the point I am making is that the legacy that the natives may be acquiring with this legislation is not going to be a true and equal legacy to what I would acquire as a white man because of the fact that the Federal Government will have final control over that legacy for 20 years, and I think that is a major point of philosophical difference.

Secretary HICKEL. It is a good point, Senator, but likewise, let us be practical for a moment. If you borrowed $500 million from the bank and they paid you this amount of money over 20 years, I am sure that the bank would want some control over that until at least it was paid out. That is the kind of thing.

Senator GRAVEL. But here again, and I will rest on my philosophical point, the natives of Alaska are not borrowing this money, they are being paid what is their due, and that is the basic rationale.

Now, either we can accept philosophically that the settlement they acquire is their due, and that it is not a loan; or we accept that we are doing some economic development and social work and giving them moneys in order to ease our consciences. I believe that we are paying a legal claim; and within the settlement mechanism, I would hope to see the natives manage their own affairs.

When we make statements about the natives managing their own affairs and then in the mechanism of settlements prohibit such management, we are deluding ourselves.

In my mind the present legislation proposed by the administration, and I mean no reflection on you as you probably will not be Secretary of the Interior in 20 years, will allow a person sitting in the Secretary's office 15 years from now to say yes or no to the vital affairs of that Corporation.

Secretary HICKEL. No, that is not true.

Senator GRAVEL. Well, then you re-explain it to me, because as I understand it, the articles of incorporation are the heart of the matter. If the Secretary can restructure the articles of incorporation through disapproving or approving changes then he can restructure the function of the corporation and the use of its assets. Maybe not directly, but indirectly, this is indeed possible.

Mr. BRACKEN. Well, I think the only thing that might arise 15 years from now in your example, that the Secretary of the Interior would have any control over, would be the filing of an amendment.

Senator GRAVEL. Well, that is exactly the point I make.

Mr. BRACKEN. Short of that——

Senator GRAVEL. That is the point that I am making.

Mr. BRACKEN. But if you give the corporation broad powers, which we have suggested we do, in our bill, this would then be a part of the original articles as filed. From then on the Secretary of the Interior would have no control.

Senator GRAVEL. That is the whole point at issue, the administration has kept the trump card which is secretarial approval of basic corporate amendments. And that trump card can be translated through an administrative body which is very powerful in relationship to the indigenous people in question.

Mr. BRACKEN. The Secretary has no control over how they invest the funds or what they do as far as operating the Corporation for the full 20-year period.

Senator GRAVEL. Well, I submit that anybody who is knowledgeable of corporate affairs is well aware that if I have a trump card with a large corporation and it comes down to the final crunch, I can lay it on the table and demand that nothing can be changed unless you meet my requirements.

Secretary HICKEL. Just the amendment.

Senator GRAVEL. Well——

Mr. MELICH. What the Senator, I think, is concerned about in relation to the bill that sets up the original five incorporators would be a majority in the corporation.

Senator GRAVEL. No, I am concerned about the changes that can be made. I think initially this thing will get off to a good flying start and that the administration will agree to things, but I think what will happen is that bureaucratic rigor mortis will set in, and the ad-

ministrators will not be wanting to give up any power or control that they have. What we will have is 20 years of wardship of which we have had enough.

Mr. MELICH. Your concern is that they could not amend the articles of incorporation to give the economy to the natives during this 20-year period?

Senator GRAVEL. I think that is a very key point. The articles of incorporation is the piece of paper that the natives will live by. Everything else in the pyramid rests on those articles of incorporation.

Secretary HICKEL. That is a very good point.

Senator GRAVEL. Now, if somebody can change that with or without the approval of the Secretary of the Interior, then the whole pyramid changes also. People have a sense of recognizing where power rests when they are dealing with ancillary problems.

Secretary HICKEL. They can operate within the articles as originally set out without any approval from the Secretary.

Senator GRAVEL. I do not question your good will and desire because philosophically you stated that right at the beginning of your statement, and I only take issue with this point which I think is in conflict with your initial philosophical statement.

Secretary HICKEL. I think that is a very good point. It is not the intent, but as we have the original articles of incorporation and the natives want to operate within whatever they agree upon at that point, they would never have to ask the Secretary of the Interior for anything.

Senator GRAVEL. Well, they will never have to go back to the well.

Secretary HICKEL. If they wanted to amend the articles.

Senator GRAVEL. That is correct.

Secretary HICKEL. Yes; that is right. That is a good point.

Senator GRAVEL. Thank you.

Mr. Chairman, that is all I have at this time.

Senator METCALF. Senator Hansen?

Senator HANSEN. I have no questions, Mr. Chairman.

Senator METCALF. Senator Bellmon?

Senator BELLMON. Mr. Chairman, I have a couple of questions I would like to ask. I missed part of the hearing and perhaps these matters have been covered.

Mr. Secretary, I am from Oklahoma and, of course, we have many Indian tribes in our State. I have observed that periodically, and sometimes almost yearly, a new claim is brought up and a new settlement is finally arrived at, after the Indians have paid a very high attorney fee. Then there is always a great deal of trouble as to how these funds are divided and how they are administered, and as a result our Indian citizens are kept in a state of suspense over a long period of time, and also they live with the hope that even after those funds are used that there will be another claim that can be brought out and other funds derived from the Federal Treasury. Will this bill settle, once and for all, all of the native land claims against the Federal Government?

Secretary HICKEL. Yes, Senator.

Senator BELLMON. There will not be any lawyer coming up here figuring out another way that he can get some more fees and some more money?

Secretary HICKEL. Well, I am not an attorney, and he might figure out something, but the legislation spells it out.

Senator BELLMON. But this is the final settlement of all the native land claims in the State of Alaska?

Secretary HICKEL. That is the full intent and that is what it says.

Senator BELLMON. One other question, and again I am not sure that I did my arithmetic properly, but as I understand it there are 50,000 Alaska natives.

Secretary HICKEL. Approximately 60,000 or 65,000 and the roll will tell.

Senator BELLMON. Has the roll been perfected?

Secretary HICKEL. No.

Senator BELLMON. And you are using the one-eighth blood——

Secretary HICKEL. One-quarter.

Senator BELLMON. One-quarter blood?

Secretary HICKEL. Plus the commission if there are any inequities. There will be a three-man commission. As I mentioned before, Senator, that in past years, not too long ago, there were not any records kept of births, and some people who are living there today have no records of their birth, some of the real oldtimers. Since we did not want to disenfranchise anyone, they can appeal to the three-man commission if they want to prove their rights as a native, and then the commission decision would be final. This is for those who cannot prove a quarter degree native blood.

Senator BELLMON. Well, now, as I understand it, using the figure of 60,000, which is in the description of the bill, your letter, the total sum of money figures out to $5,367 per native over a 20-year period, and if I have done my arithmetic right, that is $268 per native per year.

Secretary HICKEL. That is right.

Senator BELLMON. And this money goes into the corporation?

Secretary HICKEL. Right.

Senator BELLMON. This money would be used according to the way the corporation decides to use it?

Secretary HICKEL. That is right.

Senator BELLMON. As I understood the discussion between you and Senator Gravel, there will be no effort made to tell the corporation how to use those resources?

Secretary HICKEL. The corporation has the authority to do whatever they want to, under the board of directors' approval.

Senator BELLMON. That is all, Mr. Chairman.

Senator STEVENS. Mr. Chairman, may I identify for the record——

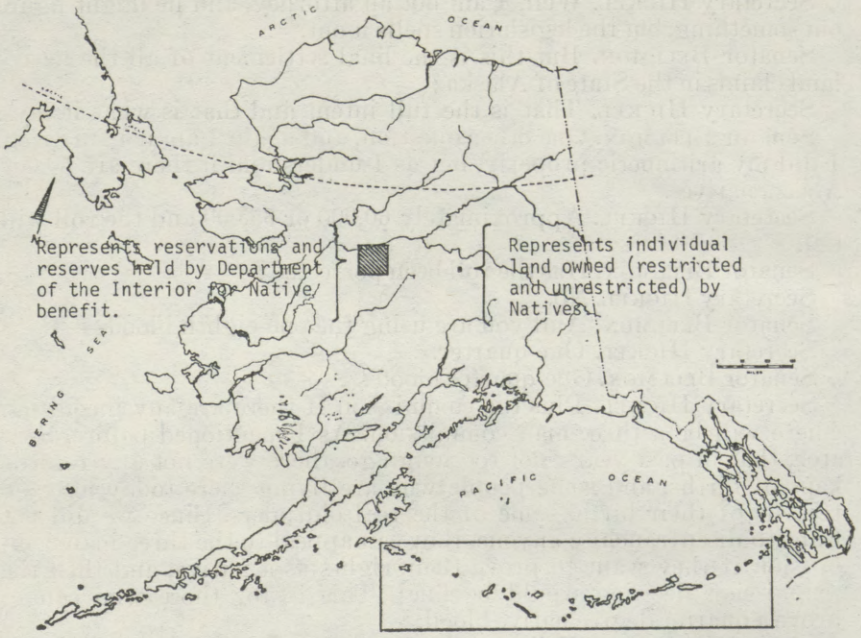
Senator METCALF. The Senator from Alaska.

Senator STEVENS. I asked previously that the acreages of the various reservations for native purposes in Alaska be placed in the record.

Senator METCALF. Without objection, so ordered.

(The material referred to follows:)

FIGURE II–5.—PORTRAYAL OF ACREAGE OWNED BY NATIVES OR HELD BY THE DEPARTMENT OF THE INTERIOR FOR THEIR BENEFIT, JUNE 30, 1967



Source: Records of Realty Office, U.S. Department of the Interior, Bureau of Indian Affairs, Juneau Area, Juneau, Alaska, May 1968.

About 900 families of the landless two-thirds share the use of—but not the ownership of—slightly more than 4 million acres on 23 reserves, withdrawals or reservations.[20] Certainty of tenure on these lands ranges from the security of the Congressionally-established Annette Island Reservation[21] to the insecurity of the Executive Order Reserve[22] of the village of Eklutna, now shrunken by successive land orders from 328,000 acres to 1,819 acres. The smallest of all Native reserves is 75 acres near Fort Yukon, inhabited today by two families; the largest, the Venetie Reserve of 1,408,000 acres shared by two villages and some 215 Native people.[23]

Another 2.6 million acres of mountain tops and glaciers in southeastern Alaska is held in "Indian title" by the Tlingit-Haida Indians, as recognized by the U.S. Court of Claims.[24]

If all lands to which even a color of title exists are added together, the total reaches only 6,615,500 acres. And the title, and management of all of this—except for 500 acres—is held by the federal government. (See Figure II–5.)

Without title and without tenure, the vast majority of the rural people live on, range over, and use the public domain as they have for generations.

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[20] Includes 1,253,000 acres in Reindeer Reserves. See Figures VI–3, VI–4, VI–5, VI–6, in Chapter IV following.

[21] Act of March 3, 1891 (26 Stat. 1101).

[22] Executive Order No. 4778, December 5, 1927, as modified by Executive Order No. 6734 of June 8, 1938, Departmental Order October 30, 1936, and Departmental Order of December 18, 1942, partially revoked by Public Land Order 2427, July 5, 1961. Lands were reduced from 9,221.17 acres to the present acreage of 1,819 acres.

[23] See Footnote 19 above.

[24] *The Tlingit and Haida Indians of Alaska and Harry Douglas, et al. Intervenors* v. *United States* (Ct. Cl. 47900, January 19, 1968).

Senator METCALF. The Senator from Colorado has some additional questions.

Senator ALLOTT. Mr. Chairman, I intended to raise some of these later; perhaps these are four very short matters that I want to call attention to at this time, while we have the Secretary and his Assistant and the Solicitor here. The first one is in section 3(e) you define public lands.

Now, please explain for the sake of the record what effect this definition would have upon lands that have been tentatively approved for selection by the State of Alaska.

Secretary HICKEL. It will not affect the tentatively approved lands.

Senator ALLOTT. Not in any way?

Secretary HICKEL. Not in any way.

Senator ALLOTT. All right. The Senator from Nevada spoke previously about the section 7(h) which provides for an appropriation, and this is not, as you know, an appropriations committee. It is a legislative committee, and I think we are going to have to find some other means, some other techniques of handling that matter. I am sure that the chairman of the appropriations committee—and probably each member, including the Senator from Colorado, would object to handling the appropriations in this way. It can be done in other ways, and perhaps you and your Solicitor can direct your attention to this. I understand fully your purpose in doing this. You have to nail this down. Otherwise we do not have an effective and meaningful bill here, but there are other techniques that might be used in doing this, without making what might become an affront to the appropriations committees.

The third item is that in section 10(j) is a provision that all income derived from the leases, contracts, or permits continue to be received by the lessor, contractor, or permitter after passage.

Since we are speaking of public lands, which will be conveyed to villages and individuals in settling these claims, can we justify the retention of the income by the Government from the land if the title to the land goes over to the patentee?

Secretary HICKEL. Senator, we do not agree with that portion of the bill.

Senator ALLOTT. You what?

Secretary HICKEL. We do not agree with that portion of the bill. We think that once the native people have title to the land they should receive whatever moneys are forthcoming from any lease that might be there.

Senator ALLOTT. In other words, this is a provision of the bill that other Departments of the Government insisted be in there, but that you individually, Mr. Secretary, do not agree with?

Secretary HICKEL. That is absolutely right, Senator.

Senator ALLOTT. You agree, then, that really if you are going to turn this land over you have got to turn it over?

Secretary HICKEL. That is right.

Senator ALLOTT. The last matter I would like to raise is in section 11. Section 11 modifies the Mineral Leasing Act to make all leasing on a competitive-bidding basis. Well, as you know, the Public Land Law Review Commission is deeply involved in a study of this issue and is

expected to make recommendations which, if adopted, would apply to all States equally. Are we not, by taking such action, undercutting the Public Land Law Review Commission and predetermining for them how the Mineral Leasing Act should be amended or modified or rewritten, realizing, of course, that they have no legislative authority?

Also, the bill appears not to be clear as to what point competitive bidding is to take place. As an example, title 30, section 261, authorizes the Secretary of the Interior to grant prospecting permits to qualified applicants for 2,560 acres and for a period of 2 years. If the applicant discovers sodium, just using sodium as an example, within that period, and shows to the Secretary that a valuable deposit has been found, and that the land is valuable, therefore—and I am quoting from the law: "the permittee shall be entitled to lease any or all of the land embraced in the prospecting permit." If the term "competitive bidding" is applied to the time that the lease is issued, then we have nullified that language in the statute I have just referred to.

Further, no one would be foolhardy enough to expend their energies and money to mine and to prospect and find valuable sodium deposits and then be required to bid competitively against others who have expended nothing for prospecting.

If, on the other hand, competitive bidding is to apply at the point of the issuance of the prospecting permit, I doubt very seriously that you will experience any competitive bidding unless the lands are already known to contain valuable deposits.

If they are known to contain valuable deposits, the second sentence in section 262 provides that the Secretary shall lease such lands by competitive bidding. A similar situation, of course, prevails with respect to sulfur, potash, phosphates, and coal.

Would you care to comment on that?

Secretary HICKEL. Well, Senator, I will have the Solicitor comment on that.

Mr. MELICH. Senator, I am aware of the problem that you raise and, of course, it is a troublesome one. The rationale behind the language in this bill is because of the tremendous excitement of boom proportions that apparently exist in Alaska over the attempt to acquire through lease these minerals under the Mineral Leasing Act. It was felt that maybe competitive bidding should be applied up there. I do not think that we intend by this section to change the existing procedure which exists in the "Lower 48." This is one of the areas that concerns me, that you are talking about. I don't think that we intend by this to tell to the Public Land Law Review Commission that you should change the procedure you are now following in the "Lower 48."

Now, certainly, as you know, and I am aware, there is some discussion going on that maybe the regulations and the law should be changed and everything should be competitive but I share your concern: what do you do with the prospecting permit, do you put that out competitively? Because if you do, what is going to happen? I do not know whether we could get the maximum development of our natural resources as you mentioned. But this provision, as I read it and construe it, only applies to the lands which are in the State of Alaska and under this bill.

Senator ALLOTT. Well, of course, I do see, perhaps a stifling of development. On the other hand, if you apply the competitive-bidding aspect at the time of the issuance of the lease, I think the facts are that you will to a great extent stifle location of mineral deposits. No one is going to expend x dollars in defining the nature and content of the mineral deposits knowing that after he has expended x number of dollars that he is going to have to come in and bid competitively for the lease. This is the problem I am really posing here. I think that before we finish this we have got to find a way to be sure that we are defining this so that it will have two effects: (1) not provide an unfair windfall for anybody, (2) provide the greatest stimulus for development.

Mr. MELICH. I agree with you. I do not think that if a prospecting permit is issued and a discovery is made, that the person who makes the discovery ought to be subjected at that point to competitive bidding. I think that he has made the discovery and he certainly ought to have the preference to negotiate with the Department for a lease.

Senator ALLOTT. Well, that is my belief. I will yield to the Senator from Alaska.

Senator STEVENS. I looked into the background of this and it is my understanding, Senator, that this recommendation originally came from the Federal Field Committee and they were concerned with the revocation of the large reserves, such as the naval petroleum reserves, and I would suggest that none of these areas that they are revoking have ever been available for leasing, so if we could limit this competitive-bidding clause to the areas that had previously been reserved and not available for leasing, then we would be preserving it in the area so that there would be no windfall, and at the time, the same time, we would not be imposing competitive bidding on previous noncompetitive lands that have been under the Federal jurisdiction in the past.

I would suggest to you that that would be a solution. We could limit this, and if you would permit me I would like to ask Mr. Melich, what he thinks about that.

Mr. MELICH. I think that may be a reasonable answer to it, Senator.

Senator STEVENS. Thank you very much.

Mr. MELICH. I do not think that we intend by this legislation to stifle the development in the State of Alaska. I think the Senators are well aware of this problem.

Senator ALLOTT. Well, I again thank you, Mr. Chairman. I thought it best to raise some of these points now, while we had all of these people here, and we can be thinking about them as we proceed.

Senator METCALF. I have some questions for the Secretary. Under the unanimous consent agreement under which we are operating on the ABM, this hearing is supposed to end at 12 o'clock. I propose to run through until the bell rings, at 1:15. I do not know whether we will be able to get permission to come back and sit this afternoon. We are trying to work out something between now and 1:15 for a meeting tomorrow. We have another engagement for this room and we are trying to get another hearing room. Many of the members of our committee are on the Public Land Law Review Commission that is scheduled for here, but we want to accommodate ourselves to the people who have come so far and who have important testimony to present.

So, we will run through until the bell rings for the rollcall at 1:15, and then I do not know whether, at this time, we will be back this afternoon, or not.

Senator JORDAN. Mr. Chairman, may I ask one question for the purposes of clarification?

Senator Allott asked a question having to do with what happens to the income from these Government lands that have been ceded to the villages in fee, and you say the retention of that income by the Government was not your contribution to the bill. Whose contribution was it? Who insisted on that being in there?

Secretary HICKEL. You ask a difficult question, Senator. Could I answer it this way: That some of the Government agencies that have contracts on public land proposed it, or do you want to be more specific on that?

Senator JORDAN. No; just so that we get them on the witness list, Mr. Chairman. I would like to inquire what they have in mind. I would not want to invite the wrong people here.

Secretary HICKEL. Well, the problem was, if I can clarify it, from those that had surface rights to the lands that had very valuable resources on them such as timber.

Senator JORDAN. That is close enough.

Senator STEVENS. Mr. Chairman, may I ask one question?

Senator METCALF. Surely.

Senator STEVENS. Mr. Secretary, it is my understanding that the township provisions of the land grant in the bill that you have recommended, the amendments you have recommended, do not apply to the Pribilof Islands.

Now, as you know, I have a bill to turn the Pribilof Islands over to the State, but would you have any objection if we included here some provision so that the Pribilof people could obtain title to the lands that they actually use for their villages?

Secretary HICKEL. We do not have any objection.

Senator STEVENS. Thank you very much.

Thank you, Mr. Chairman.

Senator METCALF. Thank you very much.

Now, Mr. Secretary, in line with some of the questions that the Senator from Oklahoma was asking you, we have read the statement that has been presented by Mr. Goldberg, counsel to the Alaska Federation of Natives, and in the course of reading that statement we note that the Department has yet to approve an attorney's contract between the Alaska Federation of Natives and their counsel. Can you tell us when this contract will be aproved?

Secretary HICKEL. I will turn this over to the Solicitor.

Mr. MELICH. Mr. Chairman, the Solicitor's Office has had a number of conferences with the Goldberg firm. We have submitted to them our changes in the proposed contract that they originally submitted to us, and they have returned that contract with their proposed changes and we are reviewing those now.

There has not been a contract approved by the Secretary for the Goldberg firm.

Senator METCALF. Well, now when that contract is approved, can you make it available to the committee?

Mr. MELICH. Yes, we will. We have furnished, as I recall, to this committee, and to the House committee, I think, all of the contracts that we have of record now with attorneys who are representing the native groups in Alaska.

Senator METCALF. Yes.

Mr. MELICH. And we will furnish any new ones that come through.

Senator METCALF. Unless there is objection, those contracts will be made a part of the record.

(The contracts referred to follow:)

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SOLICITOR,
Washington, D.C., August 22, 1969.

HON. HENRY M. JACKSON,
Chairman, Committee on Interior and Insular Affairs, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: In response to your recent request for current information concerning attorney contracts with Alaska native groups or associations, we are pleased to submit the following:

1. *Approved Contracts:* Enclosed are copies of Departmentally approved contracts currently in force under which Alaska native groups have retained legal counsel. These contracts, which cover general counsel, claims, and special services work, include all such agreements reflected in our files in Washington. Prior to this time contracts of this nature were finally approved at the field level pursuant to delegated authority. While we believe we now have in Washington copies of all such contracts, should any additional agreements approved in the field be furnished us, copies will be forwarded to you.

For your convenience, we have summarized the major provisions of these contracts on the enclosed charts. They indicate one special services, four general counsel and twelve claims contracts presently in effect.

2. *Disapproved Contracts*: Enclosed also are copies of attorney contracts with associations of native groups or individuals which have been recently disapproved by this Department. As with contracts currently in force, we have summarized the major provisions of these disapproved contracts on an enclosed chart.

If we may be of further service in this matter, please let us know.

Sincerely yours,

MITCHELL MELICH,
Solicitor.

[The full text of the contracts between the Native Groups and their attorneys have been made a part of the Committee's official files.]

GENERAL COUNSEL AND SPECIAL SERVICES CONTRACTS WITH ALASKA VILLAGES AND GROUPS IN FORCE AS OF JULY 1, 1969

Native group	Attorney	Contract No.	Contract term	Type of contract	Compensation	Date of approval
Metlakatla Indian community	Strasser, Spiegelberg, Fried, Frank & Kampelman (Washington, D.C.).	14–20–0650–988	3-year extension, Nov. 1, 1967, to Nov. 1, 1970.	General counsel	$8,000 retainer for 1 year; $5,000 thereafter.	Oct. 23, 1967.
Do	Preston, Thorgrumson, Horowitz, Starim & Ellis (Seattle, Wash.).	8EC1420C–011		Special services (legal opinion on docking and mooring facility note).	$1,200 fee	June 13, 1967.
Chilkat Indian village	Connor, Engstrom & Engstrom (Juneau).	14–20–0300–1488	3 years, May 20, 1966, to May 20, 1969.	General counsel	$30 per hour while in Juneau, $150 per hour otherwise fees and expenses not to exceed $2,000 per annum.	May 20, 1966.
Tlingit and Haida Indians	Weissbrodt & Weissbrodt (Washington, D.C.).	8EC1420C–0055	18 months, Apr. 26, 1968, to Oct. 26, 1969.	do	$18,000 annual retainer	May 14, 1968.
Native village of Tyonek	McCutcheon, Groh & Benkert (Anchorage).	14–20–0300–1536	3 years, Aug. 1, 1966, to Aug. 1, 1969.	do	$36,000 annual retainer	Mar. 2, 1967.

CLAIMS ATTORNEY CONTRACTS WITH ALASKA VILLAGES OR GROUPS IN FORCE AS OF JULY 1, 1969

Native village of Eklutna	McCutcheon, Groh & Benkert (Anchorage).	8EC1420–C0053	10 years, Apr. 2, 1968, to Apr. 2, 1978.	Claims against United States and Alaska.	Contingent Quantum Meruit fee not to exceed 10 percent of recovery.	Apr. 21, 1968.
Native village of Unalakleet	McCutcheon, Groh & Benkert and John W. Hendrickson (Anchorage).	8EC1420–C0029	10 years, Oct. 25, 1967, to Oct. 25, 1977.	Claims against United States.	do	Oct. 25, 1967.
Natives of Chitina	McCutcheon, Groh & Benkert (Anchorage).	E00C1420–0075	10 years, July 28, 1968, to July 28, 1978.	Claims against United States and Alaska.	do	July 29, 1968.
Native village of Tatitlek	do	8EC1420–C0056	10 years, Feb. 18, 1968, to Feb. 18, 1978.	do	do	May 15, 1968.
Native village of Shungnak	do	E00C1420–0067	10 years, Dec. 11, 1965, to Dec. 1, 1975.	Claims against United States.	do	July 9, 1968.

Native village of Minto	Jackson & Fenton (Fairbanks)	E00C1420-0082	10 years, Dec. 11, 1965, to Dec. 11, 1975.	Claims against United States and others.	do	Aug. 22, 1968.
Native village of Nenana	Jackson & Fenton (Fairbanks)	EooC1420-0082	10 years, Mar. 22, 1967, to Mar. 22, 1977.	do	do	Do.
Native village of Tanacross	do	E00C1420-0084	10 years, Apr. 5, 1967, to Apr. 5, 1977.	do	do	Do.
Tee-hit-ton Indians	James C. Peacock	42495	2d 5-year extension, June 12, 1967 to June 12, 1972.	Indian Claims Commission work.	do	June 1967.
Tlingit and Haida Indians	Weissbrodt & Weissbrodt (Washington, D.C.)	14-20-650-528	10-year extension, Mar. 5, 1965, to Mar. 5, 1975.	Claims against United States.	do	Apr. 26, 1966.
Nisgah Tribe of Indians	Frederick Paul (Seattle)	14-20-0300-1343	10 years, Mar. 20, 1964, to Mar. 20, 1974.	do	do	Mar. 20, 1964.
St. Paul Island Aleut community.	Donald H. Green (Washington, D.C.) Roger G. Conner (Juneau).	14-20-0300-1501	10 years, July 14, 1966, to July 14, 1976.	do	do	July 14, 1966.

ATTORNEY CONTRACTS WITH ASSOCIATIONS OF ALASKA, NATIVE GROUPS, OR INDIVIDUALS, DISAPPROVED AS OF JULY 1, 1969

Association	Attorney	Contract date	Type of contract	Date of disapproval
Arctic Slope Native Association	Frederick Paul (Seattle)	Nov. 20, 1967	Claims against United States or others	Feb. 26, 1968
Chugah Native Association	McCutcheon, Groh & Benkert (Anchorage)	Feb. 21, 1968	Claims against United States and Alaska	May 27, 1968
Arctic Native Brotherhood, Seward Penninsula Native Association, and Nome Eskimo Community.	do	Jan. 31, 1968	do	Do.
Copper River Indian Land Association	do	Jan. 24, 1968	do	Apr. 8, 1968
Bristol Bay Native Association	do	Feb. 2, 1968	do	May 27, 1968

Senator METCALF. Now, what about those other contracts with regional native attorneys? They have already been furnished to the committee?

Mr. MELICH. I think that they have. I know that they were furnished to the House committee as Chairman Aspinall requested them, but I will check our office to find out if they were furnished to this committee.

Senator METCALF. They have not been furnished to the committee—if they have not, I request that they be supplied to the committee and be made a part of the record of the committee.

Mr. MELICH. Yes, Mr. Chairman.

Senator STEVENS. Mr. Chairman?

Senator MELCALF. Yes.

Senator STEVENS. Is it my understanding that all attorney contracts for any Alaskan native group will be a part of this record?

Senator METCALF. That is correct, unless there is objection.

Senator STEVENS. No, I think that is a very valid suggestion.

Senator METCALF. The valuation of lands, Mr. Secretary, based on the concept that we have about a dollar an acre, and on that concept we have $500 million settlement. In view of both the North Slope Oil Discovery and some of the other improvement of values of the land in Alaska, do you think that that is an accurate estimate of value?

Secretary HICKEL. I was just trying to justify that much money and how really small it was.

Senator METCALF. Well, you are based upon the 500 million acres——

Secretary HICKEL. 365 million acres.

Senator METCALF. Yes, you are about putting this into $4 billion if the value is proved to be about an average of $10 an acre?

Secretary HICKEL. That is right. I was just showing that on the most conservative method of $1 an acre, which the Court of Claims over a period of time has used, even if you want to go back to the turn of the century, a dollar an acre is not exorbitant. That is my point, it is not exorbitant.

Senator METCALF. We have a treaty entered into and agreed to by Indians in Montana where they were paid 10 cents an acre, and these were remote arid lands that were comparable maybe to some of these lands, and we feel that it was entered into under duress and that is why we passed the Indians Claims Commission Act, and that is why there have been substantial awards and judgments since we have entered into that, and I think perhaps a dollar is fair.

But, suppose we take a look and say this land is worth $10 an acre. Do you think the Federal Government should pay $4 billion?

Secretary HICKEL. I do not think that is realistic, Mr. Chairman. All we were trying to do was justify the $500 million, and show that it was equitable on a per capita basis or on the value of the land at the time of taking at a dollar an acre.

Senator METCALF. I have just been informed that attorneys' contracts were not submitted to this committee and that they were submitted to the House committee, and I respectfully request that they be submitted.

Mr. MELICH. You will have them.

Senator METCALF. The chairman, a few weeks ago, requested you to prepare a report on the brief on behalf of the Canadian companies

which take the position that S. 1830 should continue the priority of mineral lease applications filed during the land periods, and how are you getting along with your work on that?

Mr. MELICH. Well, we are replying to that, Mr. Chairman. I have a draft copy of the letter, and I do not know whether it was mailed out or not, but we have a reply, and if it has not been mailed, it will be mailed shortly.

Senator METCALF. Well, I hope so, because before this hearing is over I wish to have it before the committee and the chairman may want to make it a part of the record.

Now, it was my privilege, Mr. Secretary, to hear you and Mr. Notti, and many of the other Alaskan witnesses when we held field hearings in Alaska, and a most eloquent and persuasive and sometimes vehement case was put into the record on behalf of the native claims.

I feel that Congress has acted wisely in taking these away from the Indian Claims Commission and out of the court process in handling them themselves.

I was an early sponsor of a bill for the Indian Claims Commission, and I know they are doing the best that they can, but it is taking a long time, a drawnout process, and so I hope that you will continue to keep us advised and continue to work with us in working out this problem, and as we suggested during your confirmation hearings, during this session of Congress.

Secretary HICKEL. That is right.

Senator METCALF. Are there any further questions?

Senator STEVENS. I just thought of one more, if I may, Mr. Chairman. We are all trying to achieve a degree of fairness in this, and I would like to ask, Mr. Secretary, the reservation of the leasable minerals in the two township areas is going to prove quite controversial, I am sure. I wondered what your position would be if we provided that the leasable, the title to the leasable minerals would be vested in the statewide corporation?

Secretary HICKEL. Senator, Mr. Chairman, this was debated at great length and decided that it was one of the things that had to remain in the Federal Government. They felt, due to the fact that the natives were going to receive a $500 million cash settlement, rather than a percentage of the minerals, the mineral rights should remain in the Federal Government.

The Federal Government felt that it should retain the leasable minerals and pay out the fixed sum of $500 million.

Senator STEVENS. Well, understanding the rationale behind it, that you did not want an unfairness in the settlement as far as particular villages were concerned, if the leasable minerals, the title to those was placed in the statewide corporation, all Alaska natives would benefit equally, and as I understand it, there are very few of these villages that are in sedimentary basins so that there cannot be too much involved in the title to the township lands as far as leasable minerals is concerned.

Now, maybe Mr. Loesch can tell us whether that is incorrect. It is my understanding, and is my understanding incorrect as to the number of these villages that are actually in sedimentary basins?

Mr. LOESCH. No, I think your understanding is correct, Senator. Very few. I forget the number, but it is very few. I do not think that

is really the problem here. The problem, it seems to me, is whether in providing for a substantial cash settlement, this should be entirely in lieu of the leasable minerals or not. I think in the final analysis that is up to the Congress.

Senator STEVENS. Thank you very much.

Thank you, Mr. Chairman.

Senator METCALF. Now, Mr. Loesch, do you have a statement?

Mr. LOESCH. No, Senator, I do not. I would be glad to answer any questions directed to me.

Senator METCALF. Mr. Secretary, do your colleagues have any further statements?

Senator STEVENS. Well, Mr. Chairman, I am sure that Mr. Loesch had a prepared statement.

Secretary HICKEL. I ask that this be a part of the record, as my statement, Mr. Chairman.

Secretary METCALF. Without objection, this statement of Mr. Loesch as prepared will be incorporated in the record following the statement of Secretary Hickel.

(The statements referred to follow:)

STATEMENT OF WALTER J. HICKEL, SECRETARY, DEPARTMENT OF THE INTERIOR

Mr. Chairman and Members of the Senate Interior and Insular Affairs Committee:

I know that you, Mr. Chairman, and the Committee, are extremely interested in helping bring about a just, fair, and equitable solution to the claims of the Alaska Natives.

It has been a pleasure to work with you and to witness the determined efforts which you are putting forth to reach this goal with speed and wisdom.

Consequently, I am genuinely pleased to be here today, and to have this opportunity to discuss with you the Interior Department's proposal for the settlement of the Alaska Native claims which has recently been introduced by the Chairman and the ranking minority member of this Committee as an amendment to S. 1830. We hope by the enactment of this legislation to achieve full opportunity for Alaskan Natives.

In the words of the title of this bill, "S. 1830, as amended," would "provide for the settlement of certain land claims of Alaska Natives, and for other purposes."

However, these technical words really don't tell the whole story, as the Chairman and other members of this Committee are deeply aware, from their intense interest in this problem.

We have witnessed social and economic progress on such a grand scale in recent decades that man's vocabulary can hardly provide enough adjectives to honor these achievements.

At the same time roughly 20 percent of the population of the State of Alaska—its Eskimo, Indian and Aleut citizens—has faced economic and social conditions so limited—and so depressed—that Ambassador Sargent Shriver, while he served as head of the Office of Equal Opportunity, called their condition "worse than anything I ever witnessed in Appalachia."

Just over one hundred years ago, our Nation acquired from Russia title to the vast and mysterious land we know as Alaska.

But since that time, we have failed to meet the moral obligations which should have gone hand-in-hand with the legal obligations of that purchase.

Alaska's Native citizens have received far more promises than positive action to really solve problems.

Passage of this legislation will be the major step in fulfilling these past promises . . . the ultimate effort in meeting both our moral and legal responsibilities to these forgotten Americans.

At the time of my confirmation hearings before this Committee, the question of Native Land Claims was thoroughly discussed. I made it clear that I consider it the responsibility of the Secretary of the Interior and Congress to resolve the Native Land Claims question as quickly as possible.

Because of the intensive—and cooperative—efforts of all those involved in this matter, we are moving toward that goal. We are demonstrating together that we want to *solve* problems, instead of creating new ones.

Mr. Chairman, we are prepared today to examine in detail the provisions of our proposed amendments to S. 1830.

But first I would like to consider the provisions of the Interior Department's proposal—not as the Secretary of the Interior—but as one of 200 million individual Americans.

I am convinced that we have sometimes attempted to "solve" the problems facing our Native Americans by forcing on them policies not of their design.

Far too often we have failed to give adequate consideration to the strong and vibrant cultures of the various peoples represented.

We have smothered their cultures with our own ignorance, and this ignorance has been witnessed on a grand scale in Alaska.

This must be changed—and it can only be changed by listening to the Alaskan Natives, and by treating them as *equal* partners—not as *junior* partners.

We have adopted a "full partnership" approach to the preparation of the measure before you for consideration today.

Proof of this full partnership is clearly evident in this room today—Native, Senator, Lawyer and Administration Executive meet *together*—to consider together *to solve problems together.*

Mr. Chairman, this bill should bring full and final settlement of all Native land claims against the United States in Alaska. It will also terminate claims pending before the Indian Claims Commission.

But most important, it will do these things fairly, and it will bring great new opportunities to our Native Alaskans . . . rather than stifle them.

A major provision of this legislation is the section establishing a three-man Federal Commission—to be known as the Alaska Native Commission—which will work *in* Alaska—*with* Alaskans—to see that every Native receives all of the benefits to which he is entitled under this legislation.

The legislation also establishes an Alaska Native Development Corporation, and provides that it will be responsible for promoting the economic development of the Alaskan Natives to the fullest extent possible.

To do this, we need one essential ingredient: *Money.*

We consider the sum of $500 million to be a generous yet equitable settlement of Alaska's Native Land Claims. The language of our proposal, which has the full support of this Administration, guarantees to the Alaskan Natives that the full $500 million will be paid in equal installments to the Alaska Native Development Corporation over a period of 20 years.

We provide for a method of permanent appropriation which will accomplish this objective.

Land is also a vital need for the Alaska Natives, and that need has been recognized in this legislation.

The legislation provides for the withdrawal of public land for all the Native villages involved in this settlement, with the withdrawal to include the township enclosing the villages, plus the townships that are contiguous to each village.

Within a period of one year from the effective date of the withdrawal, each Native village will be entitled to select—from the eight contiguous townships—an area equivalent to one additional township.

The legislation also provides that in addition to the surface rights the locatable minerals shall be patented to the villages.

From the land withdrawn and selected, the Secretary is authorized to patent up to 10 million acres to the Native villages for subsistence use and expansion. We should recognize that many Alaskan Natives still depend on the land for subsistence, and will continue to do so in the future.

We also propose that each Alaskan Native shall receive a patent of the surface and locatable minerals for the land upon which he resides.

In summary, Mr. Chairman, the Interior Department's proposal combines a cash and land grant settlement for the Alaskan Natives.

The cash portion of this settlement is paid to the Alaska Native Development Corporation and the benefits will be realized by each Alaska Native through his ownership of 10 shares of stock in this corporation. Over the period of time the opportunities and prospects for a state-wide corporation of this magnitude to contribute to the economic development of the Alaska Natives is far reaching.

The land grant portion of this settlement provides that each Native village will be entitled to receive up to 46,080 acres of land which will cover the surface

and locatable minerals surrounding the village. In addition, each Alaska native will be entitled to a patent of up to 160 acres which will include the surface and locatable minerals to the land on which he resides if he does not reside in the township area patented to a village. It is the Department's feeling that all Natives whether living within or outside a metropolitan area should share in the land settlement as well. For this reason, we have also provided that all adult Alaskan Natives living outside the withdrawn area shall be entitled to the surface rights of up to 160 acres in those areas designated by the Secretary for that purpose.

The Department feels that the combination of these two methods of settlement provide an equitable solution to the Native Land Claims in Alaska.

These men, women and children—now citizens of this nation—have lived on this land since time immemorial. If this Government is to meet its commitments to these citizens, we must get on with the job at hand.

To do that we need this bill, for it is not a mere promise . . . it is action . . . it is what President Nixon meant—I believe—when he said:

"America's Indian and Eskimo citizens want—and rightly seek—many things . . . many of them long denied. But they cannot fully achieve them in this society until the economic stepping stones of meaningful and productive opportunity are laid in place."

Thank you, Mr. Chairman . . . I have with me today Assistant Secretary Loesch, Mr. Melich, the Department Solicitor, and Mr. Frank Bracken, the Legislative Counsel, who will be pleased to discuss the details of the bill section by section. We welcome your questions.

Mr. Loesch.

STATEMENT OF HARRISON LOESCH, ASSISTANT SECRETARY, DEPARTMENT OF THE INTERIOR

Mr. Chairman and Members of the Senator Interior and Insular Affairs Committee, I appreciate the opportunity to appear before you today to outline briefly the significant sections of the Interior Department's proposal for the settlement of the Alaska Native claims which has recently been introduced by the Chairman of the Interior and Insular Affairs Committee and the ranking minority member as an amendment to S. 1830.

Section 2 of the bill contains a declaration of policy by the Congress and sets out the purpose of this Act. It sets out the Congressional intention to solve this problem without creating in Alaska any of the institutions that have become associated with Indians and Indian tribes here in the lower 48 States.

Section 3 of the bill contains definitions of terms used in the Act. Subsection (b) defines the term "native" and gives the Commission, created under the bill, the authority to determine who qualifies as a native and thus who will be eligible for benefits. It is the Department's opinion that the Commission is the proper body to make the determination as to an individual's qualification as a native. The definition of "native" excludes all Tsimshian Indians since they are not aboriginal natives of Alaska. This tribe will continue in their present status, including the continuance of their reservation.

We have defined the corporation as a state-wide corporation organized under the laws of Alaska.

We have defined the term "incorporated native village" in this bill because we believe it is necessary to differentiate between a native village and an incorporated native village when these terms are used in the bill.

Section 4 makes the declaration that this bill shall be regarded as full and final settlement and extinguishment of any and all claims against the United States based upon aboriginal right, title, use, or occupancy of land in Alaska by any of the natives. This section also provides for the payment by the corporation of reasonable attorneys' fees and attorneys' expenses, as determined by the Secretary in pursuing before the Indian Claims Commission pending claims dismissed pursuant to this Act. An additional $250,000 is paid to the corporation in fiscal year 1971 for the purpose of paying these fees and expenses.

We believe that it is fair to provide for the payment of these fees and expenses because the bill terminates the claims pending before the Indian Claims Commission, ending the opportunity that the various attorneys would have of being compensated from the award made by the Indian Claims Commission, as is the usual practice.

Section 5 of the bill establishes a three-man Federal Commission which is designated as the Alaska Native Commission which will continue in existence until June 30, 1991. The members of the Commission are appointed by the President with the advice and consent of the Senate and fall under the same laws and regulations relating to conflict of interest that cover other Federal employees.

The Commission is a rotating Commission with each member appointed for a three-year term. The Commission members are subject to removal from office by the President only for inefficiency, neglect of duty, or malfeasance in office.

The section sets out the compensation to be received by the members of the Commission and authorizes necessary travel and transportation expenses. It also provides that the principal office of the Commission shall be located in Alaska, which is appropriate since its primary responsibilities will be there. The bill contemplates that the Commission will do everything possible to make it convenient for the natives to avail themselves of the services of the Commission and gives the Chairman broad authority as to the setting of hearing locations. This means that often the Commission will travel to the natives to hear their cases and make decisions. This should afford a trust and confidence among the natives in the Commission and its operation. Furthermore, all decisions of the Commission are subject to judicial review which adds an additional protection for the natives.

Subsection (i) outlines the duties of the Commission which are summarized as follows:

(1) The determination of who qualified as a native;

(2) The preparation of a roll of natives, as well as the duty to hear the complaints of those denied enrollment;

(3) The appointment of the incorporators of the Alaska Native Development Corporation, and in conjunction with the Secretary of the Interior, to approve the articles of incorporation and amendments thereto before they are filed;

(4) The determination of the land occupied by an individual or organization and the settlement of disputes where any conflicts concerning occupancy may arise;

(5) The issuance of rules and regulations for the filing of applications for patent of land and the acceptance of such applications;

(6) The certification to the Secretary of the Interior of those entitled to patent of land;

(7) The issuance of rules and regulations covering what is historic occupancy of subsistence campsites; and

(8) The submission of reports required by this bill to the Congress.

Section 6 of the bill requires the Commission, under rules and regulations it may issue, to prepare a roll listing all natives living on the effective date of the Act. We believe that the Commission, since it has the authority to determine who qualifies as a native, is the proper body to prepare the roll. The Secretary of the Interior is directed to furnish all reasonable assistance in the preparation of such a roll. The section provides for a hearing and for judicial review for any individuals denied enrollment.

Section 7 of the bill establishes the Alaska Native Development Corporation as an Alaskan Corporation, and subjects it to the provisions of the Act until June 30, 1991. As we stated in our report, we have some concern that under present Alaska corporate law it may not be possible to give the corporation the broad powers set forth in the bill. We believe, however, that this can be worked out satisfactorily with the cooperation of the State of Alaska.

As a means of organizing the corporation, the bill authorizes the Commission to appoint five incorporators, one of whom must be the Chairman of the Commission, who shall take all necessary steps to establish the Corporation, including the filing of the articles of incorporation after approval by the Commission and the Secretary of the Interior. The incorporators will serve as the initial board of directors until the first board is seated. Any amendments to the articles of incorporation must be approved by the Commission and the Secretary of the Interior prior to filing. The Secretary of the Interior is authorized to pay the sum of $1,000,000 to the corporation as paid in capital.

The bill authorizes a nine-man board of directors, five of whom shall be appointed by the President. Four of the Presidential appointments shall be subject to Senate confirmation and the fifth shall be the Chairman of the Commission. The Chairman's service on the board of directors shall be concurrent with his chairmanship of the Commission. The stockholders of the corporation shall elect

four members of the board, such election to take place within 180 days after the issuance of the certificate of incorporation. Membership on the board shall be for a four-year period. We also feel that it is essential to have the natives involved in the operation of corporation as soon as possible. We recognize that the roll of natives will not be complete within the 180-day period, however, it is important to secure native representation on the board as quickly as possible. On June 30, 1991, the term of all board members appointed by the President including the Chairman of the Commission will expire and thereafter the natives will elect all nine board members. We feel it is important, however, for the President to control the appointment of a majority of the members of the board during the time the corporation is subject to the provisions of this Act and is receiving federal funds.

The board of directors are authorized to appoint a president and such other officers as they determine are necessary at rates of compensation established by them. The officers of the corporation are prohibited from engaging in any other business while employed by the corporation. Thus assuming that they will devote their full attention to the affairs of the corporation.

Subsection (e) provides that the corporation shall have one million shares of common stock, without par value, such stock to be divided into such classes of shares as may be authorized by the board. It directs the issuance of ten shares of stock to each enrolled native and prevents the alienation of the shares until June 30, 1991. The prohibition against alienation will prevent a takeover of the corporation by non-native interests during the twenty years when the corporation is receiving federal claims.

The corporation is given very broad powers to promote the economic development of the natives and native villages to the greatest extent possible. This type of authority is necessary to fully maximize the federal monetary contribution for the benefit of the natives.

Limitations are placed on the amount of the corporation's profits and annual federal contributions that can be paid out as dividends or used for unsecured loans in any one fiscal year.

As a means of providing for a federal auditing procedure the Corporation is subject to audit by the General Accounting Office until June 30, 1991.

Subsection (h) provides for a permanent appropriation by the Secretary of the Interior of $24,250,000 in fiscal year 1971 and of $25,000,000 for each of nineteen fiscal years thereafter. The contribution in the first fiscal year is actually $25,250,000, however, $1,000,000 is paid to the capital of the corporation upon its incorporation. The additional $250,000 is to be used by the corporation to pay the attorneys' fees and expenses mentioned previously in connection with claims pending before the Indian Claims Commission.

Since the intent of this legislation is to settle through the legislative process, rather than the judicial process, the aboriginal claims of the natives of Alaska, the Department feels that the natives should be assured of receiving the full amount of the settlement over the twenty year period. The method of permanent appropriation accomplishes this objective.

The sum of $500 million as a fair and equitable settlement can be arrived at by at least two different methods. First, if $1 per acre is established as a fair average value for all of the lands in Alaska, and the native aboriginal claims are recognized for the entire state, the monetary value is approximately $375,296,000. This figure should then be reduced by $12,500,000 which represents the approximately 12,500,000 acres patented to the natives and incorporated native villages under the provisions of the bill. If the sum of $500 million is discounted by 4⅝ percent for a period of twenty years, a present value of the monetary settlement would be approximately $322,000,000. On the other hand if a discount rate of 7 percent, the current long-term rate on federal government bonds is used, the present value would be approximately $267 million. This, therefore, establishes the discounted value of the $500 million as a fair value on a per acre basis. Second, if the value of the $500 million is computed on a per capita basis for each Alaska native the amount is $5,367 per native if a discount rate of 4⅝ percent is used and $4,450 per native if a discount rate of 7 percent is used. On the basis of our investigation of the awards made by the Indian Claims Commission on a per capita basis either one of these figures is reasonable.

Section 8 of the bill provides for the withdrawal of public land, except land withdrawn or reserved for national defense purposes, subject to all valid existing rights, for the 196 native villages listed in this section and for those natives whose primary place of residence is located outside the areas withdrawn and

selected by the villages. The withdrawal is for the township enclosing the listed native villages, and the eight townships that are contiguous to and corner on the township enclosing the native village. Within a period of one year from the effective date of the withdrawal each native village must select, from the eight contiguous and cornering townships, an area equivalent to one township. After the one year period the remaining area in the contiguous and cornering townships is lifted from the withdrawal and the remaining area, i.e., the township enclosing the native village and the area selected equivalent to one additional township will continue to be withdrawn until either patent to a native village or June 30, 1991, whichever occurs first. The withdrawal for the native whose primary place of residence is outside the areas withdrawn and selected by the native villages is for one section and will remain withdrawn until June 30, 1991, unless sooner terminated by the Secretary.

The Section gives the Federal agencies now managing the withdrawn land the authority to continue such management until disposition of the land is made. The section also provides that the minerals located under the land patented under the provisions of this Act shall remain withdrawn until the withdrawal is terminated either by the Secretary of the Interior or by the Congress.

Section 9 directs the Secretary of the Interior to survey the townships withdrawn and areas selected for conveyance to incorporated native villages under the provisions of the legislation. It also sets limitations on the survey authority.

Section 10 provides for conveyance of approximately 12.5 million acres of land to the natives and incorporated native villages. The first conveyances are for lands within the townships withdrawn and areas selected by native villages which are occupied by individuals as a primary place of residence or a primary place of business or occupied by organizations. The patent is for the surface and the locatable imnerals, and is granted without consideration to natives and non-profit organizations, and after payment of fair market value to non-natives and other organizations. The individuals and organizations have a period of ten years within which to apply for the patents.

The second conveyances are for a patent without consideration for the surface and locatable minerals of up to 46,080 acres of withdrawn land to those villages listed in section 8 of the legislation that have incorporated prior to June 30, 1991. There are 196 listed villages and thus the conveyance under this provision could be for a maximum 9,031,680 acres. We have recommended that the land available for patenting to villages be increased from the one township recommended in other legislative proposal up to the equivalent of two townships, except in the case of the Tlingit-Haida villages. The Department does not believe that one township is sufficient for native use as subsistence lands. We should recognize that many Alaska natives still depend upon the land for subsistence to a large degree and will continue to do so into the future. This being true, we believe that each village that qualifies for the patenting of land will need sufficient land to protect the subsistence resources of its citizens. The subsection granting conveyances to the incorporated Tlingit-Haida villages provides for up to only one township per village or an area of only 23,040 acres, however, this tribe has previously been awarded a court of claims judgment.

Subsection (d) provides for the patenting of the surface of tracts, ranging in size from five to sixty acres, from any public land in Alaska except land in the National Parks, National Wildlife Refuges, and National Forest, as well as land withdrawn or reserved for national defense purposes, to those individuals or incorporated native villages who for a period of more than three years prior to the effective date of this legislation used such land for subsistence campsites. These campsites may be located within or outside of withdrawn areas. These areas could total approximately a million acres.

Subsection (e) provides for the patenting of the surface of tracts of up to 2,560 acres to each bonafide reindeer husbandryman whether it be an individual or organization. Each husbandryman could receive several tracts if he shows that they are part of his operation, such as a summer meadow, a winter plot, etc. There are very few known reindeer husbandrymen and this land area will be small in terms of total acreage, probably less than 100,000 acres. The lands available for patenting are subject to the same exceptions as those imposed on the subsistence campsite patents.

Subsections (f), (g), and (h) provide for the patenting of tracts of up to 160 acres to individual natives nineteen years of age or older who qualify under the various sections. Subsection (f) provides for a patent to the native of the land he is occupying as his primary place of residence if this is outside an area withdrawn for a native village but within an area withdrawn for his benefit.

Subsection (g) and (h) provide for a patent in areas classified by the Secretary of the Interior for that purpose, to the surface of land to a native who lives either in a withdrawn area however because of geography it is not possible to withdraw the equivalent of two townships surrounding the area in which he lives or who lives outside of any withdrawn area. Since this bill revokes the Allotment Act as it applies to Alaska natives the Department feels that all Alaska natives should be granted land in the settlement of their aboriginal claims. The maximum acreage patented under these three subsections should not exceed 4.8 million acres.

The section further provides that the Secretary of the Interior shall provide adequate protection to those granted patents by this legislation when he grants prospecting permits or leases for mining or drilling under the land patented. The permittee or lessee must furnish a bond, satisfactory to the Secretary, that would indemnify the surface patentee for any damages caused by his activity.

Section 11 provides that all minerals included under the mineral leasing laws located in all public lands in Alaska shall, after the effective date of the Act, be disposed of by the Secretary only by competitive bidding. This language follows that recommended by the President's Field Committee and has the strong support of the Administration.

Section 12 contains a separate land settlement of the claims of Tlingit-Haida Indians. Since this tribe has already received a court of claims award of approximately $7.5 million this section provides that the tribe retain such award however the ten Tlingit-Haida villages will have withdrawn for their benefit only the township in which the village is located.

We have recommended this solution in order to give the Tlingit-Haida villages a land base for future expansion however at the same time recognizing that the judgment of the Court of Claims was for settlement of the Tlingit-Haida claims against land set aside for the Tongass National Forest.

In line with the extinguishment of all claims pending before the Indian Claims Commission, this section extinguishes the Tlingit-Haida claim to the 2.6 million acres of unappropriated land in Southeast Alaska.

Section 13 of the bill extinguishes the eligibility of all natives covered by this legislation to qualify for allotments under the provisions of the General Allotment Act and the Forest Service Allotment Act. It further repeals the Alaska Native Allotment Act.

Section 14 revokes the reservations and reserves set aside for the Alaska natives, except for the Metlakatla Reservation since the Tsimshian Indians are not included under the Act.

Section 15 requires that the Secretary of the Interior and the Alaska Native Commission submit annual reports to Congress until June 30, 1991, and the filing of a final report thereafter.

Section 16 authorizes the appropriation of those funds, needed by the Secretary of the Interior and the Commission to carry out the provisions of this legislation. This, of course, is in addition to the appropriation for the $500 million to be paid to the corporation.

Section 17, the publication section, and section 18, the section containing the saving clause are standard.

This completes my prepared statement. I have with me this morning members of my staff who are knowledgeable regarding this legislation and we will be happy to answer your questions.

Senator METCALF. Does that conclude your testimony?

Secretary HICKEL. Yes, Mr. Chairman.

Senator METCALF. Thank you very much, Mr. Secretary, and we will be in constant touch with you as we work this out, and will work with you.

The committee is honored to have the Honorable Keith H. Miller, the Governor of Alaska as the next witness.

Governor Miller, it is a great privilege to have you before us and to have your assistance and your counsel. We note that you are accompanied by some of your staff, and, if you will identify them, go right ahead, please.

STATEMENT OF HON. KEITH H. MILLER, GOVERNOR OF THE STATE OF ALASKA; ACCOMPANIED BY G. KENT EDWARDS, ATTORNEY GENERAL; ROBERT PRICE, ASSISTANT ATTORNEY GENERAL; AND ROBERT L. HARTIG

Governor MILLER. Thank you, Mr. Chairman, I would like to introduce those who are here with me today.

First, on my immediate right is the Alaska attorney general, Mr. G. Kent Edwards.

Also, with the department of law on my far right, Mr. Bob Price, and on my left Mr. Bob Hartig.

Mr. Chairman, it is my belief that my prepared testimony does contain the specifics which Chairman Jackson asked for earlier this morning and I feel that there is no repetition with testimony previously given to this committee, so with the Chair's permission, I will proceed.

Senator METCALF. Go right ahead, Governor.

Governor MILLER. Mr. Chairman, and members of the Interior and Insular Affairs Committee, all of us in Alaska appreciate this opportunity for a hearing on Alaska Native land claims. I believe that the holding of this hearing at this time manifests the interest and the concern of this committee for the Alaska Natives and all other Alaskans.

I hope that my testimony today will be of some assistance to the committee in its deliberations on this very complex question.

The resolution of these claims is not an easy matter for Congress because the objective of the settlement is a comprehensive resolution of Alaska Native land claims. It is comprehensive because it deals not only with monetary compensation for the extinguishment of Indian title to Alaska, but also with the land base of the Alaska Native villages. The effects of whatever legislation is enacted on the subject of Alaska Native land claims will have a lasting influence on the daily lives of Alaska Natives, and, therefore, it is important that we carefully consider this legislation.

The starting point for any legislation which deals with the Alaska Native is the Alaska Native himself. During the past several weeks, I, and representatives of my administration, have met with the Natives and their attorneys in order to discuss the resolution of this important issue. We have had a full and frank exchange of views, and I believe that these conferences were constructive for all of us. We are in agreement on many aspects of the settlement, but, as is the case with any discussion in a democratic society, there are differences of opinion on some aspects.

The recommendations of the Department of the Interior were also considered before I took a position on the settlement. That department has special competence on questions which involve the Indian and public lands.

Further, Secretary Hickel, as the former Governor of Alaska, has a personal familiarity with the problems to which we address ourselves.

There are certain principles which I have taken into consideration in the preparation of my testimony, and, I would like to emphasize them now so that it will be possible for the committee to appreciate my remarks on specific matters.

The basic premise of an Indian land claims settlement is that any such settlement must be the subject of legislation by Congress.

In the history of the United States, there have been such settlements for almost all American Indians, with the single exception of the Alaska Natives, apart from the Tlingit-Haida settlement in 1935 which related only to southeast Alaska.

The Congress has established a fair and honorable record in its Indian settlements with Indians in the "lower 48," and the aim of my testimony is to secure that same treatment for the Alaska Natives.

The anomaly of the situation of the Alaska Natives is that the Indian Claims Commission Act of 1946 was inapplicable to many of the Alaska Native claims.

In other instances, no one counseled the Natives that they had claims under that law. There are very few Alaska Native claims filed with the Indian Claims Commission, and it is now too late to file further claims. The consequence of this is that most Alaskan Natives are in the position of being the only American Indian people that are excluded from the Indian Claims Commission Act.

I would like to recall for you at this time a statment made by President Truman in 1946 on the occasion of his signing the Indian Claims Act in 1946:

> This bill makes perfectly clear what many men and women here and abroad have failed to recognize, that in our transactions with the Indian tribes we have at least since the Northwest Ordinance of 1787 set for ourselves the standard of fair and honorable dealings, pledging respect for all Indian property rights. Instead of confiscating Indian lands, we have purchased from the tribes that once owned this continent, more than 90 percent of the public domain, paying them approximately $800 million in the process. It would be a miracle if in the course of these dealings—the largest real estate transaction in history—we had not made some mistakes and occasionally failed to live up to the precise terms of our treaties and agreements with some 200 tribes. But we stand ready to submit all such controversies to the judgment of impartial tribunals. We stand ready to correct any mistakes we have made.

I believe that this quotation best states the perspective from which the committee may judge an Alaska Native claims settlement.

There is a history of honorable dealings by the United States with the American Indian, and, in this case of omission of settlement, I firmly hope that Congress will rectify this injustice.

The settlement should award compensation for the extinguishment of the Alaska Native claims, and this compensation should be commensurate with the loss of that land. This criterion of commensurate compensation is no different from the evaluation of the other claims under the Indian Claims Act. I suggest to the committee that it take into consideration in its evaluation of the claim the $800 million which President Truman estimated had been paid on Indian claims up to 1946 and the $278 million appropriated by Congress for awards under the Indian Claims Commission since 1946.

The legislation should also include a land settlement with the Alaska Natives. The objective of this aspect of the settlement should be a Native land base which is adequate for present and future community use and development. There should be a uniform system of Native ownership throughout Alaska but the size of the grant should vary with the particular characteristics of each village. The result should not be Indian reservations because this is contrary to the traditions of Alaska. The ownership of land held by Alaska Natives should be

no different from that of other Alaskans. By this I mean that the land should be alienable and capable of individual ownership. The settlement should also take into consideration the conservation of natural resources and the danger of the immobilization of large tracts of land from the use of the general public. The extent of the Native lands should be consistent with the size of other Indian lands throughout the United States. There are now about 600,000 American Indians with approximately 50-million acres of reservation land. The 60,000 Alaska Natives should have at least a proportional share of lands for their use and development.

The committee should also consider the desire and the aptitude of the Alaska Natives for the right to determine the course of their own affairs. The Natives believe that it is time to end Federal paternalism, and I support them in this belief. One of the objectives of the settlement should be the displacement of this Federal paternalism by Native autonomy.

The committee should consider the many regions of Alaska in its deliberations on the settlement. I know that all of you are familiar with this aspect of Alaska, and I need not go into the details of these differences. These regional differences should influence not only the size of the land necessary for the villages, but, more important, the character of the Native corporations.

The final statement of principle which I would like to stress at this time relates to the Alaska Statehood Act. Many of you are personally familiar with that Statehood Act because it was this committee which recommended statehood for the territory.

This Statehood Act has a special significance for all Alaskans. It is, perhaps, because we are so close in time to that event. It is only 11 years ago this month that the people of the territory voted to become a State. At the 1958 election on the question of statehood, Alaskans voted on the Statehood Act which had been enacted by Congress. The terms of the Statehood Act provide that the Statehood Act constitutes an amendment to the Alaska constitution and, therefore, the State constitution, and the Statehood Act form a single document which controls the affairs of Alaska. As the chief executive of the State, I am charged with the obligation to defend the State constitution and the Statehood Act. Any changes in the Statehood Act which undermine the provisions of that compact must be consented to by the people of Alaska as an amendment to the State constitution.

Therefore, I have no authority to support any provision of the settlement which conflicts with the Statehood Act.

I would now like to comment on specific provisions of the bill before you and the recent recommendations of the Department of the Interior. At the time of the preparation of this testimony, I had been furnished a copy of a position paper of the Alaska Federation of Natives, but, because of the tight time schedule, there was no opportunity to discuss the precise language of their recommendations and suggested amendments made to this committee. My remarks, therefore, in this testimony are also directed to that position paper and not to the precise language of the testimony of the Alaska Federation of Natives before this committee.

I will also restrict my testimony to those major aspects of the settlement which are of special relevance to the State of Alaska.

First, I have these comments on the land provisions:

Each recognized Native village should receive patent, subject to valid existing rights, to a minimum of one township, or 23,040 acres, and, in cases where such factors as population, economic resources, and the traditional way of life of the occupants justify a greater land base for the village, the village should receive up to four townships. The one township minimum should be selected by the village from within the township of its location and the eight contiguous or cornering townships in contiguous and reasonably compact tracts except as separated by bodies of water, and each tract selected should contain at least nine sections, or 5,760 acres. This is a position which I believe incorporates the best provisions of the proposals of the Department of the Interior and the Alaska Federation of Natives.

The patent should include the locatable minerals and the surface resources, such as timber in the township in which the village is located. I recommend the inclusion of the locatable minerals in order to protect the surface use of the lands by the village. This is in agreement with the recommendation of the Department of the Interior. The leaseable minerals, however, should continue to be subject to the State selection rights under the Statehood Act. I should explain at this time that the severance of the mineral ownership from the fee title is not unusual in Alaska. In fact, the Statehood Act requires the State to reserve title to the minerals in all disposals of land which it is granted under the Statehood Act. The Congress then believed that the mineral resources of Alaska were for the benefit of all Alaskans, and that belief is as valid now as it was then.

The valid existing rights to which the patent is subject should include not only the rights of present owners, homesteaders, and mineral lessees, but the rights of the State of Alaska acquired by selection under the Statehood Act. In order to insure that all Native villages will be treated equally under the settlement, I pledge that the State will transfer title to those villages which are on or surrounded by the State selected land in accordance with the formula applicable to Federal lands.

The withdrawal of public lands for subsequent conveyance to the Native villages should include the township in which the village is located and any other contiguous or cornering townships which are necessary to complete the patent of land to the village. It should not, however, include land presently selected by the State of Alaska. The period of withdrawal for all townships should be no longer than 1 year. During that withdrawal period, the State should be able to exercise its selection rights under the Statehood Act to any retained or reserved mineral interest in the lands in any of the townships. I believe that it can be seen from these comments that I agree with the Department of the Interior in some respects on its recommended withdrawal provisions, but, on matters which affect rights of the State under the Statehood Act, I must differ.

The list of Native villages in the bill should be carefully scrutinized by the staff of the committee in order to determine that it includes all of the villages of 25 or more Natives and that it includes only such Native villages. The record of the last Senate hearing on S. 1830 con-

tains a letter from the magistrate of Manley Hot Springs in which he stated that the town has never been a Native village and that the three Indian families who now live there moved to the area within the last 9 years in order to work for the department of highways.

I understand that there are other villages on the list, such as Red Devil, are mining communities that have no relevance to the traditional Native way of life. I suggest to the committee that the definition of Native village include the criterion that it be a traditional Native village or that the Department of the Interior include that criterion in its regulations of the statute.

The Federal domain which should be made available to the villages should include reserves which were withdrawn for purposes other than as Indian reserves. The Department of the Interior recommends one township for villages in the national forests and two townships for villages in the National Wildlife Refuge System or other reserve lands. I understand that there are no villages within the National Park System.

The Alaska Federation of Natives has a similar recommendation. I support the use of this reserve land in the settlement, but in accordance with the land size recommnedation of the State.

The present Native reserves, with the exception of Metlakatla, should be revoked.

Now, on this matter Senator Stevens brought up a very valid point, and I believe Secretary Hickel indicated that any existing contracts would be honored and protected. This is also the recommendation of the Department of the Interior. There appears to be no reason for different forms of Native ownership within the boundaries of one State. The State recommends that these reserves should be entitled to the same rights of ownership as the villages with township rights under this settlement.

They should also have the same rights to acreage. Most of the present Native reserves have less land than provided for under the recommended settlement, although some are much larger, and it appears more consistent to have a uniform approach in this matter.

There should be some provision in the settlement act for the reservation or acquisition of easements in the public interest. The State is aware that there have been past difficulties in Alaska through the use of such provisions in homestead deeds, and does not recommend that the easement rights be acquired without compensation to the Native village. It only wants it to be clear in the Settlement Act that there are such easement rights in the United States and the State of Alaska. I do recommend, however, the reservation of easements for public purposes such as transportation and utility corridors and common carrier pipelines.

The township conveyances to the villages should be the only land conveyances to the Natives under the Settlement Act.

I cannot support the proposal of the Alaska Federation of Natives that urban Natives should be entitled to receive a patent to 160 acres of land. Nor can I support the recommendation of the Department of the Interior which provides for the withdrawal and conveyance of 160 acres to Native occupants.

The extent of the land recommended by the State for conveyance to the Native villages appears to me to be sufficient for Native use. Further, there is the element of uncertainty in the settlement if there

is no determination of the land provided to Natives under the settlement. This could lead to disputes which would make the administration of the settlement unusually difficult. The State in this respect, supports the position of the Alaska Federation of Natives that the Alaska Native Allotment Act not be revoked by the settlement. This allows the head of the family to obtain an allotment of 160 nonmineral acres. The Allotment Act provides a method under present legislation to grant lands to the Native occupants.

The Statehood Act granted to the State the control of fish and game resources within the State. The State, therefore, cannot support any proposal which recommends the diminution of that authority. The State has laws and it has a policy which recognizes subsistence rights to fish and game to all its citizens. I believe that Congress made a wise decision when it gave full control over the fish and game to the State. This grant of control to the State was a repudiation of that territorial policy which caused the destruction of considerable natural resources. The Alaska Constitution states: "Wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use." Therefore, I cannot support the proposal of the Alaska Federation of Natives which provides for closure of areas from fishing and hunting for nonresidents of that area. Nor can I support the recommendation of the Department of the Interior for the conveyance of public land to villages for the exclusive right to campsites for the harvesting of fish, wildlife, berries, fuel, or other products of the land. It is the creation of special privileges which violates the Statehood Act and which can only lead to conflicts within the State.

Next, I have these remarks on the monetary aspect of the settlement. I support the position of the Alaska Federation of Natives for a payment of $500 million by granting $100 million in the first year and $50 million each succeeding year for a period of 8 years.

I believe that this is an amount which is commensurate to their losses of land, and that it also is consistent with prior settlements of Indian claims.

I cannot, however, support a revenue sharing proposal such as the 2 percent overriding resource royalty that is advocated by the Alaska Federation of Natives. The $500 million compensation figure is commensurate to the Native losses, and I can see no justification for additional compensation. The Alaska Federation of Natives has testified both in the House of Representatives and in the Senate in 1968, in favor of a $500 million settlement without mention of royalty provisions or revenue sharing. Furthermore, the 2-percent proposal conflicts with the Statehood Act and the province of Alaska State Legislature and I have no authority to support such a proposal.

The Alaska Native Commission should be appointed as an independent agency of the United States, and it should be composed of five members appointed by the President, and at least three members should be Alaska Natives. This is the position of the Alaska Federation of Natives, and I fully support it.

The State also supports the Alaska Federation of Natives proposal on the creation of a statewide Native corporation and up to 12 regional corporations. The compensation received by the Natives in the settlement should be apportioned 75 percent to the village, 20 percent to the regional corporations, and 5 percent to the statewide corporation. I

believe that this position of the Alaska Federation of Natives provides for a maximum of village autonomy and also insures that the real recipients of the compensation are the Native peoples themselves.

Finally, the settlement should make certain that the Settlement Act is a full and final settlement of all Native claims against the United States and whatever claims the Natives may have against the State of Alaska and all other persons which are based upon use or occupancy of lands, waters, and submerged areas in Alaska. The language in the present bill should make this clear if we are to avoid future conflicts on other Native claims.

I hope that my observations today are understood to be constructive. I hope that I have not criticized the position of any of the interested parties to the settlement without explaining the reason for my objection and suggesting another alternative. The Alaska Federation of Natives, the Department of the Interior, and the State of Alaska are close to a common ground of settlement of Alaska Native claims, and I am sure that all of us appeal to the wisdom of this committee for a resolution of this conflict.

Thank you very much, Mr. Chairman.

Senator METCALF. Thank you very much, Governor Miller, for a very forthright, frank, and provocative statement.

Now, since you came on the witness stand the junior Senator from Alaska has propounded a unanimous consent request on the floor of the Senate and we are permitted to sit this afternoon.

We will have several votes, but he has persuaded the leadership, in view of the unusual situation, that we will be able to sit this afternoon, and so in order that all of our committee, including the junior Senator from Alaska, will have an opportunity to interrogate the witness, I am going to call a recess at the present time, until 2 o'clock, and we will reconvene in this room; and I instruct the staff to be sure to see that all members of the committee that were not here get a copy of Governor Miller's statement, and we will ask to have you back at 2 o'clock.

Governor MILLER. Thank you, Mr. Chairman. We will be here.

(Thereupon, at 12:25 p.m. the hearing was recessed, to reconvene at 2 p.m., this same day.)

AFTERNOON SESSION

Senator METCALF. The subcommittee will be in order.

We have both of our distinguished Alaskan members of this subcommittee present, and the time now has arrived for interrogation of Governor Miller and his very distinguished staff.

I am first going to call on the senior Senator from Alaska, Senator Stevens.

Senator STEVENS. Thanks very much, Mr. Chairman.

I am happy to welcome the Governor here with his staff, and for your information, my former law partner and now the attorney general. It is good to have you here.

Senator METCALF. That must have been a formidable law firm.

Mr. STEVENS. Governor, I am interested in some comparison of your position representing the State and that of the Alaska Federation of Natives (AFN) and of the Federal Government as represented by Sec-

retary Hickel. Could you tell me, first: did you have available the complete recommendations of the AFN as you prepared your statement?

STATEMENT OF HON. KEITH MILLER, GOVERNOR OF ALASKA; ACCOMPANIED BY G. KENT EDWARDS, ATTORNEY GENERAL; ROBERT PRICE, ASSISTANT ATTORNEY GENERAL; AND ROBERT L. HARTIG—Resumed

Governor MILLER. Yes, we had the position paper, Senator, prepared by the Alaska Federation of Natives.

Senator STEVENS. As I understand it, the first conflict that you have is with the Federal Government where you have indicated that you would like to have each village, on a justification basis, have up to four townships or is it five? I am not clear on that.

Governor MILLER. Up to four townships.

Senator STEVENS. Up to four. You want them each to have a minimum of one township and up to four townships?

Governor MILLER. This is our position, yes.

Senator STEVENS. As I understand it, you agree with the Department of the Interior, representing the Federal Government, that the locatable minerals and all surface resources should go with title to any land that is patented to the native village?

Governor MILLER. Just the one township.

Senator STEVENS. Just on the one township? I see.

Senator METCALF. How would they select the township in which the locatable mineral is located? Suppose some village had four townships and they are only given the locatable minerals on one, who selects them?

Governor MILLER. Mr. Chairman, that would be the one township immediately surrounding the village area itself.

Senator METCALF. Well, suppose there are two townships surrounding the area. Suppose there is one township on the east side and one township on the west side.

Governor MILLER. I think that would be the equivalent to one township, Mr. Chairman. The area immediately surrounding the village equivalent to——

Senator METCALF. But somebody has to make the decision, and who would do that? Do you think the Secretary should do that or the Commission?

Governor MILLER. The village itself, Mr. Chairman.

Senator METCALF. The village.

Senator STEVENS. Thank you, Mr. Chairman.

Now, as to the surface resources in the extra townships, do you believe those should be retained by the Federal Government? If a village had four townships, I can understand the locatable minerals problem, but as to the surface resources, if they are getting a tidelands fee, why shouldn't they have the surface resources?

Governor MILLER. No, we would have no objection, Senator, to the surface rights on all four townships in the event the village had four.

Senator STEVENS. You are talking about surface title to any land that is conveyed to the native villages and locatable minerals in the one that immediately is involved in the village location. And you want

the State to have the right to select the leasable minerals that are located under any of the lands that are conveyed to the village.

Governor MILLER. This is correct, as to leasable.

Senator STEVENS. It is my understanding if any of those lands are already under lease or were under lease prior to January 3 of this year that they are no longer subject to selection by the State. Is that your understanding, Mr. Edwards?

Mr. EDWARDS. Yes, it is, Senator.

Senator STEVENS. So that, in effect, if any of these lands are now or were formerly under lease by the Federal Government they would not be available for selection by the State or would not be patented to the natives; is that right?

Mr. EDWARDS. Once the lease runs out.

Mr. Hartig.

Mr. HARTIG. As you know, on January 3, the right to select minerals under leased land of the Federal Government ran out. We are, as you know, hopeful that the Congress and Senate will see fit to extend this.

Senator STEVENS. Yes, we have a bill in to do that but I wouldn't want to leave any lasting impression that our colleagues are rushing to our assistance on that one.

Mr. HARTIG. Yes, sir.

Senator STEVENS. So, in effect, that leaves us in a position that the Federal Government will retain title to any lands that are presently under Federal lease until we can get the bill extended; is that right?

Mr. HARTIG. Yes, sir; that is right.

Senator STEVENS. Within the native title under your recommendations.

You have recommended that the period of withdrawal suggested by the Department of the Interior be limited. It is my understanding that the Secretary has suggested that we withdraw eight townships around the village site, around the township in which the village is located, in order to give the people the time to choose which of the townships they want. I gather that it is your recommendation that the period of withdrawal for all townships should be no longer than 1 year. You want a definite time limitation within which the selection should be made, do you not?

Governor MILLER. That is our recommendation, Senator.

Senator STEVENS. Have you conferred with the AFN and the village people about the time limitation? Is that a reasonable limitation?

Governor MILLER. Yes; this was part of our discussions of last week.

Senator STEVENS. We can ask them their point of view with reference to the conflict that may exist between their selections and presently filed State selections or already approved selections but first, is that a reasonable period? Do you think this can be done within 1 year?

Governor MILLER. We feel that it is reasonable, Senator.

Senator STEVENS. I am concerned with these reservations and I previously put in the record the table of reservations by the Congress, the Indian reorganization reserves and the Executive order reserves and let me point out the ones that I am worried about: Venetie has 1.4 million acres reserved under the Indian Reorganization Act. As I understand, both under the recommendation of the Federal Government and now the State government, you propose that we should re-

voke acts previously made by any authority except for Metlakatla and possibly Tyonek, as I understand your comment.

Governor MILLER. Yes, with the exception of any contracts in existence now.

Senator STEVENS. Would you have any objection if we made some provision for executive authority to reimpose the limits of the existing reserves if, in the opinion of the Commission that is created by this bill, the continuation of those reserves is necessary for the continued livelihood of the people who have relied on them in the past?

Governor MILLER. It is our feeling, Senator, that this is not. The size of the Venetie Reservation, for example, is so much larger than the proposal that we are talking about here that it would be perhaps unequal treatment for that particular village and certainly much more land perhaps than that village could use. I believe we are in consistency with the Department of the Interior on this particular request.

Senator STEVENS. You understand my suggestion is not that we give them title to that land, but that we make provision whereby the Commission itself, could prescribe the restricted status of that land for such time as the surface use may be needed, and perhaps we could put a time limit on it. But we have other areas, the Noorvik Reservation, the Elim Reserve, and the Tetlin Reserve are all in excess of 100,000 acres. As a matter of fact, the Tetlin Reserve is 700,000 acres, and I should think that an abrupt termination of the right to use those lands exclusively might work to the disadvantage of these people and perhaps we should provide some phasing-out period over a reasonable period of time, say, 30 or 40 years, or something of that nature, so that they are assured they will have an opportunity to acquire an economy before this one is cut off.

Governor MILLER. You are referring to the full amount of the reserve as presently encompassed.

Senator STEVENS. I am suggesting that perhaps this Commission should be given the authority to continue these reserves in effect so long as they are needed, with a definite termination date sometime in the future.

Governor MILLER. Well, Senator, we feel that we have covered this in other portions of our testimony. However, it is something that we certainly could take another look at.

Senator STEVENS. As I understand your comment when you made your statement you agree with me that if there are existing rights based upon these reserves whereby these native people in our State have established rights to utilize even the subsurface leasable minerals that we should do something to protect those existing rights.

Governor MILLER. Yes.

Senator STEVENS. Is this correct?

Governor MILLER. Yes, in consistency with the Secretary of the Interior's testimony this morning.

Senator STEVENS. Thank you.

Now, in your statement you made a comment about acquisition of of easements in the public interest, and you say that you want to make it clear that there are easement rights in the United States and the State of Alaska. I take it that you do not mean to imply that we should impose a burden similar to the 1947 act on the native land.

We are trying to get rid of the 1947 act which impose a burden of easements and right-of-way without compensation. You are not suggesting that?

Governor MILLER. That is correct, Senator, we are not. Our testimony indicated that compensation would be paid for such easements.

Senator STEVENS. If this right of easement is preserved, do you believe they should be in accordance with the same types of rights that exist on lands that have gone into private ownership in our State from the public domain? Should they, for instance, conform to the section lines or the other public land laws that exist?

Governor MILLER. It is difficult to answer that yes or no. Senator, depending on topography, terrain, and so forth. We certainly would take all precautions to preserve the surface, the ecology, and so forth, of the area.

Senator STEVENS. Yes; but what I am trying to make out now, to be sure we understand one another, you are not asking for any greater rights for the State or Federal Government into lands conveyed in Indian title now if this bill passes than the State or Federal Government would have in privately owned land owned by nonnative Alaskans?

Governor MILLER. With your permission, I will let the attorney general answer that specific question.

Mr. EDWARDS. Senator, this is basically correct. As we indicated, though reserving a few specific roadway easements that would have to go through a certain area which is undeveloped at the moment, and since those lands are now in Federal ownership or State ownership, we think that it should be made clear that as far as the few major arteries that would go through there, if practicable, that they would be reserved. If not practicable, then they would have to be obtained by eminent domain, I mean by condemnation, as would any other land. We don't want a floating easement.

Senator STEVENS. We would have definitely acquired easements in accordance with the highway plan, is that what you are contemplating?

Mr. EDWARDS. Yes.

Senator STEVENS. You have already laid out your highway program and you assume you could get right-of-way under the present land laws and where you cannot delineate it you would like to have that right by virtue of a provision in this bill, is that right?

Mr. EDWARDS. That is correct, Senator; we are not in any way attempting to have these uncertain floating easements of the 1947 act. Just a few major arteries and you are well aware, there are many areas of Alaska that do not have transportation or utility corridors into them and there are programed projected rights-of-way into these areas and to the extent predictable we would like to see some reservations made for those major arteries.

Senator STEVENS. How much of a task would it be to inform the committee of the nature of extent of this type of right-of-way that you have, definite right-of-way, in mind that you would like us to preserve?

Mr. EDWARDS. I am certain we could get that information to the committee with very little difficulty.

Senator STEVENS. Mr. Chairman, may we request that and put it in the appendix?

Senator METCALF. Would you supply it for the committee and it will be incorporated unless there is objection, in the record at the appropriate place?

Mr. EDWARDS. We shall do that.

(Subsequent to the hearing the following information was supplied:)

STATE OF ALASKA,
OFFICE OF THE GOVERNOR,
Juneau, September 18, 1969.

Hon. HENRY JACKSON,
Chairman, Committee on Interior and Insular Affairs,
New Senate Office Building, Washington, D.C.

DEAR SENATOR JACKSON: This is to forward to you further clarification of the position of the State of Alaska on the subject of Alaska Native Land Claims.

The enclosure to this letter is a suggested revision of the most recent Department of the Interior draft bill. This bill was introduced in the House of Representatives as House Resolution 10193 but I understand it has not yet been introduced in the Senate.

I hope that the revisions suggested by the State will be of assistance to the Committee on Interior and Insular Affairs in its deliberations on the Alaska Native Land Claims Bill.

Sincerely,

ROBERT W. WARD,
Secretary of State.

[Enclosure]

REVISIONS OF H.R. 13142 SUGGESTED BY THE STATE OF ALASKA

Section 2

1. Strike subsection (a) (1).
2. On page 2, in line 3, insert (1) in place of (2).
3. On page 2, in line 5, insert after the semi-colon and before "and" the following phrase: "or for reindeer husbandry;"
4. On page 2, in line 6, insert (2) in place of (3).
5. On page 2, in lines 7 and 8, strike the phrase which begins with "$25 million" and ends with "1971", and insert in place thereof the following: "$500 million dollars, $100 million dollars to be paid in the fiscal year commencing July, 1970, and the remainder to be paid in equal amounts in each of the succeeding eight fiscal years."

Section 3

1. On page 3, in line 11, after the semi-colon, insert the following phrase "and adoption of a native by a person who is not a native shall not affect his status as a native;"
2. On page 3, in lines 12 through 14, after the word "means", strike the words which begins with the word "any" and ends with the word "natives", and insert in place thereof the following: "a historic native village site that has at least 25 permanent native inhabitants 19 years of age or older residing within a radius of three miles of a designated centrally located point or structure."
3. On page 3, in line 21, change the semi-colon to a comma, and insert the following phrase: "but does not include any land selections of the State of Alaska under the Alaska Statehood Act as amended (72 Stat. 341, 77 Stat. 223);"
4. On page 3, in line 22, before the word "Corporation", insert the following word: "Statewide".
5. On page 3, after subsection (f), insert the following subsection: "(g) "regional corporation" means a corporation authorized to be established pursuant to this Act and under the laws of the State of Alaska;"
6. On page 4, in line 1, insert (h) in place of (g).
7. On page 4, in line 3, insert (i) in place of (h).

Section 4

1. On page 4, in lines 7 and 8, strike the phrase "be regarded as" and insert in place thereof the word "constitute".
2. On page 4, in line 9, following the words "United States", insert the following phrase: ", the State of Alaska, and all other persons which are".

3. On Page 4, in lines 9 and 10, strike the words "aboriginal right, title," and the comma following the word "use".

4. On page 4, in line 10, strike the word "land". and insert in place thereof the following words: "lands, waters, and submerged areas".

5. On page 4, in line 11, strike the word "or" and insert in place thereof the following phrase: ", including claims based upon aboriginal right, title, use, or occupancy,".

6. On page 4, in line 13, strike the word "including" and insert in place thereof the following phrase: "or any other statute or treaty of the United States, and".

Section 5

1. On page 4, in lines 23 and 24, strike the phrase "until June 30, 1991" and insert in place thereof the following phrase: "for a period of ten years after the effective date of this Act".

2. On page 4, in line 24, strike the word "three" and insert in place thereof the word "five".

3. On page 4, in line 24, after the word "members", insert the following phrase: ", of whom not less than three shall be Alaska natives".

4. On page 5, in line 7, strike the word "three" and insert in place thereof the word "five".

5. On page 5, in lines 7 through 10, strike the phrase which begins with the word "except" and ends with the word "term." and change the comma which follows the word "years" to a period.

6. On page 5, in line 20, strike the word "two" and insert in place thereof the word "four".

7. On page 6, in line 20, strike the word "two" and insert in place thereof the word "three".

8. On page 6, in line 22, strike the word "two" and insert in place thereof the word "three".

9. On page 9, in lines 19 through 21, strike subsection (i) (4).

10. On page 9, in line 22, insert (4) in place of (5).

11. On page 10, in line 1, insert (5) in place of (6).

12. On page 10, in lines 3 through 5, strike subsection (i) (7).

13. On page 10, in line 6, insert (6) in place of (8).

Section 7

1. Strike Section 7, and insert in place thereof the following:

"SEC. 7. (a) There is authorized to be established the Alaska Native Development Statewide Corporation as an Alaskan corporation. Such corporation will not be an agency or establishment of the United States Government. The corporation shall be subject to the provisions of this Act, for a period of ten years after its incorporation and to the extent consistent with this Act, to the laws of the State of Alaska applicable to corporations.

"(b) The Commission shall appoint incorporators one of which shall be the Chairman of the Commission, who shall serve as the initial board of directors until the native members of the board are elected. Such incorporators shall take whatever actions are necessary to establish the corporation, including the filing of articles of incorporation, as approved by the Commission. There is authorized to be paid from the fund the sum of $1,000,000 which shall serve as consideration for shares authorized to be issued under this section.

"(c) The corporation shall have a board of directors consisting of eleven individuals who shall be natives and who shall be elected, one from each of the geographic areas covered on the date of the enactment of this Act by a regional association referred to in section 8(a)(2), by natives enrolled within a native village within the geographic region represented by such corporation. Natives shall be entitled to vote only for the director from the geographic region within which such native is enrolled. Members of the board so elected shall serve for terms of four years or until their successors have been elected and qualified; except that of the members first elected, three shall serve for terms of one year, three for terms of two years, and three for terms of three years. Any vacany shall be filled in the same manner as that provided for the member holding such office immediately prior to such vacancy. Any member elected to fill a vacancy shall serve only for the period of the unexpired term of the director whom he succeeds. The members who shall serve the short terms shall be determined by straws conducted by the Commisison. Elections pursuant to this Act shall be conducted in accordance with procedures set forth in the articles of incorporation or by-laws of the corporation.

"(d) The corporation shall have a president, and such other officers as may be named and appointed by the board, at rates of compensation fixed by the board and serving at the pleasure of the board. No officer of the corporation shall receive any salary from any source other than the corporation during the period of his employment by the corporation. The president shall be responsible for carrying out the corporation's functions in a businesslike manner consistent with the provisions of this Act, the articles of incorporation, and the policies of the board, and shall appoint such other employees as the board deems appropriate. Such employees shall be subject to standards and requirements similar to those applicable to Federal civilian employees, but shall not be regarded as Federal employees for any purpose.

"(e) The corporation is authorized to have one million shares of common stock, without par value, and to issue and have outstanding shares of common stock equal to ten times the number of natives enrolled on the date of incorporation. Such stock shall carry voting rights and be eligible for dividends, except that such stock shall not be distributed to the natives for a period of ten years after incorporation but shall be held in trust by the board for each eligible native with the right of such native to receive dividends during this period and to exercise voting rights. Each native entitled to such stock shall have a life interest therein, and at his death, such stock shall vest in the corporation and may be reissued. Ten years after the date of incorporation, ten shares of common stock shall be issued and distributed to each eligible native then alive and enrolled.

"(f) The corporation shall, in accordance with such terms and conditions as the board may prescribe and consistent with this Act and for the benefit of the stockholders thereof, invest its funds; make dividend payments to the common stockholders at such times as the board of directors deems appropriate; provide for the lending of funds to individuals or organizations for the construction of homes and other purposes that would promote economic development of the natives; provide loans or grants to native groups, or regional or governing bodies or native corporations for the purpose of fostering the health and welfare of the people; provide loans for the education of individual natives; provide emergency or charitable grants and loans to individuals and communities in time of distress; sell, lease, or otherwise dispose of its lands; and promote the economic development of the native and the native groups to the greatest possible extent. The corporation shall establish such rules and procedures as it deems appropriate in carrying out the provisions of this subsection. For a period of ten years after incorporation the corporation shall not in any one fiscal year issue dividends or make any grants or unsecured loans the total amount of which equal more than one-half the sum of the corporation's profits and additions to its capital from the fund during the previous fiscal year.

"(g) The corporation shall be subject to audit by the General Accounting Office for a period of ten years after the date of incorporation. After final audit by the General Accounting Office and the filing of a summary financial report with the Congress, the limitations established under this section applicable to the corporation shall terminate and the corporation shall continue in business under the appropriate laws of the State of Alaska. For the ten years from and after the date of incorporation, the corporation shall be considered a public instrumentality eligible for grants and contracts for planning and development programs which will assist the natives and the native groups under any Federal law.

REGIONAL CORPORATIONS

"SEC. 8. (a) (1) Within each area in the State of Alaska covered, on the date of the enactment of this Act, by a regional association referred to in paragraph (2) of this subsection, there is authorized to be established a regional corporation which shall have the power to manage, in accordance with the provisions of this Act, the lands, moneys, and other interests made available to it pursuant to this Act, for the benefit of the natives enrolled in the native villages of the geographic region represented by such corporation. Each such corporation shall be established as an Alaskan corporation and shall not be an agency or establishment of the United States Government. Each such corporation shall be subject to the provisions of this Act, for a period of ten years after its incorporation and to the extent consistent with this Act, to the laws of the State of Alaska applicable to corporations. The enrollment of each such corporation shall initially

be the natives enrolled in the native villages of the geographic region represented by such corporation.

"(2) As used in paragraph (1) of this subsection the term "area" means any area which, on the date of the enactment of this Act, is covered by any one of the following regional associations:

"(1) Arctic Slope Native Association (Barrow, Pt. Hope);

"(2) Bering Straits Association (Kotzebue Seward Peninsula, Unalakleet, St. Lawrence Island);

"(3) Association of Village Council Presidents (Southwest Coast, all villages in the Bethel area, including all villages of the lower Yukon River and the Lower Kuskokwin River);

"(4) Tanana Chief's Conference (Koyukuk, Middle and Upper Yukon Rivers, Upper Kuskokwim, Tanana River);

"(5) Cook Inlet Association (Kenai, Tyonek, Eklutna, Iliamna);

"(6) Bristol Bay Native Association (Dillingham, Upper Alaska Peninsula);

"(7) Aleut League (Aluetian Islands, Pribilof Islands, and that part of the Alaska Peninsula which is in the Aleut League);

"(8) Chugach Native Association (Cordova, Tatitlek, Port Graham, English Bay, Valdez and Seward);

"(9) Tlingit-Haida Central Council (Southeastern Alaska);

"(10) Kodiak Area Native Association (All villages on and around Kodiak Island);

"(11) Copper River Native Association (Copper Center, Glennallen, Chitina, Mentasta).

"(b) Regional corporations authorized by this section shall be organized, as approved by the Commission, under the laws of the State of Alaska relating to corporations. The board of directors of each such regional corporation shall be elected by the enrolled natives of the native villages of the geographic region represented by such corporation on a basis to assure adequate representation of members, consistent with the laws of the State of Alaska, and members thereof elected in such manner as set forth in the articles of incorporation. The articles of incorporation of each such regional corporation must be approved by the Commission. The enrollment of each such corporation shall consist of the rolls of all of the native villages within the region of the corporation. There is authorized to be paid from the fund to each such corporation the sum of $1,000,000 which shall serve as consideration for share authorized to be issued under this section.

"(c) Each such corporation is authorized to have one million shares of common stock, without par value, and to issue and have outstanding shares of common stock equal to ten times the number of natives enrolled in the villages represented by such corporation on the date of incorporation. Such stock shall carry voting rights and be eligible for dividends, except that such stock shall not be distributed to the natives enrolled in such corporation for a period of ten years after incorporation but shall be held in trust by the board for each eligible native with the right of such native to receive dividends during this period and to exercise voting rights. Each native entitled to such stock shall have a life interest therein, and at his death, such stock shall vest in the corporation and may be reissued. Ten years after the date of incorporation, ten shares of common stock shall be issued and distributed to each eligible native then alive and enrolled.

"(d) Each such corporation shall, in accordance with such terms and conditions as the board may prescribe and consistent with this Act and for the benefit of the stockholders thereof, invest its funds; make dividend payments to the common stockholders at such times as the board of directors deems appropriate; provide for the lending of funds to individuals or organizations for the construction of homes and other purposes that would promote economic development of the natives; provide loans or grants to native groups, or regional or governing bodies or native corporations for the purpose of fostering the health and welfare of the people; provide loans for the education of individual natives; provide emergency or charitable grants and loans to individuals and communities in times of distress; sell, lease, or otherwise dispose of its lands, subject to the provisions of this Act; and promote the economic development of the enrolled natives within the villages represented by such corporation to the greatest possible extent. Each such corporation shall establish such rules and procedures as it deems appropri-

ate in carrying out the provisions of this subsection. For a period of ten years after incorporation the corporation shall not in any one fiscal year issue dividends or make any grants or unsecured loans the total amount of which equal more than one-half the sum of the corporation's profits and additions to its capital from the fund during the previous fiscal year.

"(e) Each such corporation shall be subject to audit by the General Accounting Office for a period of ten years after the date of incorporation. After final audit by the General Accounting Office and the filing of a summary financial report with the Congress, the limitations established under this section applicable to the corporation shall terminate and the corporation shall continue in business under the appropriate laws of the State of Alaska. For the ten years from and after the date of incorporation, each such corporation shall be considered a public instrumentality eligible for grants and contracts for planning and development programs which will assist the natives and the native groups under any Federal law.

"(f) Each corporation established pursuant to this section shall have maximum flexibility and power to engage in any commercial or elecmosynary activity, either individually or in groups. In order to make maximum use of their resources, such corporations shall have the power to merge, engage in joint ventures, employ common managerial services, or collectively take whatever actions are deemed appropriate by their respective boards of directors."

Section 3

1. On page 15, in line 24, insert "SEC. 9" in place of "SEC. 8".
2. On page 16, in line 2, insert "1981" in place of "1991".
3. On page 16, in line 14, insert a period after the word "subsection", and insert in place of the word "plus" the words "There is also hereby withdrawn".
4. On page 17, in line 7, following the word "to", insert the words "at least", and, following the word "within", insert the words "the township in which it is located and".
5. On page 17, in line 11, change the period to a comma, and insert after the comma the following phrase "and each tract selected shall contain at least 5,760 acres.".
6. On pages 17 through 25, the State of Alaska will furnish the Committee the names of native villages which it recommends be deleted from the list of villages qualified for withdrawal.
7. On pages 25 and 26, strike subsection (b).
8. On page 26, in line 13, insert (b) in place of (c).
9. On page 26, in line 14, insert "13" in place of "12".
10. On page 26, in line 17, insert (c) in place of (d).
11. On page 26, in line 18, insert "13" in place of "12".
12. On page 26, in line 19, insert "1981" in place of "1991", insert a period in place of the comma, and strike the remainder of the subsection through page 27, line 2.

Section 9

1. On page 27, in line 4, insert "SEC. 10" in place of "SEC. 9".
2. On page 27, in line 6, insert "9" in place of "8".
3. On page 27, in line 7, insert "13" in place of "12".
4. On page 27, in lines 8 through 12, strike the sentence which begins with the word "he" and ends with the word "Act".

Section 10

1. On page 27, in line 14, insert "SEC. 11" in place of "SEC. 10".
2. On page 27, in line 15, insert "10" in place of "9".
3. On page 27, in line 16, insert "five" in place of "ten".
4. On page 27, in line 18, insert "1981" in place of "1991".
5. On page 27, in line 22, insert "13" in place of "12".
6. On page 27, in line 23, insert "9" in place of "8".
7. On page 27, in line 23, place a period after the word "Act".
8. On page 27, in lines 23 through 25, strike the phrase which begins with the word "to" and ends with the word "occupy-".
9. On page 28, in lines 1 through 17, strike the words that begin with "ing" and end with "issued".
10. On page 28, in line 19, insert "9" in place of '8".
11. On page 28, in line 21, insert "1981" in place of "1991".

12. On page 28, in line 23, following the word "of", insert the following phrase: "at least twenty-three thousand and forty acres of land and".

13. On page 28, in lines 23 and 24, strike the words "forty-six thousand and eighty" and insert in place thereof the words "ninety-two thousand and one hundred and sixty".

14. On page 29, in line 3, insert "9" in place of "8".

15. On page 29, in line 12, insert "13" in place of "12".

16. On page 29, in line 14, insert "1981" in place of "1991".

17. On page 29, in line 16, following the word "of", insert the following phrase: "at least twenty-three thousand and forty acres of land and".

18. On page 29, in line 17, strike the words "twenty-three thousand and forty" and insert in place thereof "ninety two thousand and one hundred and sixty".

19. On page 29, in line 20, insert "13" in place of "12".

20. On pages 30 and 31, strike subsection (d).

21. On page 31, insert (d) in place of (e).

22. On page 31, in line 13, insert "1981" in place of "1991".

23. On page 31, in line 19, insert "the" in place of "any".

24. On page 31, in lines 21 through 25, strike the phrase which begins with the word "except" and ends with the word "are", and insert "which on the effective date of this Act was".

25. On pages 32 through 35, strike subsections (g), (h), and (i).

26. On page 35, in line 3, strike the words "continue to".

27. On pag 35, in lines 3 and 4, strike the words "lessor, contractor or permitter and", and insert in place thereof the words "patentee, but".

28. On page 35, in line 7, insert (e) in place of (k).

29. On page 35, in lines 11 and 12, strike the words which begin with "patented" and ends with "or".

Section 11

1. On page 35, in line 22, insert "12" in place of "11".

Section 12

1. On page 36, in line 13, insert "13" in place of "12".

2. On page 36, in line 14, insert "1981" in place of "1991".

3. On page 38, in lines 2 through 6, strike the sentence which begins with the word "The" and ends with the word "village".

Section 13

1. On page 38, in lines 12 through 19, strike Section 13.

Section 14

1. On page 38, in line 23, following the word "legislation", insert the following phrase: ", with the exception of Metlakatla,".

2. On page 39, in line 2, change the period to a semi-colon and insert the following phrase after the semi-colon: "provided, however, where, prior to the effective date of this Act, a contract or lease or permit has been issued for the utilization of mineral or surface resources by the reserve, the natives of the reserve shall continue to be entitled to the complete enjoyment of whatever rights, privileges, and benefits that were granted to it by such lease, contract, or permit.".

3. On page 39, in line 7, insert "1981" in place of "1991".

4. On page 39, in line 9, insert "1981" in place of "1991".

5. On page 39, in line 15, insert "1981" in place of "1991".

Section 18

1. On page 40, in line 4, insert a new section numbered Section 18:

"FEDERAL HIGHWAY ALLOCATIONS AND FIRE PROTECTION

"SEC. 18. Lands granted by this Act shall, so long as the fee therein remains untaxed by the State, continue to be regarded as public lands for the purpose of computing the Federal share of any highway project pursuant to title 23 of the United States Code, as amended and supplemented.

"Lands granted by this Act shall, so long as the fee therein remains untaxed by the State, and so long as there are no revenues from the lands, continue to receive forest fire protection services from the United States at no cost to the owner. Provided, That when there are revenues the owner may contract for forest fire protection services with the United States so long as the fee remains exempt from such taxes."

Section 19

1. On page 40, following the new SEC. 18, insert a new section numbered Section 19:

"AUTHORITY FOR EASEMENTS

"SEC. 19. (a) The Secretary is authorized to make any land withdrawn but not patented under this Act subject to easements for any public use, benefit, or purpose, including easements for the administration and utilization of any Federal lands or lands owned by the State of Alaska.

"(b) Lands patented under this Act may be condemned for any public purpose under the laws of the State of Alaska."

Section 20

1. On page 40, following the new Sec. 19, insert a new section numbered Section 20:

"ALASKA NATIVE COMPENSATION FUND

"SEC. 20. (a) There is hereby established in the Treasury of the United States an Alaska Native Compensation Fund (referred to in this Act as the "Fund") for the benefit of the natives and native villages of Alaska. All moneys deposited in the fund pursuant to this Act shall be available until expended. The Secretary of the Treasury is authorized to make payments from such fund, with the approval of the Commission, to any native, native village, or corporation in accordance with the provisions of this Act.

"(b) There is hereby authorized to be appropriated $500,000,000 to be paid into the fund. The amount so authorized to be appropriated shall be paid into the fund in the following manner: '$100,000,000 during the fiscal year commencing July 1, 1970, and the remainder to be paid to such fund in equal amounts in each of the succeeding eight fiscal years.'

"(c) Moneys paid into the fund pursuant to subsection (b) of this section shall be paid by the Secretary of the Treasury in the following manner: 75 per centum to be paid to the native villages; 20 per centum to be paid to the regional corporations; and 5 per centum to the Statewide corporation. Such payments to native villages shall be made on the basis of the ratio that the number of natives in each village bears to the total population of all natives authorized to receive benefits under this Act. Payments to each such regional corporation shall be made on the basis of the ratio that the total membership of such corporation bears to the total membership of all such regional corporations. Such payments to the Statewide corporation and regional corporations, together with other revenues available to any such corporation, may be expended, subject to the provisions of this Act, by such corporation, in accordance with an annual budget prepared by the corporation and approved by the Commission.

"(d) Each native village, regional corporation, and the Statewide corporation receiving benefits pursuant to this title shall be authorized to expend, invest, or distribute such benefits to promote the advancement of the Native people in Alaska, subject to authorization by the appropriate governing body, and the approval of the Commission.

"(e) No native village or corporation receiving funds pursuant to this title shall make, in any one calendar year, direct per capita distributions from such funds in excess of 20 per centum, in the aggregate, of such funds so received."

Section 21

1. On page 40, following the new SEC. 20, insert a new section numbered Section 21:

"SEC. 21. Subsection (b) of Section 6 of the Act of July 7, 1958 (72 Stat 340), is hereby clarified by the addition of the following: 'Provided further, That for the purposes of this section the term "public lands of the United States in Alaska which are vacant, unappropriated, and unreserved" shall include, without limiting the use thereof, the retained or reserved interest of the United States in lands which have been disposed of with a reservation to the United States of all minerals or any specified mineral or minerals.' "

Section 22

1. On page 40, in line 5, insert "SEC. 22" in place of "SEC. 18".

2. On page 40, in line 9, after the comma, insert the following phrase "excluding the Alaska Statehood Act as amended (72 Stat. 341, 77 Stat. 223),".

Section 23

1. Insert a new section numbered 23:

"SEC. 23. A selection by the State of Alaska pusuant to the Alaska Statehood Act (72 Stat. 340) of the retained or reserved interest of the United States in any land withdrawn under this Act shall, without further action of the State of Alaska, include all interests of the United States to the land so selected if the withdrawal expires before patent has been issued to a native village in accordance with this Act."

Section 24

1. Insert a new section numbered 24:

"SEVERABILITY CLAUSE

"SEC. 24. If any provision of this Act, or any section, subsection, sentence, clause, phrase, or individual word, or the application thereof to any person or circumstance is held invalid, the validity of the remainder of the Act and of the application of any such provision, section, subsection, sentence, clause, phrase, or individual word to other persons and circumstances shall not be affected thereby."

Senator STEVENS. Now, I am confused about one statement that is on page 11 of your statement, Governor, and let me state this right here, I think you have been very courageous in presenting the State's presentation directly and taking on both your former Governor and the AFN and a lot of other people in this statement. I don't agree with you wholeheartedly but you certainly presented your position very clearly.

You say that you do not wish to have exclusive right to campsites for the harvesting of fish, wildlife, berries, fuel, and other products of the land.

As I understand it, the Department of the Interior has made the recommendation that there be such areas established. Let us take, first, within the area of the four townships, according to your recommendation, this will be private ownership and you have no objection to the rights of private ownership within those areas, do you?

Governor MILLER. This is correct. We are speaking of areas outside of the selected townships.

Senator STEVENS. You are not including in that area the 160-acre Indian allotment land obviously.

Governor MILLER. No.

Senator STEVENS. So we are talking about the authority that the Secretary has requested to approve alternate sites for villages, in effect. We are both familiar with the fact that some of these villages do move in the summertime, for instance, to fishing camps, and I think that was one of the considerations that led the Secretary to make that recommendation. If there is a traditional use that can be established by these villages in the past, would you have objection to perpetuating the right that they have now?

Governor MILLER. In the Native Allotment Act?

Senator STEVENS. No; I know, for instance, Fort Yukon used to move up river to a summer fishing camp. They have moved up there as long as I have been in Alaska, every summer, and under this act they are going to have to decide which site they want, the summer site or the winter site.

I would like to be able to make certain that no Alaskan native loses any rights he now has by virtue of this act. Would you agree with that position?

Governor MILLER. I see what you are getting at, Senator. Yes; I believe they are now allowed up to 40 acres for a campsite, fishing site.

Senator STEVENS. Yes.

Governor MILLER. And we certainly would not recommend changing this aspect of the present law.

Senator STEVENS. All right. Within such areas as may be designated then, you would also recognize their exclusive rights, would you not? I mean that would be reserved for them permanently?

Governor MILLER. Within such areas, yes.

Senator STEVENS. So we are talking about the extra areas that the Secretary suggested that we reach outside of both the traditional use areas and the townships, whether it be two or four, according to your various recommendations.

Governor MILLER. This is correct, and we are basing this on the Alaska constitution covering that subject.

Senator METCALF. Would the Senator yield again?

Senator STEVENS. Yes.

Senator METCALF. When a village moves out and occupies a 40-acre site, that is just an occupancy. But if it is a fishing camp, and so forth, they move to a considerably larger territory upon which they depend for fishing and for the other activities in the summer. Now, shouldn't they have an exclusive right to that territory, too?

Governor MILLER. I don't believe it is that way at the present time, Mr. Chairman.

Senator METCALF. How is it when they move? Does Fort Yukon just fish on 40 acres, Senator Stevens?

Senator STEVENS. Well, they fish on the river, Mr. Chairman, but I don't know that the area of the land that they occupy in the summertime at their camp would exceed 40 acres. The one that I saw didn't but, on the other hand, there might well be——

Senator METCALF. But they might roam over much more than 40 acres.

Senator STEVENS. I think what we are trying to do is to preserve the areas that they need and have used beyond these townships, as far as I am concerned.

Senator METCALF. What I am trying to find out is, are we trying to preserve traditional areas that they have used and occupied as a part of their traditional hunting and fishing aboriginal rights from summer to winter and in the roaming that they do? It would seem to me that just giving them 40 acres along a river isn't enough to take care of them.

Governor MILLER. I believe that at the present time in some instances they do fish or hunt outside of these areas. I think the main point we are trying to make here is that the State of Alaska and its Department of Fish and Game retain the control of this basic activity within the State of Alaska.

Senator STEVENS. You don't want to create any exclusive hunting or fishing rights then, as I understand it. The constitution would prohibit you from consenting to do so?

Governor MILLER. This is our position.

Senator METCALF. I wonder if the attorney general would give us a brief on the constitutionality?

Mr. EDWARDS. Mr. Chairman, I believe the Governor quoted to you the section of our constitution which related to this and as we envision the problem, the land formula that we advocate and which every land formula that is devised and approved by Congress would take in these various factors, and it is not, as the Governor had indicated, the intent of the State to support any allocation of land which would encompass the entire area that any native person may have once hunted in or fished in because this, if you look at the native claims, is the basis of much of the area claimed which now encompasses all of the State. If you attempt, through legislation, to indicate that those areas which are deemed hunting areas or fishing areas or berrypicking areas or fuel gathering areas of native people—this could be of tremendous size—would, in effect, preclude the other citizens of the State, and those citizens of the United States who come up to Alaska to also hunt and fish and do these other things. We feel there is sufficient public land in the State outside of the land that would be encompassed within the land formula to take care of this other, as you have used the word, roaming and hunting and that that should not be exclusive. Those areas should be dealt with in relationship to the use of other citizens of the State and the United States. We just feel that this is consistent with our constitution and is really a mandate of that constitution and to try to do otherwise gives us problems.

Senator METCALF. Is it your contention that under the Statehood Act and under the constitution of the State of Alaska we have a contract that cannot be altered by legislation such as this that would give the native tribes greater area than what is suggested by the 40 acres that you prescribe?

Mr. EDWARDS. This is basically the concept on which we base our view.

Senator METCALF. Would you give the committee a brief on that concept?

Mr. EDWARDS. We surely will, Mr. Chairman.

Senator METCALF. Thank you very much.

Without objection it will be incorporated in the record at this point.

(The document referred to follows:)

STATE OF ALASKA,
DEPARTMENT OF LAW,
Juneau, August 28, 1969.

Hon. HENRY JACKSON,
Chairman, Senate Committee on Interior and Insular Affairs,
Washington, D.C.

DEAR SENATOR JACKSON: During the recent hearing on Alaska Native Land Claims the State of Alaska Department of Law was requested to submit a memorandum discussing: (1) Whether the Federal Government possesses power sufficient to regulate the taking of fish and game by Alaska Natives on "reservation" lands. (2) Whether the Federal Government possesses power sufficient to regulate the taking of fish and game by Alaska Natives on "non-reservation" lands. The following is our response to these questions:

(1) The Federal Government does possess power sufficient to regulate the taking of fish and game by Alaska Natives on "reservation" lands. *Metlakatla Indian Community* v. *Egan*, 369 U.S. 45 (1962). See 25 C.F.R. §§ 88.1–88.6 for regulations relative to Indian fishing on Alaska "reservations". This power continued even after the 1953 passage of a Federal statute granting states civil and criminal jurisdiction over Indian reservations. 67 Stat. 588; 18 U.S.C. § 1162; 28 U.S.C. § 1360; *Metlakatla Indian Community* v. *Egan*, 369 U.S. 45, 56 (1962).

See generally, United States Department of Interior, *Federal Indian Law*, 495–500 (1958).[1]

However, it should be noted that only two true "reservations" exit in Alaska: Metlakatla, created in 1891 for the benefit of approximately 800 Indians who had immigrated from British Columbia; and Klukwan, created in 1913 for the present benefit of 115 people, most of whom are Natives. Federal Field Committee for Development Planning in Alaska, *Alaska Natives and The Land*, 443–4 (October, 1968). The remainder of the approximately 53,000 Alaska Natives live either on public lands, native reserves, or private property.[2] None of the three types of Alaska Native reserves (Indian Reorganization Act, Executive Order and Administrative) contain "tribal governments or legal systems familiar to other parts of the United States", *Id.*, pp. 443–445, and all would be revoked by the terms of the proposed Alaska Native Claims Settlement Act of 1969. H.R. 13142, § 14. Natives covered by the Act would be issued patents, either immediate or deferred, and no new reservations would be created. H.R. 13142, §§ 2(b), 10(a), (c), (d), (e), (f), (g), (h). Thus although the Federal Government does possess power sufficient to regulate the taking of fish and game by Alaska Natives on "reservation" lands that power has little relevance to the proposed Alaska Native Claims Settlement Act of 1969.

(2) The Federal Government does *not* possess power sufficient to regulate the taking of fish and game by Alaska Natives on "non-reservation" lands. Under the Organic Act, 37 Stat. 512, § 3, the Alaska Territorial Legislature was granted no control over its fish and game resources. The Alaska Statehood Act, 72 Stat. 339, provided that the Federal Government should retain jurisdiction over fish and wildlife resources until such time as the state made adequate provision for proper administration. 72 Stat. 339, § 6(e). Alaska adopted a comprehensive fish and game code on April 17, 1959, Alaska Laws 1959, ch. 94, and pursuant to Executive Order No. 10857, dated January 4, 1960, received full control over its fish and game resources.

The Statehood Act expressly provided that the state control over fish and game shall extend to fee interests granted to Native claimants:

SEC. 4. As a compact with the United States said State and its people do agree and declare that they forever disclaim all right and title to any lands or other property not granted or confirmed to the State or its political subdivisions by or under the authority of this Act, the right or title to which is held by the United States or is subject to disposition by the United States, and to any lands or other property (including fishing rights), the right or title to which may be held by any Indians, Eskimos, or Aleuts (hereinafter called natives) or is held by the United States in trust for said natives; that all such lands or other property (including fishing rights), the right or title to which may be held by said natives, shall be and remain under the absolute jurisdiction and control of the United States until disposed of under its authority, except to such extent as the Congress has prescribed or may hereafter prescribe, and *except when held by individual natives in fee without restrictions on alienation*.... (Emphasis added.)

Therefore, if the terms of the compact are to be honored, the state must control fish and game resources on all patent lands given to Alaska Natives. See *Tlingit and Haida Indians of Alaska v. United States*, 389 F.2d 778 (Alaska 1968); *Kake Village v. Egan*, 369 U.S. 60 (1962).

The Statehood Act, a compact between two sovereigns, cannot be unilaterally changed by the Federal Government. In *Beecher v. Wetherby*, 95 U.S. 440 (1877), the Supreme Court held that the State of Wisconsin acquired title to lands formerly occupied by Indians by virtue of the grant of these lands to the State in the Enabling Act and that this title could not subsequently be divested by the Federal Government on the basis of other legislation. The court, at 441, with reference to the provision of the Enabling Act which granted the land to the State, said: "It was, therefore, an unalterable condition of the admission, obligatory upon the United States . . . ." *Metlakatla Indian Com., Annette Island Res.* v. *Egan*, 362 P.2d 901, (Alaska 1961), reversed by 369 U.S. 45 on other grounds, held the Omnibus Act invalid to the extent it amended the Statehood Act.

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[1] This power is not, however, without limitation. In *Metlakatla Indian Community* v. *Egan*, 369 U.S. 45, 59 (1962) the court recognized that the Federal representative, when exercising his authority to regulate the taking of reservation fish and game, must consider not only the Indians' need but also the State's interest in conservation.

[2] "There was never an attempt in Alaska to isolate Indians on reservations. Very few were ever created, and the purpose of these, in contrast to many in other States, was not to confine the Indians for the protection of the white Settlers but to safeguard the Indians against exploitation." *Metlakatla Indian Community* v. *Egan*, 369 U.S. 45, 51 (1962).

The court, at 911, stated: "Appellants argue that the amendment is part of the compact and merely clarified the original intent of Congress. We cannot accept this reasoning. It is our view that the amendment forms no part of the compact between Alaska and the United States." See also, *Ward v. Race Horse*, 163 U.S. 504 (1896).

This reading of the Statehood Compact is fully consistent with decisions upholding the precept that the individual state possesses authority to control the taking of fish and game within its borders. E.g., *People v. Zimberg*, 321 Mich. 655, 33 N.W.2d 104 (1948); *State v. State Fish & Game Comm'n.*, 437 P.2d 373 (Mont. 1968); *Allen v. McClellan*, 75 N.M. 400, 405 P.2d 405 (1965). See also Alaska Statehood Act, 72 Stat. 339, § 1, wherein Alaska came into the Union on "an equal footing" with the other states.

Also, it might be pointed out that even if the Federal Government did possess power sufficient to regulate the taking of fish and game by natives on "non-reservation" lands, such regulation would be unnecessary to protect native rights. The Alaska State Constitution Art. VIII, § 3, provides that: "Wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use." This provision has been so implemented that *all* Alaskans, regardless of race or economic status, can share in its meaning. While the normal fee for a resident hunting, trapping, and sport fishing license is $15.00, a family obtaining welfare assistance or earning less than $3,600 per year can obtain the same license for 25¢. AS 16.05340(5). Moreover, no person is prohibited, in case of dire emergency, from taking fish or game during the closed season for food. AS 16.05.930(b); 5 AAC 81.370; 5 AAC 84.280; 5 AAC 211.04. Also, subsistence fishing, defined in AS 16.05.940(17) as ". . . the taking, fishing for, or possession of fish, shellfish or other fishery resources for personal use and not for sale or barter, with gill net, seine, fish wheel, long line, or other means defined by the board . . ." is expressly allowed throughout Alaska Fish and Game Regulations. 5 AAC 12.910—5 AAC 12.990; 5 AAC 15.910—5 AAC 15.990; 5 AAC 18.910—5 AAC 18.950; 5 AAC 21.910—5 AAC 21.990; 5 AAC 24.934—5 AAC 24.980; 5 AAC 27.930—5 AAC 27.990; 5 AAC 30.980—5 AAC 30.990; 5 AAC 33.980—5 AAC 33.990; 5 AAC 39.885—5 AAC 39.890.

Thus, Alaska Natives, in common with all Alaska citizens, are afforded a full and fair opportunity to share in the fish and game resources of the state. Further, under the proposed settlement plan (H.R. 13142), Natives may, as any proprietor, prohibit or restrict hunting on their lands. Also, as any proprietor, they may improve the habitat on their lands, thereby preserving and encouraging game populations.[3] Therefore, even if the Federal Government did possess power sufficient to regulate the taking of fish and game by natives on "non-reservation" lands, such regulation would be unnecessary to protect Native rights; these rights now receive the full protection of both statutory and common law.

In conclusion, it is the opinion of this office that: (1) The Federal Government does possess power sufficient to regulate the taking of fish and game by Alaska Natives on "reservation" lands. (2) The Federal Government does not possess power sufficient to regulate the taking of fish and game by Alaska Natives on "non-reservation" lands. Further, it is the opinion of this office that even if the Federal Government did possess power sufficient to regulate the taking of fish and game by natives on "non-reservation" lands, such regulation would be unnecessary to protect Native rights.

Respectfully submitted,

G. KENT EDWARDS,
Attorney General.

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[3] Contrary to popular belief, Alaska "Wildlife populations are not uniformly abundant, and Alaska is not 'teeming' with game. Large areas are nearly devoid of wildlife, and other areas contain significant populations only seasonally." Federal Field Committee for Development Planning in Alaska, *Alaska Natives and The Land*, 291 (October, 1968). Still, Alaska wildlife is an important resource of significance not only to Alaskans, but to the nation as a whole. In fact, certain regions of Alaska (such as the Yukon-Kuskokwim, Copper River Delta and Buldir Island) support the total nesting population of the following migratory waterfowl: Crackling Goose, Emperor Goose, Dusky Canada Goose and the Aleutian Canada Goose. "The waterfowl produced on Alaska nesting grounds provide Kenai moose, Dall sheep, muskox, caribou and several species of marine mammals have migratory flights and wintering birds in the Pacific flyway; the Kodiak brown bear, their only United States occurrence in Alaska . . . the populations of several species of wildlife in Alaska are also categorized by national and world biological authorities as rare or endangered." *Id.*, p. 287.

In order to protect the national interest in this wildlife, and in order to uphold the spirit of the Alaska State Constitution Art. VIII, § 3, which reserves wildlife for *common use*, care should be taken that extensive areas of prime wildlife habitat are not granted to private individuals possessing power sufficient to prohibit the public use and enjoyment of Alaska's wildlife.

Governor MILLER. We do not recognize the subsistence rights of the Alaskan natives to hunting and fishing and again reiterate our main point is that we desire that the control of all fish and wildlife in the State of Alaska be retained with the Department of Fish and Game.

Mr. EDWARDS. Subsistence is part of our statutes and our regulations, Mr. Chairman, and it applies to all citizens of the State, and it is a program that the State has always been quite active in and one which I am sure the State will always continue in so this is an area we are not attempting in any way to eliminate.

Senator METCALF. If the Senator from Alaska will continue to yield, I think that, Governor Miller, you will find that this committee, and every member of this committee, is dedicated to the proposition that hunting and fishing rights should be in the hands of the States. But all of the western Senators who have reservations in their States have areas where the Indians have exclusive rights, and so there is precedent for the proposition that the natives will have exclusive rights for the sustenance and support of the tribe, to let them go into historic areas. What we are trying to do is to give the Alaska natives something comparable to what we have done in the contiguous 48 States. We have given the State fish and game commission rights to control hunting and fishing within the States.

We have also given Indian tribes right to control hunting and fishing on their reservations, and it would seem to me that the same thing could be done in these traditional areas where this is necessary for the sustenance and support of the tribe, to let them go into historic areas and hunt and fish, and have exclusive rights in those areas. That is why I would like a brief from the Attorney General as to how this violates the contract that we made under the Statehood Act and under your Constitution.

Governor MILLER. Thank you, Mr. Chairman.

Senator STEVENS. I want to go back, if I may, to the comment that you made about the proposal that urban native people should be entitled to receive a patent for up to 160 acres of land.

It is my understanding that these native people would be entitled to participate in the corporate ownership relating to the cash settlement. Is that your understanding also?

Governor MILLER. Yes, we are referring only to a land portion of the settlement, Senator, in regard to the urban native.

Senator STEVENS. Now, I take it that one of the problems the AFN is trying to solve is to find some way to give the individual native who has been separated from his village a piece of the action more or less. With regard to those people who actually reside out of the metropolitan cities and, say, have a trading post or something like that in the rural areas, would you have an objection to a formula that would preserve for these people the title to the lands that they are actually occupying in terms of some 160 acres or something like that? In other words, I can think of people throughout the bush that I know who, if the Homestead Act had applied to them, would have applied for a homestead because they have trading posts or they have cabins. I can think of some of my friends who had five or six trapline cabins up north of Fort Yukon, and certainly have the improvements necessary to get title if the Homestead Act had applied at that time.

Governor MILLER. You mean the Allotment Act.

Senator STEVENS. No, the Homestead Act. They have improvements and if they had applied under the Homestead Act they could have gotten a patent. But they have been sitting waiting for a settlement and have no title to the land that their trapline cabins are on. What are you going to do with those people?

Mr. EDWARDS. I am not clear on your example, Senator. Why would not the native Allotment Act apply to those individuals?

Senator STEVENS. Mr. Weinberg can remind us, but I remember when I was Solicitor of the Interior Department we had a problem concerning what to do with State selections when they involved areas where there were in fact traplines and cabins on those areas, and we devised a means at that time to try to exclude them or have some reservation from the State selections, but to my knowledge they have had no protection to this time, they have not had any title.

Mr. EDWARDS. To my knowledge, Senator, they should be able to receive it under the Native Allotment Act and I am not clear—

Senator STEVENS. That is only one, and it is contiguous.

Mr. EDWARDS. I think they can have 440 acres.

Senator STEVENS. 460 on allotment.

Mr. EDWARDS. No, 440 acres.

Senator STEVENS. You would then preserve whatever rights that might exist through the Indian Allotment Act outside the villages?

Mr. EDWARDS. Yes.

Senator STEVENS. And outside the township areas?

Governor MILLER. Very definitely.

Senator STEVENS. Exclusively. What about the urban native, the Anchorage, Juneau, or Fairbanks resident? How does he participate in the land portion of this settlement?

Governor MILLER. Senator, in the first instance, our position is that the land portion of this settlement is based primarily on use concept. The monetary portion of the settlement basically is the portion of the settlement covering the loss of the land in the first place. However, it is our feeling and understanding that these urban natives would be enrolled as members of the village from whence they came originally and could participate in this manner as a member of that village. This, I am sure, would be up to each village council.

Senator STEVENS. I only have one or two more questions, Mr. Chairman.

Senator METCALF. I don't like to interrupt the Senator, but he was talking about the Indian Allotment Act, and the recommendation of the Secretary is to repeal the Indian Allotment Act.

Senator STEVENS. They disagree with that specifically.

Senator METCALF. You disagree with that.

Governor MILLER. Yes, sir.

Senator METCALF. What we are trying to do is to have an ultimate and a final settlement of these Alaska Native claims, and if we have a continuation of the Indian Allotment Act there is a persuasive argument from the Secretary's point of view that that should be discontinued and we should, by this legislation, make the final settlement. You have made a similar suggestion that all these selections be made within a year, that they come in and have a final determination.

Governor MILLER. But this is separate from the Native Allotment Act, Mr. Chairman.

Senator METCALF. Yes, it is separate. But as you have indicated in your responses to Senator Stevens, it is a part of it because the only way that the urban native can get a "piece of the action" is to participate under the Allotment Act, if we adopt your suggestion.

Mr. EDWARDS. Mr. Chairman, if I might answer that, first of all, it is our understanding under the bills proposed that a roll would be established and on that roll would presumably be various urban natives who can be traced back to certain villages from whence they came, and that on this basis—it would take the recommendation of the Department of Interior and the position advocated by the Governor—population would be a factor in determining the actual size of the land grants to the villages. The title would initially go to the village, so to that extent the urban native would have been included in the computation of the size of the land for that village.

To the extent, then, that it takes time to alienate that land down to an individual, and to alienate it into individual ownership there would be presumably enough time for those urban natives to return to the village, if that is their desire. If their desire is to live some place other than the urban areas they are living in, then they would have provision under the native Allotment Act in which they could go and use and occupy a certain portion of land and, as the Governor said, we are interested in the actual use of the land, that they are actually going to reside in that particular area, and to the extent that the urban native is not going to do that, to the extent that the urban native wishes to stay in the urban area, the monetary cash settlement therefore compensates him for that actual aspect and the land is looked at for a little different purpose rather than just a chunk of land back to each particular native to use for something other than use, and not speculation.

Senator METCALF. Thank you, Senator Stevens.

Senator STEVENS. Governor, I am disturbed that the proposal may well deny natives who live in the urban areas the right to have 160 acres and actually have participation. Now, under the Indian Allotment Act, these people living in the urban areas, if they had moved out there and had taken the——

Governor MILLER. I believe they must live on the land 5 years.

Senator STEVENS. The Department of Interior suggestion gives them the option of getting the 160 acres without leaving town.

Governor MILLER. This is in effect correct.

Mr. EDWARDS. Senator, if I may also add a comment on that aspect, an additional concern to using the formula that is propounded by Interior is the uncertainty that it would place on the land selections in the State of Alaska as far as again having to create preference of selection, where these 160 acres are going to be since you are not looking at where somebody is actually residing at the moment. Even if you talk about limiting it to the area of the claim of the native group in question we all know those claims cover many, many millions of acres, and so we can see many other problems that would arise, practical problems that would arise, in attempting to add that aspect of a land grant to urban natives. We think that the concept embodying, as we have mentioned, the two other aspects of either moving back to the village or moving to another area, and looking at it from the aspect of use, would eliminate those problems and would really bring a bet-

ter solution and have land granted more on the basis that we think it should be granted on.

Senator STEVENS. I will close with one comment and that is that I hope that the AFN will be able to tell us what, under their recommendation, would prevent the whole city of Fort Yukon from moving to Fairbanks in order to get 160 acres apiece. There is no tenure, as I understand it, no requirement for having lived away from the village so many years, or something like that. I should think that there would be a way to define this so that these people who are actually excluded from participation in the land settlement will be entitled to something. I would support that. I think the Department of Interior and AFN are reaching for this problem but I don't think it is defined well enough so that we can support it. If we can identify the native who has no connection with the village—and I can think of several that I know who never lived in a village and have no connection with any village—if we can identify those people and provide for them 160 acres would you object to it?

Mr. EDWARDS. If they live on it, Senator, we would not but if they don't live on it then we think you are giving land for really a speculative purpose, that is, to hold as an investment, and we think that is the exact purpose of the monetary grant of $500 million.

Senator STEVENS. What is the provision for up to four townships where it exceeds present use other than speculation?

Governor MILLER. Senator, let me answer that. Our concept regarding the land portion of this settlement—and we differ from both the Secretary of the Interior and the AFN on this particular point—is that this is to assist these villages to be viable communities, and in order that they have room to expand or to use this land. The monetary portion of this settlement is, in our opinion, the portion that is reimbursing for loss of lands in the first place.

Senator STEVENS. Thank you very much.

Senator METCALF. We will be in recess subject to the call of the Chairman. We will be back just as soon as we can.

(Brief recess.)

Senator METCALF. The subcommittee will be in order.

When the subcommittee recessed, the Senator from Alaska had the floor.

Senator STEVENS. Thank you, Mr. Chairman.

Governor, a suggestion was made by the former Secretary of Interior, Stewart Udall, and I supported it—Secretary Hickel commented on it this morning, as a matter of fact—and I would like to know what the position of the State would be if we were able to obtain a portion of the Outer Continental Shelf revenues to be dedicated to the corporation that will be created, the statewide corporation created by this act.

Governor MILLER. Senator, I believe that this would be certainly a legal solution and a legal revenue-sharing type proposal and, as far as I know off the top of my head, would not affect the State of Alaska in any way since the State does not receive revenues from the Outer Continental Shelf areas in any way, so I would say that with that background that we would support, certainly would not object to, that type of a revenue-sharing proposal.

Senator STEVENS. Thank you very much.

Thank you, Mr. Chairman.

Senator METCALF. Governor, I had intended to yield to the junior Senator from Alaska, but I have some questions, and they are along the same lines as those propounded by the senior Senator from Alaska, so at this time, I will ask them.

Governor, the Alaska Federation of Natives has asked Congress for 40 million acres, is that right?

Governor MILLER. This is correct. This is their proposal.

Senator METCALF. And the Department of Interior has recommended how many million acres?

Senator STEVENS. Ten.

Senator METCALF. How many?

Senator STEVENS. Ten million acres.

Senator METCALF. How many acres do you anticipate would be granted under the proposal you suggest?

Governor MILLER. We estimate approximately the same, Mr. Chairman, as the Department of Interior's propsoal, 10 million to 12 million acres.

Senator METCALF. Ten million to twelve million acres.

And you do not recommend the 160-acre grant for the urban areas?

Governor MILLER. No. Our position has been opposed to that proposal.

Senator METCALF. When I was in Alaska, at the Anchorage hearings, Governor Hickel testified and then when you testified here on the 29th of April, you suggested that the State would be able to participate and help in granting some of the Alaska claims. Today you have a little bit of schizophrenia and you have taken another approach to that testimony.

You said on the 29th, and I am quoting from the hearings—

> I am not withholding State participation in settlement by these observations, however. I pledge the State to a commitment which would be the monetary equivalent of those mineral leasing provisions of the bill which would divert revenues granted to the State by the Statehood Act and other Federal legislation, upon the understanding that the Federal Government will participate in the settlement in the proportion now set out in the bill. It would not be difficult to draft provisions to accomplish these objectives which will not violate the Statehood Act or the Constitution.

Now, why have you taken a different position today than you took then?

Governor MILLER. Mr. Chairman, the State basically has not changed its position from the testimony of last April. We were addressing ourselves at that point to S. 1830 as it existed at that time which basically, I believe, was the recommendation of the Federal field committee and, of course, the monetary settlement at that time was proposed as a hundred million dollars and the State did support some form of revenue sharing, this is true.

However, our testimony today includes addressing ourselves to the position paper of the Alaska Federation of Natives which proposes this 2-percent override in royalty, and on the advice of our Department of Law we have taken the position that this is in violation of our Statehood Act and is not a legal form of revenue sharing. This does not mean that we are opposed to the concept any more than we were last April. We have increased our recommendation to the $500

million monetary settlement as proposed by the Department of the Interior.

Senator METCALF. Well, when it was a hundred million dollars, of course, there was a suggestion that there would be a larger land-grant area. But now that we have $500 million monetary settlement, it would seem to me we still have the problems of the land grant in recognition of traditional and historic rights that are over and above any monetary compensation.

Governor MILLER. Mr. Chairman, I believe that the bill we were considering, the original bill that we were addressing ourselves to, in April recommended one township per village, which would be a smaller land settlement than is presently supported by the State of Alaska.

Senator METCALF. Many of the villages would only get one township under this legislation.

Governor MILLER. This is possible, yes.

Senator METCALF. Yes. Some would get four.

Governor MILLER. Yes.

Senator METCALF. In the States of Montana and Washington and North and South Dakota, which all came in together, we had two sections in every township. Some of them that came in earlier only were given a Federal grant of one section in a township. In the Alaska Statehood bill we gave about 30 percent of Federal land to the State of Alaska. Isn't that correct?

Governor MILLER. This is correct, taking the overall——

Senator METCALF. We gave Alaska not section 16 and 32, but we gave Alaska a right to select where your land would be, and now you have this tremendous rich area on the north slope and you have a right to select land in that area, and it would seem to me that as a result of the riches that are going to pour into the State of Alaska, as a result of your selection, that you would be willing to share in the development of the native claims of the native citizens of your State.

Governor MILLER. Mr. Chairman, of course the State of Alaska will be participating in this settlement, as it has, as the residents have as residents, as citizens of the United States. But further, the State, of course, as I gave in my testimony earlier, has pledged to transfer title to State lands which may lie within the selections around the villages which, of course, would be deducted from our total selection of Federal lands.

In addition to this, of course, if, in fact, this settlement, in effect, phase out the Bureau of Indian Affairs, at least to all intents and purposes, as I certainly hope that it does——

Senator METCALF. I, too.

Governor MILLER. The budget, the current budget of the Bureau of Indian Affairs in Alaska is approximately $50 million per year.

Now, this, of course, would be a vacuum that must be filled and, of course, this vacuum would be filled by the State of Alaska. I don't know where this would come from.

Senator METCALF. In phasing out the Bureau of Indian Affairs that doesn't means that the $50 million of Federal expenditures would be denied Alaska, because many of the services that are granted to Indian Natives by the Bureau of Indian Affairs would be granted by other

agencies. We have already done that with the Public Health Service, the Forestry Service, and the Geologic Survey, so all those things would be taken care of, and it would not be a denial to the people of Alaska of this Federal money. It would just be a transfer from one Federal agency to another.

Governor MILLER. Mr. Chairman, I didn't mean to imply the total $50 million would suddenly be pulled from the State. However, I do feel that this type of a phaseout would undoubtedly lower the amount of money spent by the Federal Government for this purpose.

Senator METCALF. That hasn't been our experience. When we transferred Indian health to the Public Health Service we increased the amount of appropriations for Indian health. So it may be, as the phaseout of the Bureau of Indian Affairs, it would mean that you would get more Federal assistance in the State of Alaska.

Governor MILLER. This is possible. Of course, a great portion of the BIA budget in Alaska goes for education, and it is a stated policy of the State of Alaska that as rapidly as economically and feasibly possible we will take over this function of the Bureau of Indian Affairs, which is a sizable portion of this $50 million budget. Therefore, the State is evidencing its good will and its intent to take over these functions.

Senator METCALF. I again remind you that our experience in education has been that when the States and the local education agencies take over Public Law 815 and 874 provide more money than has been provided under the Bureau of Indian Affairs. So you may get more money than you have had before.

Governor MILLER. This is entirely possible, Mr. Chairman.

Senator METCALF. Yes.

Senator STEVENS. Would the Senator yield?

Governor, isn't it also true, at least this is my interpretation of all the drafts we have before us, that not one version of S. 1830 tries to tamper with eligibility under any of the Federal programs for continued assistance? Is that your understanding?

Governor MILLER. To my knowledge of the present bill, this is correct.

Senator STEVENS. So what we are really doing is saying if this money is provided and this land is provided, hopefully, a lot of these people will no longer be eligible because their situation will have changed but not their eligibility for assistance if their situation does not change; is that your understanding?

Governor MILLER. This is entirely true.

Senator STEVENS. Thank you.

Senator METCALF. I can recall a few years ago we gave Alaska 90 percent of the revenue from Federal lands. In other States you get 37½ percent of the revenue. You only had about a million of revenue in those days and now you have hundreds of millions of dollars of revenue from public lands.

Governor MILLER. Well, Mr. Chairman, as a practical matter I doubt if the State of Alaska will ever totally select 103 million acres. I think this may be a fair statement. I have been informed by my Division of Lands, Department of Natural Resources, that approximately 70 percent of the land of the entire State of Alaska is above 3,000 feet elevation. So we can easily be misled as to the amount of

usable and desirable land in Alaska and, therefore, the State is highly dependent upon its natural resources for its livelihood and revenues.

Senator METCALF. Of course, all of us are, in every western State, dependent upon natural resources.

Mr. Edwards.

Mr. EDWARDS. Yes, Mr. Chairman.

One other aspect of that, as the chairman probably knows, is that a 90-percent sharing that the State has which is different from the other States was in lieu of the reclamation funds which the State of Alaska does not participate in and which the other States do and that difference in percentage was made as a substitute for the absence of use and ability to share in those types of funds.

Senator METCALF. The point I was making is that at that time the revenue from public lands was about a million dollars when we passed the 90 percent sharing. And now the revenue from public lands is tens of millions of dollars, and no one knows how high it is going. No one knows what is going to happen with some of the other mineral discoveries in Alaska, and you are still enjoying a tremendous benefit.

Governor Miller, when you testified last April you said:

> The Senate or the State endorses the percentage sharing principles of the bill in that it enables Alaskan natives to participate in the progress of Alaska.

On page 12 of your testimony today you say:

> The 2-percent proposal conflicts with the Statehood Act and the province of the Alaskan State Legislature and I have no authority to support such a proposal.

Now, will you explain your change of position since April?

Governor MILLER. With your permission may I ask the attorney general to reply?

Senator METCALF. Yes, sir.

Governor MILLER. Thank you.

Mr. EDWARDS. Mr. Chairman, as indicated, it is basically a legal basis on which the Governor made that statement today, and the advice of our department after reviewing the proposal of the Alaska Federation of Natives. We feel that legally it is impossible for Congress to legally adopt such provision, and the way we analyze this, of course, it depends on the interpretation of what is meant by the 2-percent override as to whether it is an additional charge on the royalty over and above existing royalties or whether it is a part of existing royalties or revenues. That as far as it attempts to affect the royalties of the State on State land we feel that this a prerogative of the State legislature, and Congress does not have the authority to indicate what the disposition of or the charge shall be for royalties issued by the State on State land.

As far as it pertains to the Federal Government we say that the Statehood Act did indicate that on revenue received from mineral leasing that it shall be shared with two parties and two parties only, and that is 10 percent to the Federal Government and 90 percent to the State government of the State of Alaska. And that to say that a percentage of those Federal leasing funds would go to a third party would, in effect, alter the percentage that is set out in the Statehood Act and which is made a part of Alaska's Constitution by the terms of the Statehood Act itself, and which was voted upon by all of the people of the State of Alaska.

Senator METCALF. Then the reason that you have changed your position is because you have had a legal opinion from the attorney general.

Governor MILLER. This basically is true but let me say I was not addressing my testimony in April to this specific position paper of the Alaska Federation of Natives. Of course, I am today, and if my attorney general tells me——

Senator METCALF. You said the State endorsed the percentage-sharing principle of the bill in that it enables the Alaska natives to participate in the progress of Alaska.

Governor MILLER. We did endorse the principle, yes, Mr. Chairman.

Senator METCALF. It is on page 99 of the hearings.

Governor MILLER. Yes, we do, we did and do endorse the principle itself. It is the legality of it that we are having a problem with on this specific proposal by the AFN.

Senator METCALF. If it were determined to be legal would you endorse the principle of 2 percent, or 5 percent?

Governor MILLER. We have already endorsed the principle, Mr. Chairman.

Senator METCALF. Yes. And you do not change that testimony?

Governor MILLER. We have not changed the basic position of the State in that regard.

Senator METCALF. The only proposition that you are saying today is that your attorney general has told you that that would be a violation of the Statehood Act and the Constitution?

Governor MILLER. I am not a lawyer, Mr. Chairman, and I must depend on my attorney general.

Senator METCALF. I am referring to your attorney general who has advised you on it.

Governor MILLER. This is correct.

Senator METCALF. I wonder if you would provide us with your memo on that, Mr. Attorney General?

Mr. EDWARDS. The House has made a similar request, Mr. Chairman, and there is no such memorandum that has been written at this moment. We have been asked to brief that issue, both the Federation of Natives' attorneys and ourselves, and we shall submit a copy of that brief to this committee on its completion.

(The brief referred to follows:)

STATE OF ALASKA,
DEPARTMENT OF LAW,
OFFICE OF THE ATTORNEY GENERAL,
State Capitol, Juneau, September 8, 1969.

Hon. HENRY M. JACKSON,
Chairman, Committee on Interior and Insular Affairs, U.S. Senate, Washington, D.C.

DEAR SENATOR JACKSON: This opinion is in response to the request of the Committee during the recent hearings on Alaska Native Land claims for a legal memorandum of the Department of Law of the State of Alaska on certain issues which were raised by the Position Paper of the Alaska Federation of Natives ("A.F.N.").

The A.F.N. proposed "an overriding gross royalty of 2% of all proceeds from any state and federal lands . . ." See A.F.N. Position Paper, p. 10.

Governor Miller stated during his testimony that "the 2 per cent proposal conflicts with the Statehood Act and the province of the Alaska State Legislature

. . ." The purpose of this memorandum is to explain the legal basis of the statement of Governor Miller.

The questions to be answered in this memorandum are several. First, does the 2% overriding gross royalty provision conflict with the provisions of the Alaska Statehood Act? Second, if there is such a conflict, would incorporation of such a royalty provision into a settlement enacted into law by Congress conflict with the United States Constitution?

The overriding gross royalty of 2% will be looked at both from the perspective of 2% of the current 12½% of oil royalty and as 2% on top of the current 12½%. The A.F.N. has stated that the memorandum should be presented in that light.

I. STATUTORY CITATIONS

The citations to pertinent provisions of the Alaska Statehood Act and other legislation are the following (the statutes are quoted in Appendix A).

1. The grant to the State of 90% of all money received by the United States pursuant to the mineral leasing laws in Alaska. The Alaska Statehood Act, 72 Stat. 339, Sec. 28(b).

2. The federal legislation which was confirmed and amended by the Statehood Act, Sec. 28(b). It provides that the State receives 90% of all money received by the United States pursuant to the mineral leasing laws in Alaska, 37½% thereof for the construction of public roads or schools and 52½% for the disposition of the State Legislature. 30 U.S.C. 191.

3. The federal legislation applicable to oil and gas leases of the United States provides for a minimum 12½% royalty. 30 U.S.C. 226.

4. The state legislation applicable to oil and gas leases of the State of Alaska provides for a basic minimum 12½% royalty, although, in the case of first discovery, there is a royalty of 5%. AS 38.05.180.

5. The disclaimer clause of the Alaska Statehood Act. 72 Stat. 339, Sec. 4.

II. DEFINITIONS

The logical point to begin the discussion of the question is with a definition of the term "overriding gross royalty." A leading text in the field describes the term in the following way.

"Perhaps the only safe way to define the term 'overriding royalty' is to say that it is a fractional interest in the gross production of oil and gas, in addition to the usual royalties pair to the lessor. The term my (sic) be used in referring to a nonparticipating royalty interest in perpetuity or for a term of years created by the land or mineral owner prior to a lease for oil and gas. Grants by a lessee of a share of per cent of the production from a lease are sometimes called overriding royalties. A prospective lessee may agree to pay an overriding royalty, a certain share of the production, to another person as consideration for his services in procuring a lease on certain lands. Perhaps the most common use of the term is to indicate a share of the oil or gas produced reserved in an assignment, part assignment or sublease of an oil and gas lease, and payable to the assignor by the assignee, over and above the royalty reserved in the lease payable to the lessor." *Summers Oil and Gas*, Vol. 3, Sec. 554, pp. 624–626.

It is also necessary to note the following distinction between a "royalty" and an "overriding royalty."

"The question presented here is not who is entitled to a 'royalty' but who is entitled to an 'overriding royalty'. There is a difference. 'Royalty' generally means that fractional interest in the production of oil or gas which was created by the owner of the land either by reservation when the mineral lease was entered into or by direct grant to a third person. An 'overriding royalty' is a given percentage of the gross production payable to some person other than the lessor or persons claiming under him. Such interest develops where an owner of the working interest (as Texaco is here) contracts to deliver a part of the gross production to another, usually his assignor (the Trustee here)." *Texaco* v. *Pigott*, 235 F. Supp. 458, 464 (D.C. Miss. 1964).

III. STATE LEASES

The 2% overriding gross royalty cannot apply to a State of Alaska oil and gas lease issued pursuant to AS 38.05.180. This is true whether or not the 2% is a diversion of State revenues from the present 12½% royalty or if the 2% is added to the present 12½% royalty to make it a 14½% royalty.

The real conflict between the 2% overriding gross royalty and the 12½% royalty stated in AS 38.05.180 and included as a provision of state oil and gas leases is readily apparent. This is the case regardless of whether the 2% overriding royalty is retrospective so as to affect leases in existence at the time of the effective date of the settlement legislation or if it is prospective so as to affect only leases issued subsequent to the effective date of the legislation.

It is clear that Congress has no authority under the United States Constitution to amend State legislation and State contracts on matters within the province of State law. It is a fundamental principle of American jurisprudence that the supremacy clause of the United States Constitution is applicable only if the particular act of Congress is within the jurisdiction of Congress.

In discussing these questions, the conflicting powers of the general and state governments must be brought into view, and the supremacy of their respective laws, when they are in opposition, must be settled.

"If any one proposition could command the universal assent of mankind, we might expect it would be this—that the government of the Union, though limited in its powers, is *supreme within its sphere of action.* This would seem to result necessarily from its nature. It is the government of all; its powers are delegated by all; it represents all, and acts for all. Though any one state may be willing to control its operations, no state is willing to allow others to control them. The nation, on those subjects on which it can act, must necessarily bind its component parts. But this question is not left to mere reason; the people have, in express terms, decided it by saying, 'this constitution, and the laws of the United States, which shall be made in pursuance thereof,' 'shall be the supreme law of the land,' and by requiring that the members of the state legislatures, and the officers of the executive and judicial departments of the states shall take the oath of fidelity to it."

The government of the United States, then, though limited in its powers, is supreme; *and its laws, when made in pursuance of the constitution, form the supreme law of the land,* "anything in the constitution or laws of any state to the contrary notwithstanding." McCulloch v. The State of Maryland, 4 Wheat. 316, 405–406 (1819). (Italics added.)

Conversely, it is equally clear that a State has the authority under the Tenth Amendment to the United States Constitution to regulate those activities which occur within the State if Congress has not been granted such authority by the Constitution.

We choose rather to plant ourselves on what we consider impregnable positions. They are these: that *a State has the same undeniable and unlimited jurisdiction over all persons and things within its territorial limits, as any foreign nation, where that jurisdiction is not surrendered or restrained by the Constitution of the United States.* That, by virtue of that, it is not only the right, but the bounden and solemn duty of a State, to advance the safety, happiness and prosperity of its people, and to provide for its general welfare, by any and every act of legislation which it may deem to be conducive to these ends; where the power over the particular subject, or the manner of its exercise is not surrendered or restrained, in the manner just stated. That all those powers which relate to merely municipal legislation, or what may, perhaps, more properly be called internal police, are not thus surrendered or restrained; and that consequently, in relation to these, the authority of a State is complete, unqualified and exclusive.

We are aware that it is at all times difficult to define any subject with proper precision and accuracy; if this be so in general, it is emphatically so in relation to a subject so diversified and multifarious as the one which we are now considering. New York v. Miln, 11 Pet. 102, 138 (1937). (Italics added.)

The State of Alaska is entitled to the same rights as other states under the United States Constitution by virtue of the Statehood Act, Section 1, which provides that the State is on an "equal footing with the other states in all respects whatever . . ."

The Alaska State Legislature has properly determined what oil royalty rate should be charged lessees of State lands. The rates specified by the Legislature have been embodied in the respective leases entered into by the State and are a necessary condition of the State's contractual commitment. Neither Congress nor the Alaska State Legislature has the power to interfere with or ignore that commitment. Naturally, the Alaska Legislature can increase the royalty rates to be charged in future oil and gas leases, but it does not follow that Congress

may do likewise. Congress may only supercede State legislation if it does not violate the Tenth Amendment to the United States Constitution.

There is no question that royalty legislation on State oil and gas leases is a matter within the paramount jurisdiction of the State. The conservation of oil and gas is a matter within the authority of the States.

The paramount public interest of the state in the conservation of these natural resources, the right of the Legislature to enact reasonable laws having reasonable relation to that end, and of the Commission under the authority of those laws to make regulations to carry them into effect, have been uniformly recognized and sustained in the numerous litigations that have arisen in state and federal courts, in connection with state enforcement. *Griswold v. The President of the United States*, 82 F. 2d 922, 925 (C.A. 5, 1936).

The royalty provisions of a mineral leasing act are related to conservation of natural resources.

The purpose of the Mineral Leasing Act was not to obtain sales for the gas from these reserves on Government land at any price. The Act was intended to promote wise development of these natural resources and to obtain for the public a reasonable financial return on assets that "belong" to the public. The Secretary of the Interior is the statutory guardian of this public interest. He has a responsibility to insure that these resources are not physically wasted and that their extraction accords with prudent principles of conservation. To protect *the public's royalty interest* he may determine that minerals are being sold at less than reasonable value. Under existing regulations he can restrict a lessee's production to an amount commensurate with market demand, and thus protect the public's royalty interest by preventing depression of the market. *He may also establish "reasonable values" for royalty purposes.* Of course his duties have another aspect. The public does not benefit from resources that remain undeveloped, and the Secretary must administer the Act so as to provide some incentive for development. He has statutory power to prescribe regulations to effectuate the purposes of the Act. *California Company v. Udall*, 296 F.2d 384, 388 (C.A.D.C., 1961). (Italics added.)

The conservation rationale behind royalty provisions has also been recognized by the State courts.

That the operation may be conducted by a lessee required to pay royalties to the State does not destroy its public use character or render it a private enterprise. The end to be served is the conversion of public resources and the avoidance of waste thereof and the leasehold method must be viewed as no more than a means to that end. *Opinion of the Justices*, 216 A.2d 656, 660 (Me. 1966).

Furthermore, assuming for the purpose of argument that the royalty provision is a tax measure and not a conservation measure, the same principle of state sovereignity is applicable. "The States have a very wide discretion in the laying of their taxes. When dealing with their proper domestic concerns, and not trenching upon the prerogatives of the National Government or violating the guarantees of the Federal Constitution, the States have the attribute of sovereign powers in devising their fiscal systems to insure revenue and foster their local interests." *Allied Stores of Ohio v. Bowers*, 358 U.S. 522, 526 (1959).

A diversion of revenues which may be due to the State by virtue of State law and State leases is a flagrant violation of the United States Constitution. It not only goes beyond the scope of the supremacy clause of the Constitution, but it also takes the property of the people of the State of Alaska in violation of the due process clause of the Fifth Amendment to the Constitution. A provision of that nature constitutes a serious threat to any state government because it apparently recognizes a right of the federal government to control the finances and treasury of state government.

In accordance with the principle that the paramount interest in conservation or local taxation is with the states, the United States, under the Tenth Amendment to the Constitution of the United Staes, has no auhority to legislate on state royalty provisions and state oil and gas leases.

IV. FEDERAL LEASES

The 2% overriding gross royalty cannot apply to a federal lease on public lands within the State of Alaska. This is true whether or not the royalty is retrospective or prospective from the effective date of the legislation.

The first case to examine is that of a 2% overriding gross royalty which would be supplementary to the current 12½% federal royalty. This would result in a

14½% royalty on federal oil and gas leases in Alaska, although 30 U.S.C. 226 provides for a minimum 12½% royalty throughout the United States. It is apparent that such legislation would violate not only the "equal footing" doctrine, but that it would also violate the equal protection and due process clauses of the U.S. Constitution to the extent that a lessee would not be accorded uniform treatment under federal legislation. It is true that federal legislation need not be uniform in its application throughout the United States, but it is equally true that the principle embodied within the legislation should be uniform.

So far as uniformity is concerned, there is no question that the act uniformly applies to the conditions which call its provisions into play—that its provisions apply to all the states—so that the question really is a complaint as to the want of uniform existence of things to which the act supplies, and not to an absence of uniformity in the act itself. But, aside from this, it is obvious that the argument seeks to engraft upon the Constitution a restriction not found in it; that is, that the power to regulate conferred upon Congress obtains subject to the requirement that regulations enacted shall be uniform throughout the United States. *James Clark Distilling Co. v. Western Maryland R. Co.*, 242 U.S. 311, 327, 37, S.Ct. 180, 185, 61 L.Ed. 326 (1917).

Also see *St. Mary's Sewer P. Co. v. Director of U.S. Bureau of Mines* (C.A 3, 1959), 262 F.2d 378. If there were no requisite that federal legislation be uniform throughout the United States, the result would be a gerrymandering of special legislation on not only minerals but also labor, banking, civil rights, and so forth.

The second case to examine is that of a 2% gross overriding royalty which would constitute a diversion of the current 12½% federal royalty. Pursuant to the Alaska Statehood Act, Sec. 28(b), and 30 U.S.C. 191, the State of Alaska receives 37½% and 52½%, or a total of 90%, of "All money received from . . . royalties . . . of public lands under the provisions of sections . . . 226 . . . of this title. . . ." If there were a diversion of 2% of the 12½% royalty before the apportionment of the share of the State, the State would in effect be deprived of its 90% share of the 2% which had been diverted to the Alaska Natives. This is in conflict with the Alaska Statehood Act, and is discussed in the next section of this opinion.

V. THE ALASKA STATEHOOD ACT

The question which is raised by the conflict of the 2% royalty with the Alaska Statehood Act is the following. May the United States unilaterally enact legislation in direct conflict with the Statehood Act?

The answer to this is that the United States may not constitutionally enact effective legislation in direct conflict with compact provisions of the Statehood Act unless there is an amendment to the Constitution of the State of Alaska because a Statehood Act constitutes a compact in the nature of a contract between two sovereign governments.

First, the *federal government* may not unilaterally amend the Statehood Act. *Beecher v. Wetherby* (1877), 95 U.S. 440, held that the State of Wisconsin acquired title to lands formerly occupied by Indians by virtue of the grant of these lands to the State in the Statehood Act and that this title could not subsequently be divested by he federal government on the basis of other legislation. The court, at 441, with reference to the provision of the Statehood Act which granted the land to the State, said: "It was, therefore, an unalterable condition of the admission, obligatory upon the United States. . . ." *Metlakatla Indian Com., Annette Island Res. v. Egan* (Alaska 1961), 362 p.2d 901, reversed by 369 U.S. 45 on other grounds, held the Omnibus Act invalid to the extent it amended the Statehood Act. The court, at 911, stated: "Appellants argue that the amendment is a part of the compact and merely clarified the original intent of Congress. We cannot accept this reasoning. It is our view that the amendment forms no part of the compact between Alaska and the United States."

Second, the *state government* may not unilaterally amend the Statehood Act. *State v. Commissioners of the Land Office*, (Okl. 1956), 301 P.2d 655, held that Oklahoma could not change by an amendment to its constitution and by statute a provision of the Statehood Act which provided for a trust fund of the proceeds of the sale of lands granted to the State for school purposes. The court, at 659, stated: "We hold the regulations in the Oklahoma Enabling Act . . . may not be modified, restricted or changed by an Act of the Oklahoma legislature or the people of Oklahoma in amendment of the Oklahoma Constitution." *Merrill v. Bishop*, (Wyoming 1955), 287 P.2d 620, held that the Wyoming Statehood Act

legally abridged Indian water rights, and, at 625, said: ". . . the compact between the United States and Wyoming is unalterable and obligatory." Also see *Boeing Aircraft Co. v. Reconstruction Finance Corp.* (Wash. 1946) 171 P.2d 838, 842 (". . . each government was bound by the provisions of the Enabling Act."); *State v. Reynolds,* (N.M. 1963) 378 P. 2d 622, 627. ("Section 10 of the Statehood Act became a part of our fundamental law to the same extent as if it had been directly incorporated into the Constitution when thus expressly consented to by the State and its people in Article XXI, Section 9 of the Constitution.") *Opinion of the Judges* (S.D. 1966) 140 N.W.2d 34, 36 ("It cannot be revoked without the consent of the United States.") *United States v. 111.2 Acres of Land in Ferry County, Wash.,* 293 F. Supp. 1042 (1968). ("The consent of the United States has not been manifested by amendment of the Enabling Act or by legislation inconsistent with Section 11 of that Act.")

Third, the only constitutional method by which there can be enacted legislation which is in direct conflict with the Statehood Act is the approval by the people of the State of Alaska of such federal legislation. The Alaska Statehood Act, Sec. 8(b) provided that the people o fthe State approve the Statehood Act at an election, and stated that an affirmative vote on the question would constitute an amendment to the State Constitution:

In the event each of the foregoing propositions is adopted at said election by a majority of the legal votes cast on said submission, the proposed Constitution of the proposed State of Alaska, ratified by the people at the election held on April 24, 1956, shall be deemed amended accordingly.

The Constitution of the State of Alaska, Art. XIII, provides that amendments to the Constitution must be ratified by the people. *State v. Paul,* 337 P.2d 33 (Wash. 1959), which held that the Washington Enabling Act could be amended by the State Legislature is distinguishable because the court explicitly noted that the Constitution of the State of Washington at the time of the Enabling Act provided for no initiative or referendum.

Fourth, the argument that Congress has the authority to enact Indian legislain Alaska which will override the Statehood Act because of the "supremacy clause" principle is without merit. An inference of this argument is that the United States may be about to enter into a treaty with the Alaska Natives. The inference is unwarranted. "The use of the treaty lawmaking power to deal with Indians as dependent alien nationalities, and to adjust their problems, as proper matters of international concern, was halted by Congress in 1871." *Federal Indian Law,* U.S. Department of the Interior, 1958, p. 25. Another inference may be that the "plenary" federal power over Indian affairs places federal Indian law apart from the United States Constitution. Again, the inference is unwarranted.

Thus in *United States v. Kagama* the Supreme Court found that the protection of the Indians constituted a national problem and referred to the practical necessity of protecting the Indians and the withholding of such a power from the States. This is the basis for the so-called "plenary" power of Congress over the Indians, or, more qualifiedly, over "Indian tribes" or "tribal Indians", so frequently used in recent cases. It may seem captious to point out that there is authority for the view that Congress has no constitutional power over Indians except what is specifically conferred by the commerce clause and implied in other clauses of the Constitution. The most famous defender of Federal power over Indians, Chief Justice Marshall, declared:

. . . That instrument [the Constitution] confers on congress the powers of war and peace; of making treaties, and of regulating commerce with foreign nations, and among the several states, and with the Indian tribes. These powers comprehend all that is required for the regulation of our intercourse with the Indians. They are not limited by any restrictions on their free actions; the shackles imposed on this power, in the confederation, are discarded (p. 559).

Whatever view be taken of the possibility or danger of Federal power arising from "necessity," it is clear that the powers mentioned by Chief Justice Marshall proved to be so extensive that in fact the Federal powers exercised over Indian affairs are as wide as State powers over non-Indians, and therefore one is justified in characterizing such Federal power as "plenary." *This does not mean, however, that congressional power over Indians is not subject to express constitutional limitations,* such as the Bill of Rights." *Federal Indian Law,* infra, p. 24.

The "plenary" power doctrine simply means that the United States has exclusive power over American Indians in certain circumstances, and it does not mean that the United States has an authority in Indian affairs that is so absolute that it may disregard the United States Consitution. The Congress, pursuant to the United States Constitution, Article IV, Sec. 3, enacted the Alaska Statehood Act, and the State of Alaska is now on an "equal footing" with the other states. The "plenary" Indian power of the United States does not recognize in Congress the authority to abrogate the Statehood Act.

Fifth, the disclaimer clause of the Alaska Statehood Act, Section 4, does not constitute authority in Congress to legislate in derogation of the Statehood Act. That clause simply provides that the State disclaims all right and title to any lands or other property which "*may*" be held by Alaska Natives. The legal question which arises from that involves the selection by the State of lands claimed by Alaska Natives, and not the question of revenue sharing proposals which properly relate to monetary compensations alone. The legal question of the selection rights of the State of land claimed by Alaska Natives is discussed in *Kake Village v. Egan*, 369 U.S. 60, at 65–66 (1962).

"Section 4 must be construed in light of the circumstances of its formulation and enactment. See *Alaska Pacific Fisheries v. United States*, 248 U.S. 78, 87. Congress was aware that few such rights existed in Alaska. Its concern was to preserve the status quo with respect to aboriginal and possessory Indian claims, so that statehood would neither extinguish them nor recognize them as compensable. See, e.g., House Hearings, supra, 130, 384 (1955) (Delegate Bartlett); Hearings Before Senate Committee on Interior and Insular Affairs on S. 50, 83rd Cong., 2d Sess. 227 (Senator Jackson), 260–261 (1954).[1]

Discussion during hearings on the 1955 House bill affords further evidence that claims not based on federal law are included. Section 205 of that bill (like sec. 6 of the bill as enacted) authorized Alaska to select large tracts of United States land for transfer to state ownership. *It was understood that the disclaimer provision left the States free to choose Indian "property" if it desired, but that such a taking would leave unimpaired the Indians' right to sue the United States for any compensation that might later be established to be due.* See House Hearings, supra, 135 (1955) (Delegate Bartlett). Feeling that experience had shown this procedure too slow to give prompt relief to the Indians, Oklahoma's Representative Edmondson proposed to exempt Indian property from the State's selection. Id. at 381. This was rejected as virtually destroying Alaska's right to select lands. For, although Representative Edmondson pointed out that the disclaimer extended only to property owned by Indians or held in trust for them, four representatives clearly stated their belief that the disclaimer included not just the few Alaska reservations, but also the aboriginal or other unproved claims in dispute, which covered most if not all of Alaska. Id., at 383 (Representative Engle Dawson, Metcalf, Westland). (Italic added.)

There is, therefore, no merit to the argument that Congress may re-write the Statehood Act because of the Section 4 disclaimer clause. The inclusion of that clause in the Statehood Act did not make that Act an open-ended document which may be unilaterally amended by Congress. A contrary assertion ignores the basic significance of a statehood act. The precise question of the effect of the disclaimer clause has been considered by the U.S. Supreme Court, and that Court has said that the Congress only intended the disclaimer clause to leave unimpaired possible future rights of the Alaskan Natives to compensation from the United States. The method of the compensation, of course, must be within the principles of the United States Constitution.

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[1] In 1948 a statehood bill requiring disclaimer of "all lands . . . owned or held by any . . . natives, the right or title to which shall have been acquired through or from the United States or any prior sovereignty," was favorably reported with this explanation: "As proposed to be amended, this paragraph would preserve all existing valid native property rights in Alaska, including those derived from use or occupancy, together with all existing authority of the Congress to provide for the determination, perfection or relinquishment of native property rights in Alaska. It would neither add to nor subtract from such rights and such authority, but would simply maintain the status quo." H.R. Rep. No. 1731, 80th Cong., 2d Sess. 15 (1948).

To the same effect, see H.R. Rep. No. 255, 81st Cong., 1st Sess. 13 (1949).

VI. CONCLUSION

The State of Alaska, pursuant to the Alaska Statehood Act, does have rights under the United States Constitution. The argument that the supremacy clause of the United States Constitution places rights in Congress over Indians of such an extent that Congress may enact legislation which abrogates the constitutional rights of a State or of any person is clearly erroneous. The ultimate criterion of legitimacy in the American system is not the supremacy clause in itself, but the supremacy clause in the context of the United States Constitution. The clearest and most forceful statement of the applicability of the supremacy clause in the present case is not that Congress may violate the Constitutional rights of a State, but that it might extinguish Indian title without compensation.

In 1941 a unanimous Court wrote, concerning Indian title, the following:

"*Extinguishment* of Indian title based on aboriginal possession is of course a different matter. *The power of Congress in that regard is supreme.* The manner, method and time of such extinguishment raise political, not justiciable, issues." *United States v. Santa Fe Pacific R. Co.*, 314 U.S. 339, 347, 86 L.ed. 260, 270, 62 S.Ct. 248.

No case in this Court, has ever held that taking of Indian title or use by Congress required compensation. The American people have compassion for the descendants of those Indians who were deprived of their homes and hunting grounds by the drive of civilization. They seek to have the Indians share the benefits of our society as citizens of this Nation. Generous provision has been willingly made to allow tribes to recover for wrongs, as a matter of grace, not because of legal liability. 60 Stat. 1050. *Tee-Hit-Ton Indians v. United States*, 348 U.S. 272, 281 (1955). (Italic added.)

The real effect of the Section 4 disclaimer clause was to insure that Congress is no way affected whatever claims Alaska Natives might have against the United States for monetary compensation.

The State of Alaska supports the principle of compensation to Alaskan Natives, but only to the extent that there is no interference with the rights of the State under the Statehood Act. The 2% overriding gross royalty is in conflict with the Statehood Act and principles of constitutional law, and Congress has no authority under the United States Constitution to enact such legislation.

Respectfully,

G. KENT EDWARDS,
Attorney General.

APPENDIX A

1. The grant to the State of 90% of all money received by the United States pursuant to the mineral leasing laws in Alaska. The Alaska Statehood Act. 72 Stat. 339, Sec. 28(b).

(b) Section 35 of the Act entitled "An Act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain," approved February 25, 1920, as amended (41 Stat. 450), is hereby amended by inserting immediately before the colon preceding the first proviso thereof the following: ", and of those from Alaska 52½ per centum thereof shall be paid to thte State of Alaska for disposition by the legislature thereof", 72 Stat. 339, Sec. 28(b).

2. The federal legislation which was confirmed and amended by the Statehood Act, Sec. 28(b). It provides that the State receives 90% of all money received by the United States pursuant to the mineral leasing laws in Alaska, 37½% thereof for the construction of public roads or schools and 52½% for the disposition of the State Legislature. 30 U.S.C. 191.

All money received from sales, bonuses, *royalties*, and rentals of public lands under the provisions of sections 181–184, 185–188, 189–192, 193, 194, 201, 202–209, 211–214, 223, 224–226, 226–2, 227–229a, 241, 251, and 261–263 of this title shall be paid into the Treasury of the United States; *37½ per centum* thereof shall be paid by the Secretary of the Treasury as soon as practicable after December 31 and June 30 of each year *to the State or the Territory of Alaska* within the boundaries of which the leased lands or deposits are or were located; said moneys to be used by such State, Territory, or subdivision thereof for the con-

struction and maintenance of public roads or for the support of public schools or other public educational institutions, as the legislature of the State or Territory may direct; and, excepting those from Alaska, 52½ per centum thereof shall be paid into, reserved and appropriated, as a part of the reclamation fund created by sections 372, 373, 381, 383, 391, 392, 411, 416, 419, 421, 431, 432, 434, 439, 461, 491, and 498 of Title 43, *and of those from Alaska 52½ per centum thereof shall be paid to the State of Alaska* for disposition by the legislature thereof: *Provided*, That all moneys which may accrue to the United States under the provisions of sections 181–184, 185–188, 189–192, 193, 194, 201, 202–209, 211–214, 223, 224–226, 226–2, 227–229a, 241, 251, and 261–263 of this title not otherwise disposed of by this section shall be credited to miscellaneous receipts. As amended May 27, 1947, c. 83, 61 Stat. 119; Aug. 3, 1950, c. 527, 64 Stat. 402; July 10, 1957, Pub. L. 85–508, Secs. 6(k), 28(b), 72 Stat. 343, 351. 30 U.S.C. 191. (Italic added.)

3. The federal legislation applicable to oil and gas leases of the United States provides for a minimum 12½% royalty. 30 U.S.C. 226.

(a) All lands subject to disposition under sections 181–184, 185–188, 189–192, 193, 194, 201, 202–209, 211–214, 223, 224–226, 226–2, 227–229a, 241, 251, 261–263 of this title which are known or believed to contain oil or gas deposits may be leased by the Secretary.

Lands within known geologic structure of a producing oil or gas field; competitive bidding.

(b) If the lands to be leased are within any known geological structure of a producing oil or gas field, they shall be leased to the highest responsible qualified bidder by competitive bidding under general regulations in units of not more than six hundred and forty acres, which shall be as nearly compact in form as possible, upon the payment by the lessee of such bonus as may be accepted by the Secretary and of such royalty as may be fixed in the lease, which *shall not be less* than 12½ per centum in amount or value of the production removed or sold from the lease.

Lands not within geologic structure of a producing oil or gas field; first qualified applicant.

(c) If the lands to be leased are not within any known geological structure of a producing oil or gas field, the person first making application for the lease who is qualified to hold a lease under sections 181–184, 185–188, 189–192, 193, 194, 201, 202–209, 211–214, 223, 224–226, 226–2, 227–229a, 241, 251, 261–263 of this title shall be entitled to a lease of such lands without competitive bidding. Such leases shall be conditioned upon the payment by the lessee of a royalty of *12½ per-centum* in amount or value of the production removed or sold from the lease." 30 U.S.C. 226. (Italic added.)

4. The state legislation applicable to oil and gas leases of the State of Alaska provides for a basic minimum 12½% royalty, although, in the case of first discovery, there is a royalty of 5%. AS 38.05.180.

AS 38.05.180. OIL AND GAS. (a) All tide aid submerged lands, mental health lands, school lands, and university lands shall be leased by competitive bidding, and whenever oil or gas is discovered in commercial quantities, the commissioner shall determine the extent of the area of lands in addition to tide, submerged, mental health lands, school, or university lands in the same general area of the discovery well which, by reason of the discovery, the commissioner reasonably believes to be capable of producing oil or gas and the additional lands shall be leased to the highest responsible qualified bidder by competitive bidding under general regulations in units of not exceeding 2,560 acres (except that tide and submerged lands shall be leased in units of not exceeding 5,760 acres), which shall be as nearly compact in form as possible, upon the payment by the lessee of such bonus as may be accepted by the commissioner and of such royalty as may be fixed in the lease which shall *not be less than 12½* per cent in amount or value of the production removed or sold from the lease. However, the holder of a lease who drills and makes the first discovery of oil or gas in commercial quantities in a geologic structure shall pay a royalty on all production under the lease of *five* per cent for 10 years following the date of discovery and thereafter the royalty rate shall be not less than 12½ per cent unless the commissioner specifically provides that such royalty shall be less at the time such lands are offered for lease and in no event shall such royalty be less than five per cent. All lands other than those above provided to be leased by competitive bidding may be leased competitively or noncompetitively as determined by the commissioner to

be in the best interests of the state. Noncompetitive leases shall be issued in units of not exceeding 2,560 acres in any one lease. Noncompetitive leases shall be conditioned upon the payment by the lessee of a royalty of *12½* per cent in amount or value of the production removed or sold from the lease. However, the holder of a lease who drills and makes the first discovery of oil or gas in commercial quantities in a geologic structure shall pay a royalty on all production under the lease of *five* per cent for 10 years following the date of discovery and thereafter the royalty rate is *12½* per cent. Competitive leases issued under this subsection shall be for a primary term of five years and shall continue so long thereafter as oil or gas is produced in paying quantities. If drilling has commenced on the expiration date of the primary term of the lease and is continued with reasonable diligence, such operations to include redrilling, sidetracking or other means necessary to reach the originally proposed bottom hole location, the lease shall continue in effect until 90 days after drilling has ceased and for so long thereafter as oil or gas is produced in paying quantities. If all or part of the lands covered by the lease are lands that have been selected by the state under laws of the United States granting lands to the state and a conditional lease was issued thereon, the term of the lease shall be extended for a period equal to the period during which the lease was conditional.

5. The disclaimer clause of the Alaska Statehood Act. 72 Stat. 339, Sec. 4.

Sec. 4. As a compact with the United States said State and its people do agree and declare that they forever disclaim all right and title to any lands or other property not granted or confirmed to the State or its political subdivisions by or under the authority of this Act, the right or title to which is held by the United States or is subject to disposition by the United States, and to any lands or other property (including fishing rights), the right or title to which may be held by any Indians, Eskimos, or Aleuts (hereinafter called natives) or is held by the United States in trust for said natives; that all such lands or other property belonging to the United States or which may belong to said natives, shall be and remain under the absolute jurisdiction and control of the United States until disposed if under its authority, except to such extent as the Congress has prescribed or may hereafter prescribe, and except when held by individual natives in fee without restrictions on alienation: Provided, That nothing contained in this Act shall recognize, deny, enlarge, impair, or otherwise affect any claim against the United States, and any such claim shall be governed by the laws of the United States applicable thereto; and nothing in this Act is intended or shall be construed as a finding, interpretation, or construction by the Congress that any law, applicable thereto, authorizes, establishes, recognizes, or confirms the validity or invalidity of any such claim, and the determination of the applicability or effect of any law to any such claim shall be unaffected by anything in this Act: And provided further, That no taxes shall be imposed by said State upon any lands or other property now owned or hereafter acquired by the United States or which, as hereinabove set forth, may belong to said natives, except to such extent as the Congress has prescribed or may hereafter prescribe, and except when held by individual natives in fee without restrictions on alienation. Alaska Statehood Act, 72 Stat. 339, Sec. 4.

Senator METCALF. I went into this proposition when I was in Anchorage, and the question was about 5 percent shares at that time, and Governor Hickel had testified in support of that proposition, and there was no question of legality, and so I am sure that that is why some phase of revenue sharing was incorporated in this legislation, and this brings up a new issue since your testimony in April.

Governor MILLER. I understand. The State still expresses its willingness to explore this form of settlement. To my knowledge, there is no precedent that any other State has ever been asked to participate in a settlement of this nature. However, we are expressing our willingness on the part of the State of Alaska to explore this possibility.

Senator METCALF. There is not precedent for any State to get a selection of about a third of the Federal land either. And there is no precedent for many of the other things that I think, with justification,

and with generosity, we included in the Alaska Statehood bill and should have been included. But we have to consider that generosity in consideration of Alaska's responsibility and the Federal responsibility for these Native claims.

Governor MILLER. Mr. Chairman, we again express our willingness to explore this aspect of the settlement on behalf of the State.

Senator METCALF. Do you have anything more?

Senator STEVENS. We are almost ready for another vote, I imagine.

Senator METCALF. The Senator from Oklahoma.

Senator BELLMON. This won't take a second. I want to comment about the statement you made on page 3 of your statement in which you say: "There is a history of honorable dealings by the United States with the American Indians." I would recommend, if you would read about the Indians, about the Cherokees of Oklahoma, you may want to delete that from your statement. I hope the Alaskan Indians will keep their guard up as I know that we have many Indians who were permanently damaged in 1860 and that period of time.

Governor MILLER. Senator, I admit I am not familiar with the situation of Oklahoma but members of the House committee from Oklahoma gave somewhat the same statement you did.

Senator BELLMON. It is not the one tribe but a general policy and it could occur easily again if not taken care of.

On another point. This is for information. I am sorry I have been away and some of it may have been covered. But you are saying on page 1 that "The leasable minerals, however, should continue to be subject to the State selection rights under the Statehood Act."

I am not quite clear on what you are talking about. The minerals under the lands that they are going to select, to take their lands for their tribal sites, you want them to have that?

Governor MILLER. This is our position, if Mr. Hartig could address himself to that question.

Mr. HARTIG. This is what we asked, the rights we had under the selection; we would still have the privilege, the right, to select leasable minerals under these lands. That would be the oil and gas and coal and everything but the hard rock.

Senator BELLMON. Of course, the natives would have surface rights?

Mr. HARTIG. Yes, sir; the locatable minerals and timber.

Senator BELLMON. And the State would have the oil and gas rights.

Mr. HARTIG. Yes, sir. And as you may not know, in Alaska this is not unique. There is a separation in some cases of both the locatables and the leasable minerals.

Senator STEVENS. I might add, if you will yield, that since 1957, I believe it is, there have been no mineral rights transferred to any patentees under any of the homesteads, manufacturing sites or anything like that. What you are saying is you want a policy consistent with the rights of nonnatives in Alaska as far as the leasable minerals are concerned; is that correct?

Governor MILLER. This basically is our position.

Senator STEVENS. I don't agree with you but I want to make sure they understand the situation.

Senator BELLMON. Your proposal here is these minerals would be owned by a corporation.

Senator STEVENS. That was my suggestion.

Senator BELLMON. I have one or two questions when the buzzer quiets down.

In your statement you say that:

> The State recommends that these reserves should be entitled to the same rights of ownership as the villages with township rights under this settlement. They should also have the same rights to acreage. Most of the present native reserves have less land than provided for under the recommended settlement, although some are much larger, and it appears more consistent to have a uniform approach to this matter.

Are you saying that under the terms of this proposal you would be taking away lands that the native villages now use or consider to be theirs?

Governor MILLER. I don't believe it is consistent in some cases, such as the village of Venetie that Senator Stevens mentioned earlier; it is over a million acres of withdrawal. I don't believe the village of Venetie uses a million, so many hundred thousand acres, whatever the size of that reserve is, but basically the answer to your question is, yes, that we feel that this would not be equal treatment under the settlement.

Senator STEVENS. If I may, Senator, I pointed out when you were not here, there are four villages that have reservations that exceed the allotment under any of the suggestions made today.

Senator BELLMON. And these would be reduced to the standard acreage for all villages; is that correct?

Governor MILLER. Yes; with the exception that Senator Stevens also pointed out earlier that some contracts do exist that Secretary Hickel this morning mentioned would be honored and protected.

Mr. EDWARDS. In that regard, Senator, it should be also noted there are almost a dozen that have less acreage than would probably be granted under this land formula and therefore they would be getting additional lands to their present areas.

Senator BELLMON. I should know the answer to this but I don't. Is there a vast difference between the values of lands that different tribes would receive in the lands they were getting? Do you have some, for instance, from fertile or very rich timberland that some tribe will get as compared to the rest of the acreage others will be getting? What I am getting at is there any reason for this committee putting a monetary value on it rather than just the area consideration?

Governor MILLER. I believe that our proposal, Senator, when it is indicated whether the village needs one township or perhaps four townships perhaps covers what you are speaking of, if I understand you correctly.

Senator BELLMON. There are areas, at least in my State, where one township may be worth 10 times as much as another township. What you are saying here is that you would give a tribe four townships or one township depending upon the value of the area?

Governor MILLER. Or any number in between, two or three.

Senator BELLMON. You feel that this is a fair amount of variation?

Governor MILLER. Our formula is based more on use than monetary value. Our basic concept of land provisions of this settlement is to bring to a village and its residents in that community land to help make it a viable community and give it room for expansion and use of the land surrounding the community.

Senator BELLMON. I would assume that the activity or the value of the land would have a very definite bearing upon how viable a village finally becomes.

Governor MILLER. I am sure there would be certain differences in value; yes.

Senator BELLMON. And is this difference taken into consideration—it is; you say up to four townships.

Governor MILLER. Yes.

Senator BELLMON. That is all, Mr. Chairman.

Senator METCALF. Do you have any more, Senator Stevens?

Senator STEVENS. No, not of this witness.

Senator METCALF. Governor Miller, Mr. Attorney General, and Mr. Assistant Attorney General, we have enjoyed your testimony. I think you have made a significant contribution. You have been frank and forthright with the committee, courageous in your suggestions, and made an objective presentation, and we have been delighted to have you with us.

Governor MILLER. Mr. Chairman, on behalf of the State of Alaska, I want to thank you for allowing us to appear here today.

Senator METCALF. Thank you very much.

A rollcall is again going on. We will recess for a few minutes.

Mr. Greeley of the Forest Service tells me he only has 15 minutes of testimony and he will be the next witness, and then tonight we will complete our hearings. We are going to run late on the floor so we might as well run late with the committee.

We will hear from Emil Notti, who is the president of the Alaskan Federation of Natives, accompanied by very distinguished counsel, and we will have Mr. Barash and Mr. Joseph come in in the morning.

Thank you very much.

Senator METCALF. We will be back as soon as we can.

(Short recess.)

Senator METCALF. The subcommittee will now hear Mr. Arthur W. Greeley, an old friend of ours and a frequent witness before this committee. We are delighted to have you testify on this very complicated question, Mr. Greeley.

STATEMENT OF ARTHUR W. GREELEY, ASSOCIATE CHIEF, FOREST SERVICE, DEPARTMENT OF AGRICULTURE

Mr. GREELEY. Thank you, Mr. Chairman.

I recognize the need for time, the shortage of time, and I will try to hurry.

We appreciate the opportunity to present the views of the Department of Agriculture on Legislation with settlement of Alaska Native Claims. My service with the Forest Service has included a period as regional forester for the Alaska Region. So I have some personal acquaintances with the area you are considering today.

We strongly support efforts to bring about a timely and equitable settlement of the claims of the Alaska Native peoples. We believe this should be done in accord with the basic principles set out in the proposed legislation and in accordance with wise land and resource management principles.

The pending settlement proposals will have impacts on the Alaska National Forest, and I would like to explain these briefly.

The element of both S. 1830 and the Department of the Interior's proposed substitute bill, which concerns us directly, is the proposed withdrawal and conveyance of lands surrounding the Native villages listed in the bills. Ten of the towns and villages listed in section 8 of S. 1830—and in sections 8 and 12 of the Interior substitute—are within or closely adjacent to national forests. The national forest acreage which could be conveyed to these villages under S. 1830 is around a quarter of a million acres.

We fully agree that lands occupied by individuals and organizations should be granted to such Natives and organizations.

However, the large grants to communities would have important impacts on the national forests in Alaska. As indicated in our report on S. 1830, these grants would involve substantial public timber resources, estimated to be as much as 4 million board feet, and would affect existing timber sale contracts. They would complicate access to additional national forest resources and include many public use areas and opportunities.

All but one of the national forest villages are within the Tongas National Forest. A recent decision by the Court of Claims awarded the Tlingit-Haida people $7.5 million for the extinguishment of "Indian Titles" to the land withdrawn as the Tongas National Forest. It should be recognized that land grants to the Tlingit-Haidas of the same land for which they were compensated by the Court of Claims would confer on them an additional benefit not contemplated by the court in reaching its decision.

Further, we do question whether the large community grants of land are needed for village expansion, and whether they would in a practical way provide meaningful economic support for the villages or for the maintenance of the traditional way of life.

Much of the land that would be encompassed in the withdrawals and patents is not suitable for occupancy and in most cases is not appropriate for development. Its apparent economic potential to the villages would be for sale or timber removal.

The Alaska national forests lie on the southern and southeast coasts of the State. The villagers in these areas do have some dependence on inland resources, but their principal livelihood is derived from the sea.

The grant of a substantial acreage of inland resources will not materially improve their customary way of gaining a livelihood. Their way of life and heritage is tied to fishing, and to the hunting and trapping of sea mammals. The southeast Natives do not need full control of inland resources to secure food, clothing, and protection. These subsistence resources would be available to them under normal national forest management policies and practices.

In light of the special situation of these villages within the national forests we suggest that any additional grants in the national forests be limited to land needed for basic community expansion or for the provision of basic community services. If in the future the villages within the national forests should substantially expand in population there are provisions in the public land laws which could be among the means to provide necessary additional living room.

This concludes my statement, Mr. Chairman. I would like to add one comment based on questions that were raised this morning. I was here this morning and heard the questions addressed to the Secretary of the Interior concerning a provision which is in section 10(k) of S. 1830, and in which language was changed in the draft of the proposed Interior substitute bill, which deals with what happens to receipts of a contract or permit or lease on a preexisting contract or permit or lease that goes to patent, and I was flabbergasted when the Secretary responded to a question by saying that those interested in surface resources and timber supplies had asked for that language.

I just have to tell the committee that we did not ask for that language. The Secretary's statement I cannot reconcile with what I know, and I just have to assume that there has been a misunderstanding here.

We feel, as he testified, that that language should be changed, should properly be changed, to provide that receipts for lands patented under these circumstances would go through the patentee. However, I should point out that there is a problem in the fact that at least four of these proposed township grants adjacent to the communities of southeastern Alaska, there are timber sale contracts involved here. It is not a matter of the receipts that concerns us, but it is a matter of the administration of the contract that concerns us, and I do think it important that there be some point of legislative history here that outlines that the draft Interior bill does provide what the contracts would continue to be administered by the contractor or the lessor or the permittee, and in our case we are concerned with continuing the administration of the timber sale contracts, but the receipts we do feel should go to the Natives.

That concludes my statement, sir.

Senator METCALF. Mr. Greeley, I am delighted that you have clarified that proposition that had put us in some difficulty. Thank you for your, as usual, clear testimony.

Senator Stevens, have you had an opportunity to read the statement?

Senator STEVENS. I am just reading it.

Senator METCALF. Will you or some representative of the Forest Service be here tomorrow?

Mr. GREELEY. I, or someone, can be here.

Senator METCALF. I have no questions, but maybe some of the other members of the committee might have, and we are coming back tomorrow. Will you send somebody here to be responsive for the Forest Service? We may recall you or ask you some questions.

Mr. GREELEY. We would be glad to do that, Mr. Chairman.

Senator METCALF. Is there a representative of the Interior Department here? I asked Governor Miller and his attorney general to prepare a brief on this proposition, which is a new one, that we have no right over State-sharing in this business of State revenues, and I hope that the Secretary of the Interior will also provide us with a brief and will you provide us with legal authorities on that subject. That is, as to the proposition of whether or not the State has a right to participate in the sharing of 2 or 5 percent, or whatever the decision is on our Native claims.

There was one other, I asked for a brief on another question that I am not sure about now.

Mr. WADE. It is the 2-percent override.

Senator METCALF. Would you provide us with a Solicitor's brief on that matter, too?

Mr. WADE. I will convey that message to the Solicitor, yes, sir.

Senator METCALF. Thank you.

Mr. GREELEY. Wasn't that the question about wildlife, the relationship of wildlife——

Senator METCALF. Yes; do you have something to say?

Mr. GREELEY. No; I just remember your request.

Senator METCALF. Oh, yes, it was the question as to the administration and legality of delegating control over wildlife, and setting aside certain areas for exclusive rights of the Natives for fishing and hunting under the Alaska constitution and the Statehood bill. I remember we made an analogy with Indian reservations where there is exclusive control.

Thank you very much, Mr. Greeley. Thank you for your testimony.

Our next witness is Mr. Emil Notti, president of the Alaska Federation of Natives. Mr. Notti is accompanied by very distinguished counsel, Hon. Arthur Goldberg, and Hon. Ramsey Clark, and we are honored to have you, Mr. Notti, and your very distinguished colleagues before the committee.

STATEMENT OF EMIL NOTTI, PRESIDENT, THE ALASKA FEDERATION OF NATIVES; ACCOMPANIED BY JOHN BORBRIDGE, JR., FIRST VICE PRESIDENT; ARTHUR J. GOLDBERG, COUNSEL; AND RAMSEY CLARK, COUNSEL

Mr. GOLDBERG. Mr. Chairman, if you will permit me, perhaps I will say a few words and General Clark and Mr. Notti and Mr. Borbridge will also have something to say. The hour is late and you and the members of the committee——

Senator METCALF. We can be here just as long as necessary.

Mr. GOLDBERG. You have been very patient, and we appreciate it very much.

It seems to me important that we hear the Native representatives since, when we were last here, I assured the committee that after the Administration had stated its views that those views would be carefully considered by the Natives, and as promptly as possible the Native groups would make known to this committee their attitude with respect to these views.

So I am sure you want to hear from them.

I do have a few comments to make which may be helpful by way of reference, and I should like to offer several documents for the record, in keeping with the chairman's original statement that he would like as much as possible statements to be offered for the record and that comments be made on them.

First, I would like to offer the position paper of the Alaska Federation of Natives in which the position is stated in writing, and Mr. Notti and Mr. Borbridge will have some comment to make about it, and with your permission, Mr. Chairman——

Senator METCALF. If you will put them in, we will, without objection, I am sure, order that all of your material will be put in the record at this point.

Mr. GOLDBERG. Yes. That is a paper that is entitled "Position With Respect to the Natives Land Claims Issue."

Then the second document I would like to offer is a memorandum prepared by me and my colleagues which is a memorandum in support of the position paper. It is a memorandum which deals with some of the legal issues involved which have been discussed in the course of these hearings, and it speaks for itself.

I shall only say a few words about it later, and it is this document which I hold in my hand which we have given to the clerk of the committee.

Senator METCALF. This will be incorporated.

Mr. GOLDBERG. The third document I would like to submit is my own statement which I shall not read, also, but which is a very short statement which explains the documents.

Senator METCALF. It will be made a part of the record.

Mr. GOLEBERG. The fourth document is a document which relates to a question which was asked, a question of what contracts have been entered into. I can only answer for myself and my firm, and I should like that statement to be made a part of the record.

Senator METCALF. Yes. It will be made a part of the record, and I believe that that should be followed—that should follow immediately after the contract that was entered into that will be supplied by the Secretary of the Interior.

Mr. GOLDBERG. Yes.

Now, the fifth document is, I think, a document I asked to be prepared over night last night, and because of the experience we had in the House Committee, it is a document designed to be helpful to the committee and, as far as possible and it relates to the problem which has arisen when several positions are stated to try in a very brief form to compare the various postions.

My colleagues under my direction have prepared, a paper which may be helpful to the committee, and it is principally this paper that I should like to talk about. It puts in tabular columns the various positions on various issues.

I found in my experience that this is a useful device. It is, of course, very commonly used by this committee and other congressional committees when bills are being marked up to illustrate what the various positions are.

Senator METCALF. This will be a very useful document and we are pleased to have it.

(The documents referred to follow:)

Comparison of Alaska land settlement proposals	Position of Governor Miller	Federal field committee recommendations	Department of the Interior bill	The Alaska Federation of Natives
LANDS				
Acres	Minimum 1 township, up to 4 townships per village (based on factors which State has informally said will amount to a total of about 10,000,000 acres).	1 township per village. About 5,000,000 acres.	Up to 2 townships per village, except 1 township for 10 Tlingit-Haida villages about 10,000,000 acres.	4 townships per village and 500 acres per person for villages over 184 in population, total 40,000,000 acres.
Locatables	Go with patent	Go to statewide corporation	Go with patent	Go to regional corporation.
Leasables	Remain with United States	do	Remain with United States	Do.
Nonvillage Natives	No land	Patent to 160 acres of land	Patent to 160 acres only if Native occupied same at time of act.	Patent to 160 acres of land.
Hunting and fishing outside village lands.	No special provision	Secretary may limit hunting to residents in emergencies during 1st 10 years of act.	No special provision	Subsistence resources to be protected by Secretary of the Interior.
Campsites and reindeer husbandry areas.	Opposes campsites, no position given on reindeer areas.	Patents for surface only permitted	Patents for surface only permitted	Patents for surface only permitted.
Native reserves	Revoke all Native reserves except Metlakatla.	Revoke all Native reserves except Metlakatla.	Revoke all Native reserves except Metlakatla.	Retained by villages using or occupying land.
COMPENSATION				
Cash settlement	$500,000,000 ($100,000,000 1st year, $50,000,000 for next 8 years).	$100,000,000 plus revenues if received from mineral and land resources of up $100, 000, 000 for each of 1st 10 years.	$25,000,000 per year for 20 years	$500,000,000 ($100,000,000 1st year, $50, 000,000 for next 8 years).
Interest on original balance	No position taken	Not to be paid	Not to be paid	Payable on unpaid balances.
Revenue sharing	Excluded	Provided for as above	Excluded	2 percent overriding royalty.
CORPORATIONS				
Number	1 statewide; not more than 12 regional	1 statewide	1 statewide	1 statewide; not more than 12 regional.
Method of selection of board members.	By Native peoples as stockholders	For 1st 10 years: 4 by President with consent of Senate, 4 Natives elected by Natives (with 2 more Natives elected after 3d year); 1 elected by members of board. After 1st 10 years: elected by stockholders.	President appoints 5, with consent of Senate, stockholders elect until June 30, 1991; thereafter stockholders elect all.	By Native peoples as stockholders.
COMMISSION				
Number	5	5	3	5.
Appointment	By President, position on confirmation not stated.	By President, with consent of Senate	By President, with consent of Senate	By President, confirmation question to be decided by Congress.
Native members	At least 3	No requirement	No requirement	At least 3.
Duration	Position not stated	10 years after enactment of act	Until June 30, 1991	10 years after enactment of act.

STATEMENT OF ARTHUR J. GOLDBERG,
COUNSEL TO THE ALASKA FEDERATION OF NATIVES

Mr. Chairman and distinguished members of the Committee.

With me today are representatives of The Alaska Federation of Natives, John Borbridge, Jr., First Vice President of the AFN, Eben Hopson, former State Senator who is Second Vice President of the AFN, and the rest of the AFN Steering Committee. Also with me are attorneys who have joined me in representing the AFN, as well as my partner, former Attorney General Ramsey Clark.

When I last testified I stated that the Alaska Natives would present their position on the lands issue as soon as possible. This has taken some time because of the complexity of the problem. The Natives have formulated their position in a Position Paper dated June 20, 1969, however, and we have prepared a memorandum in support of this position. Our memorandum also comments on the proposals put forth by the Department of the Interior as well as those of the Federal Field Committee embodied in S. 1830. With your permission, I would like to put both the memorandum and the Position Paper in the record and summarize them for you.

We are in the final stages of preparing legislative language embodying the AFN's proposals and an explanatory memorandum thereon. This is a difficult task as we are asking Congress to depart from past approaches to the lands problem and establish a program which recognizes the unique aspects of the Alaska land issue and substitutes self-help for unwanted paternalism. As we are concerned with novel development corporations and economic growth—and not merely with dollars—we have undertaken a complex and substantial job. That job is now being done and I would ask the Chairman for permission to submit our legislative language and the explanatory memorandum thereon when they are completed, which we hope will be very shortly.

I would note that the AFN proposal is an entirely reasonable one. It will substitute self-help for paternalism; it will enable the government to reduce welfare and BIA expenditures, and will save the taxpayers money. Moreover, it will do a great deal to further the swift and orderly development of the peoples and resources of Alaska, thereby contributing to the national economy and tax revenues.

Moreover (and perhaps more importantly), a sound settlement of the valid legal claims of the Alaska Natives is also a modest investment which will save them from becoming victims of the familiar cycle of dependency by which the recipients of welfare are made incapable of freeing themselves from a dependent status. By settling the Natives' valid claims in a manner which avoids past mistakes and looks to the future, we will have a Native population which will not be dependent observers of Alaska's growth but will, instead, be substantial contributors to the wealth of their state and nation.

As I have explained and the memorandum shows, there are differences between the AFN's proposals and the proposals made by the Federal Field Committee and the Department of the Interior. There are also differences between these three proposals and the position taken by Governor Miller. We have had several meetings with State and Department officials in an attempt to resolve these differences. All parties to these meetings have proceeded in good faith and with total candor, and some progress has been made. During the past three weeks we have had several meetings in Alaska. While we expect to continue these meetings in an effort to compromise all outstanding differences, we solicit the help of this Committee so that a program can finally be adopted which is acceptable to all.

You, in your wisdom, must analyze past experiences, consider the unique aspects of the Alaska land issue, make the value judgments, and enact whatever settlement legislation is to be enacted. We hope that the AFN's proposal for self-help instead of paternalism—will help you to enact a legislative settlement of the Native land claims which reflects credit upon our nation.

STATEMENT OF ARTHUR J. GOLDBERG, COUNSEL TO THE ALASKA FEDERATION OF NATIVES

Mr. Chairman and members of the Committee.

On April 29, 1969, I furnished this Committee with certain information concerning the nature and terms of my representation of The Alaska Federation

of Natives. I would like to apprise the Committee of developments which have taken place since that date.

As you may recall, when the AFN asked us to represent them in this matter, we prepared an attorneys' contract under which our fee would be set by disinterested third parties. Our contract provided that counsel would have no voice in selecting these parties or setting the amount of the fee, and that all fees would be subject to approval by the Secretary of the Interior.

We discussed our proposed contract with the Secretary and his representatives, and the Solicitor of the Department suggested that the contract be revised in two respects. He suggested (a) that the contract state that the fee shall be limited in any manner as may be provided by Congress, and (b) that the contract specify the maximum hourly rates for attorneys' services.

In response, I informed the Secretary that as I considered any representation of the AFN to be a form of public service in which compensation would be a secondary consideration, each of the suggestions was acceptable. I further stated that any hourly rate figures for attorneys' services should be designed to insure that the total fee on this matter would be substantially less than the total fee my associates would receive for comparable expenditures of time and effort. I told the Secretary that I would be glad to have him set the hourly rates and would accept any figures which he deemed appropriate.

We subsequently learned that the Secretary objected to our proposal that the fee be determined by third parties. On June 18, 1969, we received from the Deputy Solicitor a form of contract which the Department had drafted and which provided for attorneys' fees to be determined by hourly rates unless the settlement legislation provided otherwise. While it was and continues to be my view that our initial proposal was fairer to the Natives, I was anxious to bring the contract matter to a close, and I agreed to the formula suggested by the Secretary. I determined, however, that in view of the public nature of this matter, I would waive any personal fee for any of my time and efforts in this matter. On June 27, 1969, I wrote to the AFN, after the Department of the Interior had approved a contract which included payment for my services, as follows:

I now want to advise you that I have decided to waive any fee for any of my time and effort in this matter. I wish to make it explicitly clear, however, that with your approval I shall continue to act as chief counsel and give this matter the same time and attention as though I were being paid on an hourly basis. The compensation payable for the services of my associates and reimbursement for expenses will be determined as set forth in the final contract. But I have directed that in the internal accounting of my firm I will not participate in any way in the fees received in this matter.

On July 23, 1969, we submitted a revised contract to the Department of the Interior. Except for the fact that this proposal expressly waives any fee for my services, it follows closely the draft contract which we received from the Department on June 18.

I hope that the Department will soon respond to this proposal so that we and the Department's representatives will be able to devote all of our time and energies to the difficult substantive issues.

In sum, and I have said on several occasions in the past, so long the AFN wishes us to represent them, we will be willing to accept any contractual provisions suggested by the Secretary or anybody else which would provide additional safeguards for the Natives.

With the Committee's approval, I would like to insert in the record three pieces of correspondence from my firm to the Department of the Interior and the AFN relating to these matters.

When I last testified before this Committee, I stated that we would ask the Department of Justice for a ruling on the question of whether Mr. Edward Weinberg, who is assisting us in this matter, and also was the Solicitor of the Department of the Interior, had a conflict of interest by virtue of his past association with the Department. It was our opinion that there was no such conflict, and we set forth our reasoning in a letter to Secretary Hickel which was made part of the record. I am pleased to report that the Department of Justice agreed with us, and I would like to submit for the record their opinion letter on this matter.

PAUL, WEISS, GOLDBERG, RIFKIND, WHARTON & GARRISON,
New York, N.Y., *May 26, 1969.*

Hon. WALTER J. HICKEL,
Secretary, Department of the Interior, Washington, D.C.

MY DEAR MR. SECRETARY: In accordance with the permission granted in your letter of April 29, 1969, I represented the Alaska Federation of Natives ("AFN") at the hearings held before the Committee of Interior and Insular Affairs of the United States Senate on April 29 and on subsequent occasions.

As you know, I withdrew from my representation of AFN on May 13, 1969 for reasons which I stated in a telegram to the President and Executive Vice President of AFN. The AFN subsequently asked me to reconsider my withdrawal and I replied by telegram dated May 19, 1969. Copies of these communications are enclosed.

If I do reconsider my decision to withdraw as AFN counsel, I would want to consider, among other things, the Department of Interior's position on the contract between AFN and me. I understand that Mr. Weinberg discussed with Mr. Melich the proposed contract which we submitted to you on April 26, 1969 and that Mr. Melich suggested that the contract be revised in two respects: Mr. Melich suggested (a) that the contract state that the fee shall be limited in any manner as may be provided by Congress and (b) that the contract specify the maximum hourly rates for attorneys' services.

As I would consider any representation of AFN to be a form of public service in which compensation would be a secondary consideration, I would be glad to adopt each of Mr. Melich's suggestions. Should I resume my representation of AFN, the hourly rate figures would be designed to insure that the total fee on this matter would be substantially less than the fee my associates and I would receive for comparable expenditures of time and effort. The simple resolution of this problem may be for you to set the hourly rate figures; I would be glad to accept any figures which you deem appropriate.

Please let me know if you have any other questions or reservations concerning the proposed contract. As I have stated on several occasions, I would modify any contract with AFN in any way which would provide additional safeguards for the Natives.

I look forward to meeting with you on May 28 and to discussing with you the various problems relating to AFN's request that I represent the Natives on the land issue.

Sincerely yours,

(S) Arthur J. Goldberg
ARTHUR J. GOLDBERG.

PAUL, WEISS, GOLDBERG, RIFKIND, WHARTON & GARRISON,
New York, N.Y., June 27, 1969.

MR. EMIL NOTTI,
Alaska Federation of Natives, Anchorage, Alaska.

DEAR MR. NOTTI: I am enclosing two copies of the brief we have filed in the United States Court of Appeals for the Ninth Circuit on behalf of the AFN as amicus curiae in the case of *Alaska* v. *Udall.*

I am also enclosing a copy of the special services contract which has been given to us by the Deparment of the Interior. The contract differs substantially from the one which we proposed in that provisions to have our fees determined by imparital disinterested persons which were included in the original draft have been eliminated. We would prefer to retain the impartial panel to fix fees taking into account the public service nature of this case. The Department, however, has felt it appropriate to fix specific amounts and the amounts fixed have been determined by the Department as being fair and reasonable. We would prefer the method we originally suggested as more protective of the Natives and we will take this up again with the Department. Alternatively it would be entirely agreeable to us to be compensated on the basis of reasonable fees and expenses actually incurred in accordance with the provisions on page 15 of the AFN, June 20, 1969, position paper.

Whatever the final decision of the Department may be in this matter, I now want to advise you that I have decided to waive any fee for any of my time and effort in this matter. I wish to make it explicitly clear, however, that with your approval I shall continue to act as chief counsel and give this matter the same

time and attention as though I were being paid on an hourly basis. The compensation payable for the services of my associates and reimbursement for expenses will be determined as set forth in the final contract. But I have directed that in the internal accounting of my firm I will not participate in any way in the fees received in this matter.

One provision of the contract which is of concern is the requirement that it be assented to by individual villages some of whom are represented by regional attorneys.

Insofar as I and my associates are concerned, we would be willing to eliminate individual village assent from the contract. This assent, however, is being insisted upon by the Department of the Interior which, as you undoubtedly know, is unwilling to approve contracts with a federation such as yours. I do not desire that the village provisions should renew the regrettable controversy with regional attorneys who have expressed strong feelings on this subject. I therefore suggest that you take this matter up with the regional attorneys and that you advise us as soon as possible as to your views and the views of regional attorneys as to this matter.

In further analysing the contract we conclude that our authorization to represent the Federation is limited to giving advice and assistance with respect to legislation to settle claims concerning title to the lands in Alaska, and representing AFN in *Alaska* v. *Udall* as well as litigation affecting land claims which starts after April 15, 1969.

As a result of the contract limitations, we do not think it proper for us to become an active participant in negotiations concerning the proposed pipeline right of way between the North slope and the Gulf of Alaska and the proposed terminal facilities at Valdez.

Before our responsibilities were delineated by the Department in the contract, we offered our opinion that it was unwise for native groups to execute releases to the oil companies, until more facts concerning the proposed pipeline construction and gravel mining operations could be ascertained. We thought, among other things, you should know whether the project will have a serious effect on the ecology of areas upon which Alaskan natives depend for subsistence. A similar concern has been expressed by Assistant Secretary of the Interior, Russell Train, who is looking into the matter.

We also thought all parties should be well aware that the proposed pipeline route traverses lands against which Native claims have been asserted.

As precipitous action was avoided we feel the matter appropriately should be handled by yourselves, the regional associations, and the villages involved, with the advice of regional counsel rather than ourselves.

During the meetings in Washington on Tuesday, it was felt by all that AFN should make another attempt to meet with Governor Miller to discuss the state's position with respect to the proposed lands settlement. You will want to discuss this with your steering committee delegation when it returns. Let us know when the meeting is arranged and we shall be glad to participate.

Meanwhile we are beginning to draft proposed legislation which embodies the provisions set forth in the AFN position paper of June 20, 1969.

Sincerely,

(S) Arthur J. Goldberg
ARTHUR J. GOLDBERG.

PAUL, WEISS, GOLDBERG, RIFKIND, WHARTON & GARRISON,
New York, N.Y., July 23, 1969.

RAYMOND S. COLTER, Esq.
Deputy Solicitor, Department of the Interior,
Washington, D.C.

DEAR MR. COULTER: In accordance with our recent phone conversation I enclose several copies of a draft of an attorneys' contract with the Alaska Federation of Natives. As you will see, this draft is modeled extensively upon the draft which you gave me in Washington, and it contains the modifications which we discussed.

We greatly appreciate the cooperation which you have given to us in this important matter, and we look forward to your comments concerning the enclosed draft.

Sincerely,

(S) Jay Greenfield
JAY GREENFIELD.

WYMAN, BAUTZER, FINELL, ROTHMAN & KUCHEL,
Beverly Hills, Calif., July 28, 1969.

MR. WILLIAM J. VAN NESS, Jr.,
Special Counsel, Committee on Interior and Insular Affairs,
U.S. Senate, Washington, D.C. 20515

DEAR MR. VAN NESS: Herein I send you a copy of a letter dated July 14, 1969, from the Department of Justice to Honorable Walter J. Hickel, Secretary of the Interior, in which Assistant Attorney General William H. Rehnquist has advised that, on the facts presented, "Mr. Weinberg's representation of the Alaska Federation of Natives in proceedings before Congress to consider legislation on the subject of Alaskan native land claims would not violate 17 U.S.C. 207."

Justice Goldberg, Mr. Weinberg and I believing that the law would not prohibit Mr. Weinberg from participating in the representation of the Alaska Federation of Natives in connection with legislation pending before the Congress concerning settlement of the claims of Alaska Natives, nevertheless, believed that the public interest required the considered opinion of the Department of Justice on the matter. You will recall that Justice Goldberg alluded to the question in his testimony before the Senate Committee on Interior and Insular Affairs last April 29.

I respectfully request that the enclosed opinion of the Department of Justice be made a part of the record of hearings which the Committee will hold August 6 concerning Alaskan Native Land Claims.

Sincerely,

THOMAS H. KUCHEL.

Enclosure.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SOLICITOR,
Washington, D.C., July 18, 1969.

PAUL, WEISS, GOLDBERG, RIFKIND, WHARTON AND GARRISON,
Washington, D.C.

GENTLEMEN: In connection with your letter of April 26, relating to representation of the Alaska Federation of Natives, you were informed by the Secretary's letter of April 29 that in respect of the conflict of interest question you would be advised on a later date.

We have been advised by Assistant Attorney General Rehnquist that on the facts presented "Mr. Weinberg's representation of the Alaska Federation of Natives in proceedings before Congress to consider legislation on the subject of Alaskan native land claims would not violate 18 U.S.C. 207."

Enclosed, for your information, is a copy of the Assistant Attorney General's letter dated July 14.

Sincerely yours,

MITCHELL MELICH, *Solicitor.*

Enclosure.

DEPARTMENT OF JUSTICE,
Washington, D.C., July 14, 1969.

HON. WALTER J. HICKEL,
Secretary of the Interior,
Washington, D.C.

DEAR MR. SECRETARY: This is in response to your request for an expression of the views of the Department of Justice on the question whether 18 U.S.C. 207 would prohibit Mr. Edward Weinberg from participating in the representation of the Alaska Federation of Natives in connection with legislation pending before the Congress concerning settlement of the claims of Alaskan natives. We have reviewed the opinion of the Solicitor of the Department of the Interior on this question, as well as the letters of April 26, 1969, and June 2, 1969, submitted to the Department of the Interior by the law firms with which Mr. Weinberg is associated in this matter. We have also considered a letter of June 11, 1969, from Mr. Weinberg's firm to the Attorney General.

The facts as we understand them from these documents may be summarized as follows:

Mr. Weinberg proposes to accept employment from the Alaska Federation of Natives for the purpose of representing, together with other counsel, the Federation and the various native groups for which it speaks in connection with the consideration by Congress of S. 1830, the "Alaska Natives Claims Settlement Act of 1969," and any other legislation which would deal with the land claims of Alaskan natives.

The land claims involved are not based on existing law. In the absence of Congressional recognition of aboriginal native title to particular land in Alaska, the natives have a right of occuption but no ownership interest in the land. "Alaska Native Land Claims", Hearings before the Senate Committee on Interior and Insular Affairs, 90th Cong. 2d Sess. 20 (1968) ; see *Tee-hit-ton Indians* v. *United States*, 348 U.S. 272 (1955). In recent years a variety of legislative proposals for resolving the native claims have been considered by Congress.

Mr. Weinberg was the Solicitor of the Department of the Interior from April 1968 to Februrary 4, 1969, and for the five years immediately preceding he was the Deputy Solicitor of that Department. In connection with his official responsibilities as Deputy Solicitor and Solicitor, Mr. Weinberg participated in a number of activities concerning possible legislative resolutions of the claims of Alaskan other high officials of the Department concerning the Department's policy with natives. These included conferences with the Secretary of the Interior and respect to Alaskan native claims legislation. Moreover, Mr. Weinberg advised the Secretary and other officials in connection with various "freeze" orders issued by the Department preventing transfer of land in Alaska out of federal ownership into state and private ownership. These orders affect the ultimate disposition of these lands through any native claims legislation which might be adopted. As a result of the freeze orders, the State of Alaska brought suit against the Secretary of the Interior, challenging their validity (*Alaska* v. *Udall*). In connection with this litigation, Mr. Weinberg's subordinates prepared reports submitted to the Department of Justice. Mr. Weinberg also conferred with representatives of this Department regarding the litigation. Mr. Weinberg also advised with respect to a contract between an attorney and a native village involving claims representation which had been submitted to the Department of the Interior for approval pursuant to 25 U.S.C. 81. That statute requires approval of the Secretary of the Interior and the Commissioner of Indian Affairs of agreements with Indian tribes in consideration of services to them relative to their lands.

We understand from the letters which have been submitted that Mr. Weinberg will limit his representation of Alaskan natives to representation before the Congress in connection with native claims settlement legislation, and that under no circumstances will Mr. Weinberg engage in any activities relating to the litigation between the State of Alaska and the Secretary of the Interior concerning the freeze orders.

The question presented, therefore, is whether under the circumstances of this case 18 U.S.C. 207 applies to representation of private parties by a former Government official before the Congress in connection with legislative matters as to which he participated during the period of his Government service.

18 U.S.C. 207 provides in pertinent part:

(a) Whoever, having been an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, including a special Government employee, after his employment has ceased, knowingly acts as agent or attorney for anyone other than the United States in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter involving a specific party or parties in which the United States is a party or has a direct and substantial interest and in which he participated personally and substantially as an officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, while so employed, or

(b) Whoever, having been so employed, within one year after his employment has ceased, appears personally before any court or department or agency of the Government as agent, or attorney for, anyone other than the United States in connection with any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter involving a specific party or parties in which the United States is a party or directly and substantially interested, and which was under

his official responsibility as an officer or employee of the Government at any time within a period of one year prior to the termination of such responsibility—

Shall be fined not more than $10,000 or imprisoned for not more than two years, or both: * * *.

It is our opinion that neither section 207(a) nor section 207(b) reaches the activities in which Mr. Weinberg proposes to engage because the general subject of Alaskan native land claims is not a "particular matter involving a specific party or parties" within the meaning of either subsection. This is consistent with the position informally taken by the Department of Justice on earlier occasions.

The term "particular matter" derives its meaning from the enumeration of other matters *ejusdem generis* that precedes it in each of the subsections (*i.e.*, "any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest"). Moreover, those subsections apply only to particular matters involving "a specific party or parties", a limitation which, taken in conjunction with the types of matters enumerated, indicates that the subsections apply to specific proceedings, usually of an adversary nature, which determine the legal rights of the parties involved. "Where this language is used, it is clear that the statute is concerned with discrete and isolatable transactions between identifiable parties." Manning, *Federal Conflict of Interest Law* 204. Thus, as the Attorney General's Memorandum of October 23, 1962 (reprinted following 18 U.S.C. 201) concludes, the language "particular matter involving a specific party or parties" in section 207 "does not include general rulemaking, the formulation of general policy or standards, or other similar matters."

It has been suggested that section 207 is wholly inapplicable to representation of private parties in legislative proceedings before Congress, both because the omission from an otherwise extensive catalog of specific reference to legislative proceedings is too conspicuous to have been unintentional, and because the legislative process by its very nature is concerned with general and not particular matters. In other words, if section 207 does not apply to "general rulemaking" by and agency, then *a fortiori* should not apply to legislation by Congress. We do not find it necessary in this instance to consider the validity of so sweeping a principle. Congress does, after all, legislate on particular matters, and there will be time enough to consider the application of section 207 to legislative representation when a case arises in which the other requirements of that section are met. *Cf. Van Metre* v. *Nunn*, 116 Minn. 444, 133 N.W. 1012 (1912). In our judgment, even though the proscription of section 207 were deemed to include legislative representation, the matter here involved does not have the requisite particularity to bring it within the terms of the statute.

In the situation presented it is clear that neither Mr. Weinberg's official activities with respect to native land claims nor his proposed activities on behalf of the Alaska Federation of Natives are in connection with "a particular matter involving a specific party or parties."[1] There is nothing to indicate that Mr. Weinberg's official activities related in any may to the determination of the rights of particular individuals or particular groups to particular land or compensation therefor. The claims legislation on which Mr. Weinberg advises that he worked in an official capacity and with respect to which he proposes to represent the Alaska Federation of Natives is legislation which would deal generally with the claims of approximately 80,000 natives to hundreds of millions of acres of land.[2]

The legislative proposals which have been considered by Congress have provided for resolution of the native claims by various methods or combinations of methods, including authorization of a suit in the Court of Claims, establishment of a commission to determine the claims, grants of public lands to individuals and to native groups, and cash grants to native groups on a per capita basis.

Recognizing that the distinction between the particular and the general is largely one of degree, we believe that the task of devising legislation to provide

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[1] His activities with respect to the litigation (*Alaska* v. *Udall*) could be so regarded, but that litigation is not the subject matter of his proposed activities. The standard of specificity under section 207 must be met both at the time the Government employee acted in his official capacity and at the time he acts as agent or attorney following termination of Government service. Manning, *op. cit.* at 204.

[2] See "Alaska Native Land Claims", Hearings before a Subcommittee of the House Committee on Interior and Insular Affairs, 90th Cong., 2d Sess. 103–104. Certain provisions of S. 1830 and other legislative proposals deal specifically with certain tribal groups, and a different question might be presented if representation involving the claims of such a group were contemplated.

a formula and a procedure for compensating a substantial portion of the population of Alaska for their aboriginal land claims is not a "particular matter involving a specific party or parties" within the meaning of section 207.

Accordingly, on the facts presented to us we conclude that Mr. Weinberg's representation of the Alaska Federation of Natives in proceedings before Congress to consider legislation on the subject of Alaskan native land claims would not violate 18 U.S.C. 207.

We, of course, express no views regarding approval of the agreement under 25 U.S.C. 81.

Sincerely,

WILLIAM H. REHNQUIST,
Assistant Attorney General,
Office of Legal Counsel.

ALASKA FEDERATION OF NATIVES,
Anchorage, Alaska, June 20, 1969.

POSITION WITH RESPECT TO THE NATIVES LAND CLAIMS ISSUE

The Board of Directors of the Alaska Federation of Natives ("AFN") has been asked its position on the settlement with the Federal government of the one hundred year problem of Native Land Claims.[1] AFN feels that a settlement of native claims to land in Alaska should include:

A. Confirmation of title to land in the Native villages which has been used and occupied by the Native people from time immemorial. AFN proposes that said confirmation of lands should be in the amount of forty million acres.

B. A payment of $500,000,000 and an overriding royalty of 2% of the revenue derived from the lands as compensation for lands previously taken, and as compensation for the extinguishment of any and all claims against the United States, based upon aboriginal right, title, use and occupancy of lands in Alaska by any Native or Native group.

C. Recognition of a statewide Native corporation, and not more than twelve regional corporations as the management group for the land and funds.

D. Creation of an Alaska Native Commission to assist in the administration of the Settlement Act.

Each of these concepts (confirmation of title to a specific amount of land, payment of compensation and provisions for the administration of the settlement) have been included in prior bills inroduced in Congress.

I

CONFIRMATION OF TITLE TO LANDS

The Natives of Alaska have watched the tremendous growth in their State without having had a full opportunity to participate in that growth. The historical use and occupancy of the lands by the Natives for many centuries is indisputable. AFN proposes that the title of land heretofore used and occupied by the Natives be confirmed to them in the total amount of forty million acres in the manner specified below.

1. Each recognized Native village should have confirmed, subject to valid existing rights, a total of four townships, or 92,160 acres. Lands that have been tentatively approved for selection by the State of Alaska are to be included in the lands to be withdrawn on behalf of the natives. All public lands withdrawn and subsequently conveyed shall be contiguous, except as separated by bodies of water, and shall be in units of not less than 1,280 acres. As provided in S.1830, each of the villages should be named in the legislation, and the land withdrawals should be made by the legislation. Since the population of the villages varies, and because regional differences exist, an additional grant to the larger villages based on the number of Natives on the village rolls should be made. The additional grant should be calculated on the basis of 500 acres per person, less the grant of four townships, or 92,160 acres. The additional grants of land should be

[1] AFN will attempt to achieve a separate settlement with the State of Alaska. Because of statements made by Governor Miller during the recent hearing of the Senate Interior Committee AFN is hopeful that it will be able to reach a final settlement with the State.

limited to the "claim area" of the regional association in which the community is now located, as shown on the Bureau of Land Management's "Native Protest Map", but need not be contiguous.

2. Regional corporations should be established by the legislation. Each of these corporations should operate in an area roughly analogous to the area now covered by one of the following regional associations: [2]

(a) Arctic Slope Native Association (Barrow, Pt. Hope)

(b) Bering Straits Association (Kotzebue, Seward Peninsula, Unalakleet, St. Lawrence Island)

(c) Association of Village Council Presidents (Southwest Coast, all villages in the Bethel area, including all villages on the lower Yukon River and the Lower Kuskokwin River)

(d) Tanana Chief's Conference (Koyukuk, Middle and Upper Yukon Rivers, Upper Kuskokwin, Tanana River)

(e) Cook Inlet Association (Kenai, Tyonek, Eklutna, Iliamna)

(f) Bristol Bay Native Association (Dillingham, Upper Alaska Peninsula)

(g) Aleut League (Aleutian Islands, Pribilof Islands, and that part of the Alaska Peninsula which is in the Aleut League)

(h) Chugach Native Association (Cordova, Tatitlek, Port Graham, English Bay, Valdez and Seward)

(i) Tlingit-Haida Central Council (Southeastern Alaska)

(j) Kodiak Area Native Association (All villages on and around Kodiak Island)

(k) Copper River Native Association (Copper Center, Glennallen, Chitina, Mentasta)

A map showing the areas of jurisdiction of the proposed regional corporations and a list of the villages which are entitled to have land withdrawn will be supplied.

3. After withdrawal of the lands in accordance with the proposed legislation, conveyance of those lands in fee simple should be made by the Secretary of Interior to the recognized Native village. The village, at its option, should be able to convey title to the regional corporation in whose area it is located, or to the statewide corporation with the consent of the regional corporation. Appropriate restrictions prohibiting conveyance to others should be included. AFN anticipates that most villages would convey the lands to their regional corporation.

The villages should have the right to manage the surface of the lands, if the right had not previously been granted to the regional or statewide corporation. All mineral interests [3] should be granted to the regional corporation in whose area the minerals are found, and any revenues received by a regional corporation from those interests should be divided in the following ratio: 50% to the regional corporation in whose area the mineral is found, and 50% to be divided among all of the other regional corporations on a population basis.

4. The lands withdrawn and conveyed to the villages may be located in National Parks, National Wildlife Refuges, National Forests, unimproved portions of Military Reservations, and various animal or bird sanctuaries. AFN respectfully submits that such withdrawals were made without any consideration to the Native occupants and that, equitably, the land in those withdrawals should be restored to the occupants.

5. All Indian Reorganization Act reserves, Executive Order reserves, and Administrative reserves (Pages 444 and 445 of "Alaska Natives and The Land", prepared by the Federal Field Committee for Development Planning in Alaska), which have been set aside for Native use or for the administration of Native affairs, should be granted subject to valid existing rights, to the villages using or occupying the land at the time of the passage of the legislation. These grants should include all mineral interests therein, and those interests should be managed as provided in Paragraph 3 above. To the extent that any reserve is smaller than the area that could have been granted to the village under the terms of Paragraph 1 above, additional lands should be granted to the village by the Secretary under the terms expressed in Paragraph 1 above.

6. AFN believes that the lands not granted by the legislation should be subject to the protection of subsistence resources by appropriate provisions permitting

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[2] After further study of this matter, various changes may be made concerning the area covered by particular regional corporations.

[3] As used in this paper the term "mineral" includes, without limitation, oil, gas, gold, copper and all other leasable and non-leasable minerals.

the Secretary to declare any area closed to hunting, fishing or trapping by persons other than the residents of the area. As to any vacant public domain in Alaska, the Natives should have appropriate provisions in the legislation which will protect game, fish, berries, fuel, and other products of the land required for subsistence purposes.

7. Natives residing in urban areas shall be entitled to receive a patent to the surface of 160 acres of land as permitted in § 10(h) of S. 1830.

8. Natives shall be granted the land used by them for the harvest of fish, wildlife, berries, fuel or other products of the land. The nature and extent of such grants shall be as provided in § 10(d) of S. 1830.

9. Public Land Order 4582, which created the current land freeze should be revoked with the passage of the proposed Act and the granting and conveyance of lands as provided herein.

II

PAYMENT OF COMPENSATION

1. AFN proposes a payment of $500,000,000 and an overriding gross royalty of 2% of all proceeds from any state and federal lands as compensation for lands previously taken, and as compensation for the extinguishment of any and all claims against the United States, based upon aboriginal rights to all of the lands in Alaska. Sums should be apportioned 75% to the villages, 20% to the regional corporations, and 5% to the statewide corporation after native enrollment is completed. The apportionment should be on the basis of population.

The above distribution of compensation will be limited as to two particular groups:

(a) The Tlingit-Haida Indians, who were granted a judgment in the Court of Claims Docket No. 47,900;

(b) Those villages who have claims pending before the Indian Claims Commission that may be reduced to judgment before the legislation passes.

As to those two groups, the amount of any judgments, after deducting the payment of attorneys' fees and costs, should be withheld and reapportioned among the other Native groups on a population basis. When the compensation due those two groups is equal to the amount of money that has been offset, they should be permitted to share in accordance with the above ratios. Separate provisions are also required to deal with distribution to the Tyoneks.

2. AFN proposes that the $500,000,000 be appropriated and deposited to the credit of the Natives by granting $100,000,000 in the first year and $50,000,000 each succeeding year for a period of eight years. Interest at the prevailing federal rate should be paid against unpaid balances.

3. Direct per capita distribution of any funds in excess of 20% of the amount received by any village or corporation should be prohibited. Each village, regional corporation and the statewide corporation should be authorized to expend, invest or distribute its funds to promote the advancement of the Native people in Alaska, subject to authorization by the appropriate governing body and approval by the Alaska Native Commission.

4. AFN proposes, in place of the provisions in S. 1830, which included terms that the Native people share in the revenues derived from certain sources, an overriding gross royalty of 2% of all proceeds from all state or federal land not patented to the Native people. Such payments should be paid into a special fund and distributed in accordance with paragraph 1 of this section, namely, 75% to the villages, 20% to the regional corporations, and 5% to the statewide corporation. There should be no time limitation on the term of the overriding royalty and it should effectively grant the Native people a perpetual interest in the lands which have been theirs for thousands of years. The Native people should participate in future royalties and benefits derived from the land, and those funds could be utilized toward the improvement of conditions in the villages.

III

STATEWIDE NATIVE CORPORATION AND REGIONAL NATIVE CORPORATIONS

Historically, dependence and reliance on federal and state programs has effectively denied the principle of self-determination to the aboriginal people of the United States. The Alaska Natives want to govern themselves within the limitations of the law. Control of their destinies must therefore be transferred to the Native people. Meaningful progress toward that end can be taken in the settle-

ment legislation. AFN therefore proposes the creation of (a) a statewide Native corporation and (b) up to twelve regional corporations as described above. A statewide organization, as a federation of regional associations, presently exists. The Native people strongly believe that the regional corporations would provide a maximum of local self-determination without impairing efficiency. As is apparent from the proposed distribution of funds, AFN wants to build strong regional corporations. AFN believes that there is capable regional leadership to manage the lands and money granted in the legislation.

The regional corporations should have maximum flexibility and the power to engage in any commercial or eleemosynary activities, either individually or in groups. In order to make maximum use of their resources, the regional corporations should be empowered to merge, engage in joint ventures, employ common managerial services, or collectively take whatever steps are deemed appropriate to their boards of directors.

The Native people would be stockholders and owners in the village regional and statewide organizations.

ALASKA NATIVE COMMISSION

To assist the Secretary in the administration of the Native Claims Settlement Act, an Alaska Native Commission should be appointed as an independent agency of the United States. It should be composed of five members appointed by the President, and at least three members should be Alaska Natives. The Commission should have the power to review the budgets of the village, regional, and statewide organizations, and perform such other duties as may be prescribed in the legislation. The commission should be in existence for a period of ten years after the effective date of the act.

EXTINGUISHMENT OF ALL CLAIMS

The legislation should be a full and final settlement of any and all claims against the United States based upon aboriginal right, title, use, or occupancy of public lands in Alaska by any Native or Native group, arising under the Act of May 17, 1884 (23 Stat. 24) or the Act of June 6, 1900 (31 Stat. 321) or any other Act of Congress, including land claims pending before the Indian Claims Commission on the effective date of the Act. An appropriation of funds should be made to the Secretary of Interior to pay all reasonable expenses and attorneys' fees that have been actually incurred by those claimants in connection with cases that are dismissed as a result of the settlement legislation.

ADDITIONAL CONSIDERATIONS

1. *Enrollment*—AFN advocates a single enrollment of the Natives of Alaska, which would include all Natives of one-quarter or more Native blood, and any individual as defined in Section 2(c) of S. 3859 (90th Cong. 2d Sess.). Each Native should be enrolled regardless of present residence. The enrollment of the regional corporation shall consist of the rolls of all the villages within the region of the corporation. The regional corporation enrollments shall constitute the rolls of the statewide Native corporation. Distribution of funds to the various regional corporations and villages should be made based on a temporary enrollment. A sufficient amount of funds should be reserved to adjust the distribution of the final enrollment differs from the preliminary enrollment.

AFN advocates an immediate enrollment of all the Native people in Alaska and proposes that the enrollment be conducted by AFN under contract from B.I.A.

2. *Native Allotment Act*—No provision of the Settlement Act should affect the rights of the Natives as citizens to acquire public lands of the United States under the Native Allotment Act of May 17, 1906, as amended, or the provisions of other statutes giving land rights to Natives.

3. *Attorneys Fees*—The bill shall contain provisions for the payment of all reasonable attorneys fees or expenses actually incurred by any native group, village, association or federation in connection with legislation pertaining to the settlement of the lands issue.

4. *Appropriations*—Sufficient funds should be appropriated to the Secretary of the Interior to carry out the duties required of him under the Settlement Act.

CONCLUSION

Because of the past failures to settle Native land claims in Alaska, almost all of the State's 365 million acres are in controversy. The Native people have asserted their rights under aboriginal title to almost all of the land. However, the Native people recognize their duties as citizens and urge the Congress to provide a prompt and just settlement. A final resolution of all the claims will be of substantial benefit to the Natives, the State of Alaska, and to the United States.

AFN believes that the proposals submitted above constitute an appropriate formula for settlement. The essential ingredients of land grants, compensation, and shares in future revenues may perhaps be mixed in different proportions if the overall result is substantially the same. In AFN's judgment, the above formula represents the best solution. If the State of Alaska, and the Native people who are its citizens, are to advance, an effective solution must be promptly found by the Congress.

EMIL NOTTI, *President.*

STATEMENT SUBMITTED ON S. 1830 AND RELATED ALASKA NATIVE CLAIM PROPOSALS, BY METLAKATLA INDIAN COMMUNITY

My name is *Solomon Guthrie,* and I am the *Acting Mayor* of the Metlakatla Indian Community, which is organized and incorporated pursuant to the Federal Indian Reorganization Act with a Constitution and Bylaws approved by the Secretary of the Interior on August 23, 1944, and a Corporate Charter ratified on December 19, 1944. Our Community is the beneficial owner of the Annette Islands Reserve, which was set aside by Congress for the use of the Community by the Act of Congress of March 3, 1891 (48 United States Code 358).

The Council of the Metlakatla Indian Community expresses its full support of the efforts of the Alaska Native peoples to achive recognition of their just rights in Alaska lands. However, the Community Council has authorized me to bring to your attention steps which need to be taken if these proposals are not to be seriously unfair to the Metlakatla Indians.

First, if the Committee adopts the basic approach proposed in S. 1830 and, with minor variations, in the Departmental proposal, it is essential that the language of these bills should be clarified to specify expressly that their provisions are not applicable to the Annette Islands Reserve.

In testimony before this Committee in February of 1968 the Community's representative clearly stated that, although generally supporting Alaska Native rights, "Metlakatla would oppose any change in the status of its reserve." However, under section 16 of S. 1830 all legislative reserves for native use or the administration of native affairs in Alaska are revoked and in section 8 Metlakatla is listed among the native villages entitled to select lands to be held by each such village in fee. Thus the bill is open to the interpretation that section 16 revokes the Annette Islands Reserve, notwithstanding the exclusion of "any Tsimshian Indian of Metlakatla" from the definition of "native" in section 2. It must be remembered in connection with the interpretation of section 16 of S. 1830 that in creating the Annette Islands Reserve the Congress expressly set it apart not only "for the use of the Metlakatlan Indians . . . who . . . had recently emigrated from British Columbia to Alaska" but also for "such other Alaskan natives who may join them, to be held and used by them in common . . ." Thus, the Reserve was created for "native use" even as native is narrowly defined in S. 1830. Over the years, substantial numbers of Tlingits, Haidas, Eskimos, Aleuts and others of aboriginal descent have in fact joined the Community.

I note that in the Interior Department report on S. 1830 Metlakatla is deleted from the list of villages entitled to select lands. While this deletion may be in recognition of our expressed desire for the preservation of the present status the Annette Island Reserve, the Departmental report leaves the language revoking native reserves unchanged. We request that a proviso shall be added to section 16 of S. 1830 which will make absolutely clear that the trust status of the Annette Islands Reserve and its beneficial ownership by the Metlakatla Community is unchanged.

The clarification is important to Metlakatla for two reasons: (1) the Community does not wish to alter the present trust status of its lands, and (2) even if Metlakatla were entitled to select lands under S. 1830, it might under section 8 of the bill receive fee title to as little as 23,040 acres as against the revocation of its beneficial interest in the 86,000 acre Annette Islands Reserve. What is involved, of course, is not only the land itself, but the value of the improvement

of the land in the last 82 years by the Metlakatlans through the investment of their funds and volunteer labor. These improvements alone, including such Community owned facilities as municipal buildings, docks, streets, utilities, and an airport are valued at more than $27,000,000. The revocation of the Annette Islands Reserve against Metlakatla's wishes would constitute an exercise of the power of eminent domain by the United States over the Community's recognized property interest in the Reserve.

Secondly, if the Committee decides to adopt the proposal of the Alaska Native Federation for a bill including long range funding for the improvement of the social, health, educational and economic condition of the native peoples of Alaska, rather than the system of compensatory payments provided for in S. 1830 and the Departmental proposal, provision should be made for the Metlakatla Indian Community to share in the benefits of such a program. Metlakatla, like other Alaska native communities, suffers from chronic high unemployment rates, low average educational attainment, serious health and housing deficiencies and manifests many of the other signs of poverty characteristics of native communities in Alaska. While Metlakatla has undertaken a comprehensive anti-poverty program since 1966 with the assistance of the Office of Economic Opportunity, the Economic Development Administration, the Bureau of Indian Affairs and the Alaska Native Health Service, much remains to be done. The most recent survey of the Community (1968) indicates that forty percent of our families have annual incomes below the poverty line ($3,000 per year), seventy percent of our male labor force is unemployed or seasonally unemployed, and eighty-two percent of our female work force is in the same category. Thirty percent of our population over 65 is receiving old age assistance. Thirty-one percent of our people over the age of 25 have less than an eighth grade education. Our infant mortality rate is four percent. Twenty-three percent of our housing units are substandard.

If the Federal Government proposes to undertake a comprehensive new program to relieve economic and social distress among the Alaska Native poor, it is our position that persons in poverty should not be disqualified from receiving the benefits of such a program merely because they are members of the Metlakatla Indian Community. Metlakatlans should be able to participate in such a program just as they are benefitted by the existing federal programs for the benefit of Alaska Natives. We ask that the Committee look at this question from the standpoint of the needs of the culturally and economically deprived natives of Alaska, and not draw a distinction based upon the fact that the ancestors of one Alaska native group happened to live in British Columbia a hundred years ago.

In summary, Metlakatla asks that (1) neither the boundaries nor the legal status of the Annette Islands Reserve shall be affected by this legislation, and (2) that adequate provision be made for continued federal assistance to the Metlakatla Indians in the event that a substantial new program is recommended to eliminate poverty in the Alaska Native villages. In order to carry out our first request we ask that the bill shall be amended by the addition of the language set forth below. With respect to the Alaska Federation of Natives proposal, we will propose appropriate language after a bill has been introduced and we have had a chance to review it.

PROPOSED AMENDMENT TO S. 1830

Section 16 of S. 1830 shall be amended by adding at the end thereof the following language:

"provided, however, that any reservations heretofore made by any Act of Congress or Executive order or proclamation for the benefit of the Metlakatla Indian Community, including the Annette Islands Reserve set aside by the Act of Congress of March 3, 1891, 26 Stat. 1095, shall continue in full force and effect."

Mr. GOLDBERG. I think in this document, in summary form, will be found the answers to many of the questions which will be asked here today. It is very summary because in order to be useful it does not spell out in great detail all of the items, but they will be covered in the testimony that will be given by Mr. Notti and Mr. Borbridge.

I should like to make, therefore, this very brief comment.

As the chairman and other members of the committee have indicated, this is a very complex problem; a problem of settling the claims. It is also a very great opportunity.

I noticed in particular the question, Mr. Chairman, that you asked whether this would be a final settlement of the claims or whether on some future occasion the Native groups would come in and again request of some other Congress further consideration of their claims.

It seems to me there is an answer to this. In the position paper of the Alaska Federation of Natives, arrived at by themselves—this was not a lawyer's suggestion—they have said that they desire that this matter be settled and that this matter be settled finally, and that the settlement which is, of course, the settlement they recommend, would be a settlement that would lead to the extinguishment of the claim.

Now, my experience, whether that will prove to be the case, will largely depend—I do not question their good will in making this statement, but I think historically it will largely depend—upon whether justice is done. If justice is done then this will be the final chapter and it can be a very glorious chapter in the handling of Native claims, a chapter of which we can be justly proud.

If justice is denied then there is no final end because the feeling of people for justice and righteousness asserts itself regardless of what looks like a final solution. I think the history of our country shows that. If you look back over the history of our Constitution, some people thought the Missouri Compromise was a final settlement, and some people thought the original provisions of the Constitution as they related to our colored and black population were a final settlement. It proved not to be the case.

Senator METCALF. And the Indian Claims Commission——

Mr. GOLDBERG. Yes.

Senator METCALF (continuing). Is a more immediate example. They thought the treaties and so forth that we entered into with the Indians were final, and it was not until the conscience of America rose up and said we ought to pay these people for the deprivation through treaties, that this was done.

Mr. GOLDBERG. I am very glad you mentioned that because it relates to the very next question which you also have pinpointed and about which, perhaps, I can add something to the Native position.

Whether this will be a final settlement will not only depend upon whether enough cash is paid right now and whether enough land is allocated, it will also depend on whether the Native population have a sense that they are permanently going to participate in the enormous revenues which providence has given to this State, which is the State in which they have lived for thousands of years, and to which they claim almost all of the land.

Senator METCALF. Now, if I may interrupt, Mr. Justice, when we held the field hearings in Alaska, Governor Hickel came in and suggested that they permanently participate in the development of the resources in Alaska, and in April Governor Miller came in and suggested that there be a permanent tribal participation in the resources in Alaska. So we have had a complete change of signals today, a different ball game, and before I forget, I would like to have you submit also a brief on that proposition that I asked for briefs from the others.

Mr. GOLDBERG. Yes, and perhaps I should say a preliminary word

about it, and I would be very glad to supply a detailed memorandum. It is touched upon in the memorandum which I have already filed.

Senator STEVENS. May I comment right there, Mr. Chairman?

Senator METCALF. Surely.

Senator STEVENS. I want to make sure we keep this thing in perspective, Mr. Chairman.

The last administration, as I understand it, asked for $175 million and 4 million acres of land to settle these claims, and this was not received very well in Alaska.

This administration has endorsed $500 million, 10 million acres of land, and some rather generous provisions, some of which I do not think go far enough. But I think that the positions that are changing in this attempt to find a solution are changing because of the feelings of the Alaskan Native people reaching for the ultimate solution to their problems, and I would certainly not want to infer that the changing position, for instance, of the Department of Interior, Secretary Hickel, certainly has presented a much changed position over that presented by Secretary Udall, and now Governor Miller has presented one that is changed as opposed to Governor Hickel when he was Governor, and even Governor Hickel changed over what Governor Egan formerly recommended.

I think the changes have all been for the good, and I am hopeful that we can view them in that way. I certainly know that I do, and I hope we are going to see some more changes. As a matter of fact, I hope that soon we will see some effort on the part of those who are advising the Alaska Native Federation and the Native groups that there is going to have to be an accommodation now so that we have a United Alaska position so that we can get this bill through the Congress.

I do not think that we can continue to have before the Congress a Federal position, a State position, any AFN position, and a position of segmented groups of the Alaska Native people, and I am hopeful we will see more changes rather than fewer. I hope that the net result of the Governor's position here today is one that encourages accommodation of these viewpoints, and not one that encourages pointing out the differences over what the previous positions were.

Thank you very much.

Senator METCALF. I will say to my friends from Alaska, that all of us have been anxious that the Natives participate in the development of the resources of Alaska, and all of our hopes have been the concept that the Natives in view of their contributions, shall be given a percentage of the developments of the very rich and natural resources that that great State has. It was not until today that Governor Miller said that he would be willing to go along with that if he had not been advised by his attorney general it was illegal, and that is why I have asked for these briefs to determine the legality under the Statehood Act.

I do not think that I am unaware—I was here, Senator Stevens, as a Member of the House and as a Member of the Senate, and participated in the Alaska Statehood Act and made speeches on the floor, and I had no idea that we were shutting them off as a result of that act and as the result of the adoption of, I think, a very liberal and one of the greatest constitutions that any State has, that we were shutting the Natives off from opportunity to participate in the development of their natural resources, and this is what has bothered me to date.

Senator STEVENS. If I may suggest to you, Mr. Chairman, it is section 4 of the Statehood Act that really has enabled these people to be where they are today. The Native claims that were presented in 1953, and again later on, delayed the enactment of the Statehood bill to a certain extent. So we put in section 4, which preserved whatever rights the Natives had, and we got Statehood, and that has led to my colleague and I sitting in at the table and being in a position to help, and having a Governor being in position to help, and actually Statehood did no harm the Alaska Native claims, it has brought us to the point where we have an opportunity to solve them and solve the problems involved.

But my point was that I remember Secretary Udall in Anchorage when he endorsed the provision of sharing the resources from the Outer Continental Shelf, and when he got back and found out—and we have all been there, at least those who served in the executive branch—that the Bureau of the Budget would not go along with it, he was compelled to come up here and testify against it.

Now, the fact the Governor has changed his position based upon legal advice to me is unfortunate, but it does not bother me at all. I just hope that we are not going to emphasize changes to the point that we destroy the capability of reaching an honorable compromise on the problems that are in front of us. That was my point.

Senator METCALF. Well, this Senator is going to work with my two colleagues from Alaska and others, and work out that equitable compromise and equitable solution that Mr. Justice Goldberg is talking about.

Mr. GOLDBERG. I did not, I must say for myself, Mr. Chairman, I did not understand the Chair or anybody else on this committee is desirous of doing anything else but to accommodate all points of view.

In fact, in my testimony originally I said that I welcomed the suggestions that were made by the Field committee, by the Administration, and I thought they were constructive, and I repeat that statement in the statement that I filed today.

I do not think they are adequate, and the suggestions we have made are not designed to point up differences. As a matter of fact, this little document I prepared was really designed to point out a wide, some wide areas of agreement, and it was in that, I was going to proceed to that.

If you will look at this document very briefly you will find that everyone is in agreement that this time there ought to be a settlement based upon, first, an appropriation of land for the Natives. We do not happen to believe, and I shall let the gentlemen explain why we do not happen to believe that the amount of land which is proposed, which is set forth in the various position papers, the Governor about 10 million, the Field committee about 5 million, the Department of Interior about 10 million, we do not believe these quantities are adequate, and Mr. Notti and Mr. Borbridge will explain why in more graphic and better terms than I can.

I can only say that it is about 10 percent of the land of Alaska, and the natives make up 20 percent of the population. Their needs of land are very great considering the nature of the terrain and ecology of the situation.

But there is a common denominator, and that common denominator is that there ought to be a land, and a substantial land, provision in the bill that Congress should enact.

Then, if you will look, the next on the list, you will see some differences and some agreements. I should like to explain what the differences are.

On the locatables in the lands, Governor Miller says it should go with the patent; the Field Committee says it should go to the Statewide Corporation; the Department of Interior says it should go with the patent; and the Natives have very carefully considered what is the best way to handle this. They believe it ought to go to their regional corporations that they are proposing be established on the ground that the State is so widespread that the Statewide Corporation, as recommended by the Field Committee, would be too unwieldy and too difficult to handle, and it would be better handled in the regional corporations.

Now, on the leasables, which is very important and various questions were asked about them, you see the differences.

Governor Miller's position would be that it remain with the United States until it went with the State, and then the leasables would be retained by the State. The Field Committee says, "Statewide Corporation"; the Department of Interior says, "remain with the United States"; the Natives say it ought to go really to the regional corporations.

Now, this is a very important part of history here. As you, Mr. Chairman, I think, pointed out in all Native land settlements with Indian tribes, that we have been able to find except one, leasables have always gone with the land fee title has been given. There was one instance, I believe, where it was not so, and it is mentioned in our memorandum, and Congress corrected it later. Obviously, if land is to be given to the Natives it ought to be land given to them with all of the rights of ownership, and there is no reason, either in justice or morality or in law, why that should not be so.

There are many very important reasons for that. One would be the obvious one, if there are valuable mineral rights there, oil and gas, as well as mineral rights, they ought to enjoy the benefits of it. This is the land that is being given to them in consideration of their relinquishing a claim against much larger land.

The second reason is this is the only way that there will be an adequate safeguard that the land that is given to them is not developed in such a way that it will be harmful to their interests. They have already had experience with this in land that has been given to them.

By the way, they have done very well in the land that was given to them, as our memorandum shows, in terms of business management. They got offers which had been considered by the Government as adequate which they turned down for exploitation of oil and gas development, and they got a much better deal by turning it down, so they have shown some good capacity to handle that.

The next one, which deals with what should be done to the nonvillage Natives, I should like to make an addition to because I listened very carefully to Senator Stevens' questioning on this subject. Really it should have been, I would like the record to show in addition, this indicates nonvillage Natives' position of Governor Miller, no land;

Field Commission 160 acres of land; Department of Interior patent to 160 acres only if the Native occupied same at the time of the act; the Alaska Federation of Natives patent to 160 acres of land.

In that designation we were referring to nonurban, nonvillage Natives, and I would like the record to show that there the Natives position with respect to urban would be, Governor Miller, no land; the Field Commission 160 acres patent; Department of Interior 160 acres designated by the Secretary; and the Alaska Federation of Natives patent to 160 acres; so you get both categories.

Senator STEVENS. May I interrupt there, Mr. Ambassador?

Mr. GOLDBERG. Yes.

Senator STEVENS. It is my understanding the Governor's position would be the same as the Department of Interior. It would be under the Indian Allotment Act.

Mr. GOLDBERG. Well, I want to talk about that because this particular provision under the Department of Interior bill is beyond the Native Allotment Act, as I understand it and as I heard Governor Hickel's testimony.

The Native Allotment Act has had no benefit to the Natives of Alaska. To date, only an insignificant acreage has been allocated under the Native Allotment Act. The provisions of that act have been so restrictive they have not been very practical, and it would be our hope that this bill would provide for a real allocation for the nonvillage Natives, urban or nonurban.

Senator METCALF. Secretary Hickel testified that his bill would repeal the Indian Allotment Act.

Mr. GOLDBERG. Yes, and substitute a separate provision.

Senator METCALF. Yes.

Senator STEVENS. I certainly agree with that. It was my understanding—maybe I did not understand the Governor correctly—that so far as nonurban Natives were concerned they were perfectly willing to support the concept they would be getting under the Indian Allotment Act even if they would have amendments, but they would prefer the nonurban Natives to have title to the land they occupy.

Mr. GOLDBERG. But, as I understood, he was talking about the Native Allotment Act which has not been, as I said, of any practical value, and I understand your position not to be any different from what I am talking about.

Senator STEVENS. I agree with you. I just want to be sure of the position of the Governor.

Mr. GOLDBERG. I am not going to go through each of these. It is self-explanatory, it would take too much time, except to point out the last.

I have looked at the bills myself, and Senator Stevens and Senator Gravel in private conversation raised the same question about what would happen to the revocation of reserves.

As I read the proposal, the Native reserves would, under the Administration bill, be revoked except as to Metlakatla, and that would be very unfortunate for the reasons that have been developed in the questioning before the committee. The Tyoneki, for example, would lose the oil which has been the economic formulation of their development.

Certainly the bill, it ought to extinguish, if justice is done, it ought to finally extinguish, the aboriginal title, but it ought not to extinguish the established reserves, and many complications will arise if that were done, and I think the bill only retains that one reservation, as I have read it, and I heard the Governor say somewhat otherwise, but I do not think the language of his bill is otherwise.

Senator STEVENS. What the Governor said, Mr. Ambassador, if I may, Mr. Chairman, as I understood it, is that only four reservations in Alaska that would not, in fact, be confirmed by the proposition that he put forth, the four townships, those being Venetie, Metlakatla, Tyonek and Noorvik. The others, if you follow the Governor's recommendations of four townships, would in fact be confirmed in fee.

So that he had an indication, as I understood it, that he had a question about what to do with those four.

Mr. GOLDBERG. Yes. But I think it ought to be very specific that they are protected.

I will move rapidly to give time to the others, if you will look at the next page, everybody agrees there ought to be a cash settlement, and the positions there are stated in terms of amounts.

The Governor said $500 million, $100 million the first year, $50 million for the next 8 years. The Governor has been, there, very similar in fixed amount to the position taken by the Alaska Federation of Natives as you will see in the last column.

The field committee said $100 million, and then a sharing in the revenues up to another $100 million for each of the first 10 years.

In our memorandum we point out part of the difficulty there. It is going to take time to exploit the oil resources, so that what looks like $1 billion may fall far short of that in terms of when the oil is taken from the land. Among other things, a pipeline has to be built, and this is going to be an enormous engineering undertaking, the first time that a pipeline has been built under arctic conditions, and it will be an enormous undertaking.

So that you just cannot take oil out of the land in great quantity unless it can be transported.

Senator METCALF. I assure you, Mr. Justice, that this committee already is considering conservation and easements, and all that; that we had an executive session this morning where that matter came up, and it will take many years.

Mr. GOLDBERG. And the Department of Interior bill, the $25 million per year for 20 years, which as the Secretary has very correctly stated, is not a half-billion dollars at current rates. He has been very candid and forthright about it. He pointed out it is $322 million at discounted rates.

The Natives, of course, have asked for what I have said, and they have asked that it be paid in installments that they get interest on the installments, which is the normal way if you are given something in settlement ——

Senator METCALF. Not at the interest at the present rate, I hope.

Mr. GOLDBERG. No. They would be willing to be more modest than that, because the present rates are astonishing, at least to me.

Then, of course, the real question is the revenue sharing, about which I will merely say this: I listened with great interest to the Governor,

and I thought his statement was a good statement, except for the conclusion. He said that, in principle, he believed in it, he had not changed his mind, but his lawyers had told him that this would not be permissible under the Statehood Act or the Alaska constitution.

I shall file our legal memorandum because we have done research in this area. Congress, as you yourself have indicated, when they enacted the statehood legislation, I think took care of this problem to permit this to be done, in my legal opinion, and I shall file, with my colleagues, a legal opinion to this effect, because the language in the section refers to Native claims and subjects to congressional determination how that shall be settled.

So that it is our legal position; there is plenary power in the Congress of the United States to do this at the present time, because this legislation would extinguish those claims and all the rights that were granted to the State, and the State affirmatively, it acknowledged it in the Statehood Act, were subject to the claims of the Natives and the absolute jurisdiction and control of the United States until disposed of under its authority, except as Congress would otherwise prescribe.

So I do not want to enter into a legal debate at the moment, but I am aware of the Supreme Court precedents in this area, and in my view, Congress has jurisdiction to do this. There is no impediment in the Statehood Act.

Now, if Alaska has made some contrary State constitutional provisions, the supremacy clause of the Constitution of the United States takes care of that, because the supremacy clause of the Constitution of the United States says that when Congress enacts a law within its competence, that law takes priority over any State law, and that includes the constitution of the State to the contrary notwithstanding.

I go on to the next issue, how shall this be done. Everyone here agrees that something ought to be done with this money other than to hand out individual checks. Some individual checks may be necessary for hardship purposes, as the position paper of the Natives indicates, but basically they are in agreement, too.

Perhaps this is the first time, on a large scale that the Natives themselves have recognized this, and they have proposed that the financial distribution be for development, for improvement, for self-help which, by the way, will be of great help to the State of Alaska since the Natives will be contributing to many functions that a State ordinarily would perform. But they have suggested the 12 regional development companies, along with a statewide company, and you will see the differences in approach in this tabulation.

There is a very important difference. They believe that they are capable of running their own affairs, and they believe that the directors of this corporation, these corporations, should be elected by them. They think they are capable of doing it. They do not object to an Alaska Commission being established—I will say a word about that in a moment—but basically they believe that the time has come not to continue to treat them as wards of anybody, and they are demonstrating their capacity, as our memorandum shows, from day to day, and they, speaking for themselves, I think, have demonstrated it to this committee in the meetings you have had with them.

They are capable men, they are capable of getting advice, and good advice. I saw some of the products of their own investment in Alaska.

The office buildings, one of them, has space rented by the Bureau of Indian Affairs; they rent space from a building built by the Alaska Natives.

Then, on the last page, there is an analysis of the position on the Commission which the various bills have provided. Here the Natives say they ought to have three members, Native members, on the Commission, and that the Commission should be liquidated 10 years after the enactment of the act.

Now, these, I think, portray the areas of agreement and disagreement.

Finally, I would like to say this: this is a legislative determination. We mention cooperation with the Congress in making a legislative determination.

Part of the spirit of that cooperation, I think, is manifested by this, and I would like to illustrate: the bill of the Department of the Interior, as drafted, says that upon settlement of, enactment of, this bill, all claims against the United States shall be relinquished. I do not happen to believe, in my opinion, and I have taken it up with the Natives and I have told them what I have thought of it, I do not happen to believe that that sufficiently extinguishes the claims.

I think if there is a just and equitable settlement, people who have acquired patents, for example, people in Anchorage and others who have acquired patents, should not be subjected to any further claims against them. I think that language ought to be changed so that there will be an extinguishment of all claims.

I do say that on the basis that there will be a just settlement.

At the same time, the language is so broad that it extinguishes claims that have nothing to do with land claims. I think that language ought to be changed. There are claims that are filed over good faith dealings on wages and matters other than lands that are not the subject of these proceedings. But the spirit, I think, of the Natives, I think, is illustrated by the fact that they are ready for a final extinguishment of all claims so that everybody in Alaska will be protected.

Under the language of the act as drafted, they do not think their claims against the State could be preserved, that is not their intention. So they are not hostile to the State. They believe there ought to be a final settlement, but they believe there ought to be a just and equitable settlement.

I thank you, Mr. Chairman.

Senator METCALF. Thank you very much, Mr. Justice, for a splendid statement and a very helpful explanation of not only your position but a clarification of some of the other positions.

I might comment that, Mr. Notti, you could not have come in with a more distinguished group, except that we hoped to have our former colleague, Senator Kuchel, who was a beloved member of this committee and has been a very distinguished minority member, leading minority member, for several years, and we hoped that he would accompany you.

Mr. GOLDBERG. Mr. Weinberg is here acting for him.

Senator METCALF. Well, Mr. Weinberg is a very able witness before this committee, but he could not take the place of our former colleague.

I have been informed that we are just about ready to have another vote. I am going to call the committee back into session at 9 o'clock in

the morning in this room, and I understand, Mr. Ambassador, that you cannot be here, but I am going to let my two colleagues from Alaska interrogate you, and then recess until tomorrow.

Would that be satisfactory?

Senator GRAVEL. Very much, Mr. Chairman.

Senator STEVENS. Very much.

Senator METCALF. Very well, The senior Senator from Alaska.

Senator STEVENS. Thank you, Mr. Chairman.

Mr. Goldberg, the last statement you made on the settlement of claims, and I appreciate your position, does that include fishing rights?

Mr. GOLDBERG. No; we think that there ought to be in the legislation coverage of that, and you will notice in one of the subheadings there is a reference to hunting and fishing.

Senator STEVENS. I meant, do you believe that this bill ought to terminate the claims based upon aboriginal fishing rights except to the extent the bill covers it?

Mr. GOLDBERG. It ought to reaffirm those claims.

What I meant by that was, that the bill itself ought to lay down the standards and guidelines, protective, and otherwise. I do not believe—and that is what is meant by this shorthand way of saying it.

Senator STEVENS. I still do not think I have been clear in my questioning.

As I understand it, there are some Native claims presented to the Court of Claims based upon traditional fishing rights, and it would be my hope that this bill would resolve any litigation against either the Federal Government or the State. Do you agree with that position?

Mr. GOLDBERG. I believe that this bill in its provision should encompass all areas that deal with land and related problems and then extinguish rights that are provided for in the bill.

Senator STEVENS. Including fishing rights?

Mr. GOLDBERG. Yes.

Senator STEVENS. Fine; I agree with you. I think we ought to deal with that problem in this bill, but it is not a land problem. It is a claim against the United States that I think is preserved by section 4.

Mr. GOLDBERG. But it should be dealt with in the bill.

Senator STEVENS. Yes.

Mr. GOLDBERG. Now, if the Native rights are to be protected, it should be asserted in the bill.

Senator METCALF. May I ask a question? The extinguishment of fishing rights does not mean that we take the rights away, we clarify them.

Mr. GOLDBERG. No, no. I said we ought to confirm, I would confirm the rights.

Senator STEVENS. I am talking about the claims, extinguish the claims, by dealing with them, either confirming them or resolving them in some manner.

Senator METCALF. I am in complete agreement.

Mr. GOLDBERG. We ought to, I think, make this clear, because I do not know all of the claims that are filed.

We want to make sure, as I said earlier, about the good faith dealings, that we deal with the rights that deal with land, but we do not extinguish claims that have nothing to do with land.

Senator STEVENS. This is a bill based upon the total claims envisioned by section 4 of the Statehood Act, which includes fishing rights and other rights of an aboriginal nature?

Mr. GOLDBERG. I want to be sure you and I are talking about the same subject, Senator, so that there is no misunderstanding. I shall say my conception, but I hope that everybody will pitch in if I am wrong. I may be wrong about this. I am trying to react on the basis of your question.

As I understood the position of the Natives, it is this: they believe that this legislation ought to encompass, treat fairly, their claims to land rights, and whether they are against the United States, whether they are against the State, third parties, etc., arising out of their aboriginal title claims, and the legislation dealing fairly with that, then it should extinguish those claims.

Now, if there is a claim that does not—is not based upon aboriginal title that is a separate business.

Senator METCALF. If a man were working for the Federal Government, for example, and he was injured——

Mr. GOLDBERG. That certainly does not wipe that out.

Senator METCALF. That would not be a part of it.

Mr. GOLDBERG. He would feel he was not fairly dealt with.

Now, there may be—I may not understand the question—are there fishing claims that are not based upon aboriginal title is that what you are referring to, Senator Stevens?

Senator STEVENS. If you want to look at it that way, they are based on aboriginal title to the lands under the offshore areas and, as such, I believe, and correct me if I am wrong, Mr. Borbridge, it was my understanding in southeastern Alaska in particular there are specific claims arising out of the rights of fishing on traditional fishing grounds; isn't that right?

Mr. BORBRIDGE. Mr. Chairman and Senator, in response to this, the Tlingit and Haida Indians have appealed a case which is based upon aboriginal rights, and upon being denied a judgment award for the fisheries by, at least in that section of the decision, adverse decision, by the Court of Claims, we thereby appealed this to the Indian Claims Commission under the fair and honorable dealings clause.

The Tlingit and Haida Indians further have a suit relative to what we consider to be a wrongful bombardment of the village of Angoon, which likewise comes under the fair and honorable dealings clause, and by virtue of this we feel that, perhaps, closer examination should be given to these before they are automatically wiped out, since we feel, very frankly, and we have so presented our case, that there is an obligation on the United States to very frankly meet these charges.

Senator STEVENS. Let us make sure I am not talking about wiping anything out. I am talking about what section 4 of the Statehood Act meant, and I was involved in that, as you know, in trying to be broad enough so that it meant something. It specifically states that all such lands or other property, including fishing rights, and we are talking about a bill to settle the property claims of the Alaska Native people, not just the land claims, a bill to settle the property rights, including land, and I hope that this bill will be viewed in that manner because I would not want to have

to come back here a few years from now and try to get a bill to settle the nonland property claims.

It is my opinion that the bill should be comprehensive, and that we should be presented with a brief on this question and Congress, in fact, should substitute its judgment for the Court on all issues involving the right or title to land or other properties which are still held in trust and remain under the absolute jurisdiction and control of the Congress, until disposed of under its authority, except to the extent that Congress has prescribed or may hereafter prescribe.

That is what section 4 meant, that we have a comprehensive settlement at some time.

Mr. GOLDBERG. May I make this comment at this time: I now understand what Senator Stevens is directing his attention to. Part of it I can answer completely, part I cannot answer in light of what I understand now Mr. Borbridge and Senator Stevens have exchanged views on.

The position that the Natives have taken is that they are prepared for an extinguishment of anything that is based upon aboriginal title.

(The information requested is as follows:)

FISHING RIGHTS

It is the position of The Alaska Federation of Natives, assuming a fair and equitable legislative settlement, that the declaration of settlement should extend to all claims against the United States, the State of Alaska and all other persons, which claims are founded upon aboriginal title or use and occupancy of land, including claims relative to fishing rights so grounded, other than those fishing right claims pending under clause 5 of 25 U.S.C., § 70a, based upon breach of fair and honorable dealings. The latter claims are not regarded as "land claims".

Mr. GOLDBERG. Now with respect to this question you have just raised, you are entitled to an answer on that, and I have not given a satisfactory one because I did not understand the ramifications. We will submit a statement about it specifically to the committee after we have had a chance to talk about it.

Senator METCALF. It will be incorporated in the record at this point.

(The statement referred to follows:)

MEMORANDUM BY THE ALASKA FEDERATION OF NATIVES CONCERNING THE SETTLEMENT OF THE ALASKA NATIVE LANDS ISSUE

I. PRELIMINARY STATEMENT

This memorandum is submitted on behalf of the Alaska Federation of Natives ("AFN"), the spokesman for the Native peoples of Alaska on the Native lands issue. Its purpose is to evaluate the various pending proposals to settle this issue by Federal legislation.

Three legislative proposals are now before Congress. The earliest in date reflects the thinking of the Federal Field Committee; it has been introduced and bears the numbers S #1830 and HR #10193. (These identical Bills will be referred to as the "Federal Field Bill.") The second proposal is a Bill drafted by the Department of the Interior which is supported by the Administration; we understand that bill has been introduced in the House by Congressman Pollack. The third proposal is contained in the AFN Position Paper which will be placed in the record by AFN counsel; we expect to submit this proposal in bill form in the near future.[1]

[1] As AFN is a federation of various regional groups, and as many of these groups are represented by their own counsel, it is necessary to clear the bill with regional counsel before presenting it as the official AFN proposal.

Although all three proposals deal with the same subjects (the amount of compensation to be paid to the Natives for extinguishment of aboriginal title, the amount of land to be retained by the Natives, and the manner in which the settlement is to be implemented), they differ in material respects. We shall demonstrate in this memorandum that on each of the central issues (compensation, land and administration) the AFN proposal best serves the public interest.

In determining what is an appropriate settlement, the critical factors are not cases, statutes or treaties, although these have some bearing on the matter. If legislation is to solve the problem effectively, the problem must be seen in its total historical, economic and social context. Accordingly, before considering specific proposals, we will look at the Alaska Native lands issue as an aspect of the most persistent problem our nation has faced since its earliest days—the relationship between the United States and its aboriginal peoples—and we will discuss the unique opportunity which this issue now presents to Congress.

II. THE OPPORTUNITY PRESENTED TO CONGRESS

The legislative resolution of the Alaska Natives lands issue will constitute the last significant chapter in the history of America's confrontation with aboriginal land claims. It is an important chapter because the Alaskan Natives constitute a substantial percentage of the United States Native population and we are dealing with large quantities of valuable land. It is also an important chapter because we will be measured as a nation for all time according to whether we are able to profit from past mistakes and thereby achieve a just resolution of this difficult legal and moral problem—the last major settlement of Native land claims in our history.

Several aspects of the Alaska Native lands problems are unique. The Alaskan Natives now live on and use the lands which are in issue in this dispute; for the most part, they are the only persons who use this land. Unlike the Natives in the lower 48 states, they have never been driven off of their lands or forced onto reservations and, with few exceptions, their claims relate to lands which they still use. For the first time in our history we are dealing with land of great value which has never been taken from the Native owners by treaty, statute, force of arms or anything else. Thus, without interfering with the rights of third parties, the solution of the Alaskan lands problem can be (and should be) directly tied to the lands in question.

In the past, the aboriginal land problem has been dealt with in various ways. We have tried the Indian Claims Commission and the result has been protracted litigations which seem to go on forever and totally disillusion the Natives involved. We have tried reservations and the result has been abysmal poverty and alienation from the mainstream of American life. We have tried the Bureau of Indian Affairs and various other forms of paternalism and the result has been a large and costly bureaucracy and a failure to develop Native self-sufficiency. In short, our past attempts to resolve Native land problems have been tragic failures.

Now, as a result of the unique aspects of the Alaska problem, and as a result of what we have learned from the past, Congress has the opportunity to come up with a solution which will work. This cannot be achieved by trinkets or doles, by passing the problem off to some slow-moving adjudicatory body, or by imposing some modified form of reservation or paternalism upon the Alaskan Natives. But it can be achieved by a bold and imaginative approach which fully and finally resolves all claims, ties the settlement to the lands in question, and permits the Natives to improve themselves and their land and determine their own destiny.

Such an approach would not be costly. On the contrary, it would be an investment which would substitute self-help for paternalism. The fruits of boldness and imagination would be reduced expenditures for Native welfare programs, a less costly BIA, and a Native population which would make major contributions to the economic growth of Alaska. A satisfactory settlement which departs from the past would also substitute goodwill for bitterness by demonstrating to the Native peoples that our system does work and can produce justice.

An analysis of the pending proposals demonstrates that, while the draftsmen of the Federal Field Committee and Interior Bills obviously intended to be fair to the Natives, and the Bills contain certain constructive features, they nevertheless do not afford the Natives their just due. This is so because these Bills do not take into consideration the true value of the lands in question; their com-

pensation provisions are either inadequate or too speculative; they do not recognize the Natives' need for lands; they ignore the sharp differences between the regions of Alaska; they do not permit the Natives to be sufficiently involved in making decisions affecting their lives; and, administratively, they simply cannot work.

We respectfully submit, however, that the AFN proposal constitutes a new and dynamic approach which can finally produce a satisfactory solution to a problem which has thus far proven insoluble.

We turn now to our analysis of the three proposals relating to compensation, land and administration.

III. COMPENSATION

A. The Lands in Question

Under all three proposals compensation is to be made for the extinguishment of claims. To determine whether compensation is fair we must examine the scope and validity of the claim being extinguished.

The Alaska Natives have filed formal claims to approximately 340,000,000 acres or more than 90% of the lands in Alaska. These claims are not lightly made. After extensive analysis, the Federal Field Committee concluded:

> "That Alaska Natives have a substantial claim upon *all* the lands of Alaska by virtue of their aboriginal occupancy. . . ." *Alaska Native Claims: Major Elements of a Proposed Settlement* 15 (1969) (emphasis in original).

This is a restatement of a principle of law that has been recognized for years—namely, that aboriginal use and occupancy of lands in Alaska created rights in that land. See, *e.g.*, *Tlingit and Haida Indians of Alaska* v. *United States*, 177 F. Supp. 452 (Ct. Cl. 1959), where the Tlingit-Haidas recovered for the taking of about 20 million acres by the United States.

Further evidence of the merit of the claims which have been filed is furnished by the fact that despite the number of regions and villages making claims, and the limited amount of land from which subsistence can be obtained, there are relatively few conflicting claims. This would not be the case if the claims lacked factual basis.

The value of the land which the Natives used and occupied—or, to put it differently, the value of the land to which they hold aboriginal title—staggers the imagination. In September of this year, bonus bids will be offered by oil explorers for the right to search for oil on 431,104 acres of land. "Notice to the Petroleum Industry," State of Alaska—Department of Natural Resources, July 10, 1969. It is anticipated that these bids will bring in as much as a billion dollars. *Wall Street Journal*, May 2, 1969, p. 34. All of these oil-rich lands are lands which the Arctic Slope Eskimos have used and occupied for as long as man can recall. Indeed, in the course of oil exploration activities Eskimo graves have been literally torn apart on the Northern Slope, and lands used for grazing have been despoiled by rubbish heaps.

Without speculating as to what the bonus bids will bring, we know that plans have been made to construct a $900 million pipeline to transport oil from the Northern Slope to Valdez. *Wall Street Journal*, May 2, 1969, p. 34.

The September bids only involve a portion of the lands in a limited geographical area. When we consider the oil throughout the lands claimed by the Natives, the timber, the hard minerals, the potential sources of hydro-electric power, the fishing, and the resources which have yet to be explored, it becomes clear that the value of the lands historically used by the Natives is, at the least, in the tens of billions of dollars.

B. The Validity of the Claims

The legal validity of Native's title to lands in Alaska, based upon aboriginal use and occupancy, is not subject to serious challenge at this late date in history. The Federal policy of protecting aboriginal occupancy has been established by, and is embodied in, a long series of statutes and Supreme Court decisions. Under these statutes and decisions, continuous occupancy of land from time immemorial creates a protected property right which the United States alone has power to extinguish.

As early as 1783 the Congress of the Confederation issued a proclamation prohibiting all persons from making settlement "on lands inhabited or claimed by Indians," and "from purchasing or receiving any gift or cession of such lands or claim without the express authority and direction of the United States in Congress assembled." 8 Journals of Cong. (1873) (1800 Ed.) 274. The Ordinance for the Northwest Territory provided that the land and the property of the Indians

"shall never be taken from them without their consent" and that "their property, rights, and liberty, . . . never shall be invaded or disturbed, unless in just and lawful wars authorized by Congress. . . ." 1 Stat. 50, 52.

Judicial recognition of Indian possessory rights, based upon aboriginal occupancy, has been consistently expressed in various contexts, from the first announcement of the legal validity of such claims in 1823 in *Johnson* v. *M'Intosh*, 21 U.S. (8 Wheat.) 543 (1823) to the present day. The classic opinion of Chief Justice Marshall in that case defined the status of the original inhabitants as "the rightful occupants of the soil, with a legal as well as just claim to retain possession of it. (p. 574)"

In the famous case of *Worcester* v. *Georgia*, 31 U.S. (6 Pet.) 515, 544 (1832), the Supreme Court reiterated the principle that the right of discovery "could not affect the rights of those already in possession", and further stated that under the Indian Trade and Intercourse laws, the Indian communities had territorial boundaries and have a right to all the lands within those boundaries, which is not only acknowledged but guaranteed by the United States.

Again, in *Mitchell* v. *United States*, 34 U.S. (9 Pet.) 711, 745–47 (1835), the Supreme Court declared that "friendly Indians were protected in the possession of the lands they occupied" and "that their right of occupancy is considered as sacred as the fee-simple of the whites."

See also: *Chouteau* v. *Malony*, 57 U.S. (16 How.) 203, 239 (1853); *Holden* v. *Joy*, 84 U.S. (17 Wall.) 211, 244 (1872); *Buttz* v. *Northern Pacific Railroad*, 119 U.S. 55, 66 (1886); *Cramer* v. *United States*, 261 U.S. 219, 227 (1923); *United States* v. *Shoshone Tribe of Indians*, 304 U.S. 111, 117 (1938).

This consistent policy of respect for the Indian right of occupancy was summarized as follows in *United States* v. *Sante Fe Pacific R.R. Co.*, 314 U.S. 339, 345 (1941):

> "Unquestionably it has been the policy of the Federal government from the beginning to respect the Indian right of occupancy, which could only be interfered with or determined by the United States."

Shortly thereafter, in *United States* v. *Alcea Band of Tillamooks*, 329 U.S. 40, 46 (1946), the Supreme Court stated that the sovereign's title "was deemed subject to a right of occupancy in favor of Indian Tribes."

In *Tee-Hit-Ton Indians* v. *United States*, 348 U.S. 272 (1955), which involved lands in Alaska, the Supreme Court held that Indians' title unaided by statute did not give rise to a compensable right against the United States, but acknowledged that it has been "the policy of the Congress, continued throughout our history, to extinguish Indian title through negotiation rather than by force" (p. 273), and that the Indians had a "right of occupancy which the sovereign grants and protects against intrusion by third parties" (p. 279).

In addition to the protection afforded by general federal legislation and Supreme Court decisions, the possessory rights of Alaskan Natives have been the subject of specific legislative protection from the time of "Sewards Folly". Commencing with the Treaty of Cession, 15 Stat. 539, 542 (1867), and continuing through the Statehood Act, Congress consistently has respected "the possessory rights of the Indians of Alaska in the land actually occupied and used by them." *Federal Indian Law*, pp. 951–960 (G.P.O. 1958).

For example, section 8 of the Act of May 17, 1884, 23 Stat. 24, 26, the first statute applying federal land law to Alaska, provided:

> "That the Indians . . . shall not be disturbed in the possession of any lands actually in their use or occupation or now claimed by them but the terms under which such persons may acquire title to such lands is reserved for future legislation by Congress."

The United States Court of Appeals for the Ninth Circuit held in *Heckman* v. *Sutton*, 119 Fed. 83, 89 (1902), that this statute established possessory rights which would ground a suit against encroachment by third parties, stating that:

> "Congress saw proper to protect by its act of 1884 the possession and use by these Indians and other persons of any and all lands in Alaska against intrusion by third persons, and so far has never deemed it wise to otherwise provide."

See also Acts of March 3, 1891 (26 Stat. 1005) and May 14, 1898 (30 Stat. 409).

Similarly, Section 27 of the Act of June 6, 1900, 31 Stat. 321, 330, which established a civil government for Alaska, provides that "The Indians . . . shall not be disturbed in the possession of any lands now actually in their use or occupation," and prohibited entry, under the public land laws, on land occupied by Natives. *United States* v. *Berrigan*, 2 Alaska 442 (1905); *United States* v. *Cadzow*, 5 Alaska 125 (1914).

Continuing the policy of earlier years, Congress recently excepted lands occupied by Indians from the tideland grants to the territory of Alaska under the Act of September 7, 1957, 71 Stat. 623, 48 U.S.C. 455. *United States* v. *Alaska*, 197 F. Supp. 834 (D. Alaska, 1961).

The Alaska Statehood Act (72 Stat. 339) is a further reaffirmation of Native rights. It provides (§ 4) :

> "As a compact with the United States said State and its people do agree and declare that they forever disclaim all right and title to any lands or other property not granted or confirmed to the State or its political subdivisions by or under the authority of this Act, the right or title to which is held by the United States or is subject to disposition by the United States, and to any lands or other property (including fishing rights), *the right or title to which may be held by any Indians, Eskimos, or Aleuts (hereinafter called natives) or is held by the United States in trust for said natives;* that all such lands or other property (including fishing rights), the right or title to which may be held by said natives or is held by the United States in trust for said natives, shall be and remain under the absolute jurisdiction and control of the United States until disposed of under its authority, except to such extent as the Congress has prescribed or may hereafter prescribe, and except when held by individual natives in fee without restrictions on alienation." (emphasis added)

Thus, aboriginal title in Alaska has been accorded the safeguard of special legislation in addition to the protection generally applicable to Native rights of occupancy throughout the United States. The legal basis of the claims here asserted is beyond question.

C. The compensation proposals

We now reach the second question on the compensation issue: What is fair compensation for the extinguishment of aboriginal title to lands worth many billions of dollars? In answering this question we must keep in mind the factors which make the Alaska Natives land issue different from past settlements. The Alaska Natives have not been herded onto reservations; they are living on and using the very lands which are involved in the settlement. This may not have been the case for any past major settlement.

Moreover, up to this date, the aboriginal title of the Alaska Natives has not been extinguished. If it is to be extinguished, the date of the extinguishment will be the effective date of the settlement legislation. And it is well established that compensation is to be determined as of the date that aboriginal title is extinguished. *Crow Tribe of Indians* v. *United States*, 284 F.2d 361 (Ct. Cl. 1960).

Under such circumstances, the present value of the land is the only fair measure of what is being given up. The 19th century value is totally irrelevant.

On the compensation issue, both the Federal Field and Interior Bills set their sights too low and promise more than they produce. The compensation proposed by the Federal Field Bill is $100 million plus a certain amount of revenue sharing. The revenue sharing is to continue for only ten years and may not exceed $100 million in any given year. In theory, a billion dollars could be received over this ten-year period. But in fact, the revenue sharing will produce, at most, a very small fraction of that figure. The nature of the Federal Field Bill's revenue sharing provisions (§ 12) and the economics of oil production demonstrate why this is so.

The only source of substantial revenue for the foreseeable future is the production of oil on the North Slope. However, because of the great engineering and transportation problems which must be overcome before oil can be produced on a large scale in Alaska, a substantial portion of the ten-year period will have elapsed before there will be any meaningful production from this area.

Even when there is substantial production, the owner's share will be 12½% of that production and the Natives' share, under the Federal Field Bill (§ 12), will be 1/10th of that 12½%, or 1.25% of the total production. At that rate, and using present values for crude oil, the commercial oil production from the sources specified in section 12 of the bill would have to average almost 5½ million barrels per day before the Natives would receive $50 million in a year—one-half of the maximum amount permitted by the bill. *Oil and Gas Journal*, July 28, 1969, p. 103. But, North Slope production is not expected to reach even two million barrels a day before 1978. Accordingly, it will be almost ten years before annual revenues to the Natives will begin to approach one-fourth of the $100 million figure referred to in the Federal Field Bill.

Thus, the Federal Field Bill's compensation provisions give the Alaskan Natives $100 million plus unknown and almost certainly small—yearly payments from revenue sharing for ten years. This proposal holds out an illusory promise of substantial return. It would surely prove to be inadequate.

The Secretary of the Interior has recognized that it is undesirable for compensation to be based primarily on a speculative revenue-sharing formula. The Interior Bill contains no revenue-sharing provisions and gives the Alaskan Natives $25 million a year for 20 years. As the Secretary has noted, this is not a $500 million settlement; when discounted at 4⅝% over the 20-year period, the total worth is $322 million.

Even the discounted figure of $322 million is misleading. According to the Bureau of Labor Statistics it costs 18 to 32 per cent more to live in urban Alaska than it does to live in Seattle. Because of this, Federal employees working in Alaska receive an extra allowance of 25% of their salaries. Costs in rural Alaska, where Native villages are located, are higher than in urban areas. In some Native villages the dollar will buy only half as much as in the lower 48 states. Thus, to evaluate the true worth of the interior Bill's proposal—and to err on the side of conservatism—the $322 million figure should be reduced by at least 20%.

By any reasonable measure, the Interior proposal is inadequate. Valued at $322 million, it comes to less than $1 per acre, notwithstanding the fact that part of the acreage in question contains some of the greatest oil deposits in the world—not to mention the other resources, both known and unknown.

Nor is the figure made reasonable by comparing it with the amounts received by other aboriginal groups. (We will bypass the question of whether, in the light of the poor treatment which other Native groups have received, past settlements should provide any standard at all.) Although other Native groups have received sums in the neighborhood of one dollar per acre, their aboriginal title was extinguished in the 19th century when land was worth much less and the dollar worth much more. The title of the Alaskan Natives will probably be extinguished in the early 1970's, and unlike the settlements with other Native groups, Alaskan lands have already proven to be of inestimable value.

Nor is the figure made reasonable if we view it on a per capita basis. A per capita approach is itself irrational since the payment is for settlement of land claims and is not a gratuity to individuals. But even if we look at per capita figures, the Department's proposal is inadequate.

The Department has estimated that there are 60,000 Alaskan Natives. Other experts feel that when enrollment is completed the figure may well come to 80,000. The proposed $322 million compensation would, thus, at best amount to $5,367 per person. Several Native groups which gave up less valuable land in less inflationary times received the same or substantially more on a per capita basis. Thus, the Kalispel received $18,000 per person; the Kaw $9,600; the Southern Paiute $8,100; the Coeur d'Alene $7,500; the Kootenai $6,500; and the Mescalero Apache $5,200.

The proposed payment of $25 million per year provides $425 for each Native. This is an inadequate dole which could not cover the cost of a round-trip from Nome to Washington, D.C. (While no pending proposal permits payment directly to individuals, the per capita arithmetic is a valuable guide to determine what can be accomplished with the settlement funds.)

AFN believes that a fair settlement would encompass both past takings and the takings to be achieved by the legislation, and would include a reasonable fixed amount of cash plus a share of the resources of the lands being given up. In cash, the Alaskan Natives ask for $500 million, to be paid $100 million the first year and $50 million a year for the next eight years. This comes to about $1.50 an acre—certainly a modest amount in view of the value of the lands and the nature and validity of the claims. As $500 million paid over eight years is worth substantially less than $500 million today, AFN asks that interest be paid on the unpaid balance at the prevailing Federal rate.

The Natives are surrendering aboriginal title to lands which they have used and occupied (in effect owned) over thousands of years. But they are going to remain on these lands and the lands will be developed and produce great wealth. Under such circumstances, the Natives should not be made mere observers; they are entitled to a continuing share in the development and wealth of their land which recognizes their past, present and future ties to the land.

Accordingly, the Natives ask for a continuing 2% overriding gross royalty from the proceeds of the lands which they are yielding by this settlement. As the most valuable lands claimed by the Natives will probably be selected by the State under the Statehood Act, as the Natives represent at least 20% of the

State, and as their health, educational and economic needs are substantially greater than those of the non-Native population, the 2% figure is a modest request designed to enable them to help themselves rather than to be forever looking to some governmental agency to satisfy their needs.

In sum, fair compensation cannot be achieved by the illusory revenue-sharing provisions of the Federal Field Bill or the inadequate dollar grant proposed as the Interior Bill. It can be approached, however, by the AFN proposal.

IV. LAND

A. Acreage

The Alaskan Natives are people of the land, and a large majority of them still make their living from the lands and waters of Alaska. To many Natives—very likely to a majority of the Natives—land is more important than money as an element of settlement. Natives want to have their title confirmed to a reasonable amount of land, so that they will not be forced to choose between a reservation and an urban ghetto.

Given the vast amount of land in Alaska, the Natives' need for land, and the fact that non-Natives use only a minute amount of the land subject to aboriginal title, the settlement should permit the Natives to retain a reasonable amount of land for use and development. Unfortunately, neither the Federal Field Bill nor the Interior Bill permits this.

At the very most, the Federal Field Bill allows the Natives to retain one township per village. Using the Bill's list of approximately 200 Native villages, this comes to less than five million acres or less than 2% of the land for 20% of the people—a grossly inadequate amount in view of the Natives' rights and needs.

But although approximately five million acres would be withdrawn under the Federal Field Bill, nothing close to five million acres could be retained by the Natives under the bill's provisions. The limited rights which the bill seeks to afford are substantially diluted by language which permits land withdrawn for the Natives to be conveyed to non-Natives. Natives are only one of several groups that can receive patents to withdrawn lands without payment.

Under Section 10(a)(1) Natives stand on an equal footing with "religious, educational, . . . charitable, and other non-profit organizations" which have no claim to the land and which may or may not have anything to do with local Native groups or with any Natives at all.

Under Section 10(a)(2) any individual, any corporation and the State of Alaska can receive a patent to withdrawn land for payment, apparently even if the Natives have a stronger need for the land.

Section 10(c)(1) would permit the Secretary to convey withdrawn land to "any local government established under the laws of the State of Alaska," without payment, although relatively few Native villages would fall within that classification and although many local governments represent constituencies which are predominantly non-Native.

In brief, the Federal Field Bill would give the Natives even less land than the drafters intended, and would undoubtedly be the source of much confusion and litigation.

The land proposals of the Interior Bill are substantially different from the proposals in the Federal Field Bill, but they are no more adequate. While the Interior Bill would probably patent more acres of surface to Native villages, it denies the Natives valuable mineral rights; in addition, it does not permit Natives to use non-patented lands for subsistence purposes, even though such use may be well established and essential.

Under the Department's proposal, the Secretary could convey "up to" two townships to certain specified Native villages other than specified Tlingit-Haida, villages which can reecive no more than one township. (We will not at this time deal with the problems presented by the special treatment of the Tlingit-Haidas, but will leave this matter to their Native representatives and counsel.) Using the Department's list of 205 villages (including ten Tlingit-Haida villages), this can come to a maximum of approximately 11 million acres. However, as the bill permits the Secretary to patent "up to" two townships, there is every reason to expect that the total amount patented would be substantially less than 11 million acres.

As we received the Interior Bill only last week, and as the land provisions are quite complex, we shall not attempt to discuss the administrative aspects of those provisions. We note, though, that the Secretary has very broad powers in determining what lands are to be retained by any village. In view of the large num-

ber of villages, the size of Alaska, and the peculiar needs and characteristics of each individual village, it is hard to see how any Secretary (even one who was Governor of Alaska) could carry out this function in a rational way in a reasonable period of time.

Such delay would seriously prejudice the Natives' rights. Under section 8(a)(1) of the Interior Bill, nearly 90% of the withdrawals terminate after one year. The allotment procedure would surely not be completed in that short time. Indeed, as it might take almost a year to formulate the necessary rules and regulations, and assign and train personnel, these withdrawals might very well terminate before a single acre were patented. Thus, unless years upon years are to be extended in having an administrator decide what each village is entitled to, it is preferable to let each village choose what it needs within the withdrawn area subject, of course, to the acreage and contiguity requirements which Congress deems appropriate.

The Alaskan Natives believe that under any fair settlement they should be permitted to retain a minimum of 40 million acres for use and development. This is a request for 10% of the land by 20% of the people who have valid claims to nearly 100% of the land.

In some areas of Alaska it may require 1,000 acres to support a single Native. In all areas of Alaska, villages cannot possibly survive unless they have unimpaired use of the surrounding lands and waters for hunting, fishing, and gathering. If a stream is polluted by oil or anything else, if a spawning bed is destroyed, or if a grazing path is disrupted, a village (or several villages) will die. For, despite the best intentions of Federal, state and private conservationists, two facts are indisputably true:

First, when it comes to protecting the ecology of the land needed by a particular village for subsistence, no one will have a greater incentive than the village whose subsistence is involved.

And, second, a village will be at a serious disadvantage in protecting that ecology if it does not have title to the land in question and has to look to some state or Federal official who is hundreds (or thousands) of miles away, who is overburdened with other cares and problems, who cannot be called by telephone (only a handful of villages have phone service), and who cannot get to the village without a substantial expenditure of time, effort and money. (The vast majority of villages can only be reached by bush planes; during certain times of the year, some villages are totally inaccessible.)

To put it simply, and at the risk of understatement, if the Natives cannot retain adequate lands, their present problems may become seriously aggravated.

The AFN proposal would confirm the title of each village to a minimum of four townships. This is not an unreasonable amount for a small village because no matter what the size of a village may be, the sparseness of the land requires its citizens to cover substantial distances in order to survive. Larger villages would retain additional acreage so that there would be at least 500 acres per person.

If a village were entitled to a patent to more than four townships, the additional acreage would not have to be contiguous, but would have to be within its region. This additional land—which could be used for investment purposes—would help the village meet some of the problems created by its additional population. (For example, as a village grows in size the surrounding land may not be able to support the extra population, or the village may need additional funds to meet the sanitation problems which arise from that extra population.)

B. The Type of Title

Acreage is only one aspect of the land settlement. A second important aspect is the type of title the Natives are to hold.

Justice dictates that the Natives retain fee simple to the lands which are to remain theirs. Under our system of law and property management, fee simple title is the prevailing practice; limited title is the exception.

Moreover, aboriginal title has never been limited to the surface of lands. The cases are clear that such title includes all timber rights and all mineral rights (whether they be surface or subsurface, leasable or nonleasable). *E.g., United States.* v. *Shoshone Tribe of Indians*, 304 U.S. 111 (1938); *Otoe and Misouria Tribe of Indians* v. *United States*, 131 F. Supp. 365 (Ct. Cl. 1955). When oil or other minerals have been found on lands reserved for Natives, the Natives have been allowed to receive the benefits of their lands' resources. This has been true in Alaska where mineral resources which were found under the lands reserved for the Tyoneks have been the source of that village's capital.

Indeed, on only one occasion in our history—the Papago Reservation established by Executive Order of February 1, 1917—has the Federal Government failed to recognize an aboriginal right to minerals underlying lands held by Natives in the first instance by virtue of aboriginal title. Even this exception to the general rule was eliminated when Congress by the Act of May 27, 1955 (69 Stat. 67) declared that such minerals henceforth were to be held in trust by the United States for the Papago Tribe. The policy thus is clear that for Natives, as well as other citizens, ownership of subsurface resources should accompany ownership of the surface.

There is an additional reason why the Natives should retain nothing less than fee simple title. If the Natives do not control their lands fully, the persons who exploit the minerals will have no contractual obligations to the Natives who own the surface; this could only make it more difficult for the Natives to use and subsist from the surface patented to them. For example, if an oil company is exploring for oil on village lands, there is every reason to assume that it will take greater pains to protect the Natives' use of the surface if its contractual obligations run to a local Native group than it would if its obligations run to a State or Federal official hundreds or thousands of miles away. Indeed, experience on the North Slope has proven that the Natives' use of land surface may very well be interfered with if it is not perfectly clear that the Natives own the mineral resources being exploited.

AFN approves of that portion of the Federal Field Bill which permits the Natives to receive the full benefit of the lands retained by them. While the Natives will only receive patent to the surface, section 10(g) provides that the mineral estate of these lands will be patented to a Native development corporation. (We are assuming that the administrative and priority problems previously noted can be resolved.) Although we have serious reservations about the scope and structure of the state-wide development corporation proposed by the Federal Field Bill, we recognize that it makes sense to have such resources administered by an entity larger than a village. Accordingly, the AFN proposal provides that all mineral resources on retained land shall be granted to and administered by regional Native development corporations.

Unfortunately, the Interior Bill does not permit the Natives to retain any interest in leasable minerals. For the reasons already noted, such an artificial and unsupportable limitation should be enacted into law.

V. ADMINISTRATION OF THE SETTLEMENT

The Federal Field Committee, the Department of the Interior and AFN all agree that the proceeds of the settlement should not be distributed in cash to the individual Alaskan Natives. Such per capita distributions have proven disastrous in the past and may have done more harm than good to the Native recipients.

Under all of the proposals made to this Congress, the proceeds would go into one or more development corporations and would be used to develop the Natives' economy and resources, to meet pressing social needs which are not being met by existing governmental programs, and to enhance the growth of Alaska. All three proposals further provide that at *some* point the Natives should obtain control over the development corporation (or corporations), and that an Alaska Native Commission should administer certain aspects of the settlement.

However, the Federal Field and Interior Bills differ from the AFN proposal in two critical respects relating to administration. First, while neither of these bills requires Native representation on the Commission, and while neither gives the Natives control of the development corporations until some time in the future, AFN believes

(a) that the settlement should be administered by a commission which expressly includes Natives; and

(b) that the Natives should have control, in a democratic manner, of the corporations which will be set up under the legislation.

Second, while the Federal Field and Interior Bills propose a single state-wide corporation with vast economic resources and inconsistent and poorly defined powers, it is AFN's position that such a cumbersome Leviathan cannot work, would not meet the needs of the Natives, and would exercise an undue economic influence within Alaska if it were ever able to get off the ground.

We shall deal first with the question of Native control. While we shall focus on the development corporations, our points apply equally to Native representation on the Alaska Native Commission.

A. Native control

Under the Federal Field Bill (§ 7(c)), a majority of the Board of Directors of the state-wide development corporation would be non-Native until three years after the corporation comes into being. Even after the stockholders have the right to select a majority of the directors, five of the eleven directors are to be appointed by the President.

Under the Interior Bill (§ 7(c)), a majority of the directors are to be appointed by the President, and not by the stockholders, until June 30, 1991. It is not until that distant date that the stockholders are to achieve control of their own corporation.

The issue of control boils down to a simple question: Does Congress feel that the Alaska Natives are prepared to manage their own destinies at this time, or does it feel that their wardship status has to be continued by giving Federal appointees a strong or controlling voice over the utilization of the settlement proceeds? We respectfully submit that since the wardship concept has worked so badly throughout our history and has proven to be of so little benefit to the supposed wards, the presumption should be against its continuation.

The AFN leadership has appeared before the Senate and House Committees on Interior and Insular Affairs. No one who has heard these men can doubt that these men are capable of administering development corporations.

Obviously, few in any Natives are experts in all areas of corporate management. But this is true for most corporate officers. Expert services can and will be obtained. As a matter of fact, anticipating the settlement, AFN has taken steps to have one of the nation's leading economic consulting firms conduct a comprehensive study of the Natives' economic resources and capabilities in order to formulate a long-range and sound program for the development corporations.

Questions may be raised about the extent of Native administrative ability. Is there sufficient Native talent to administer regional corporations without the paternalistic participation of Federal appointees? We respectfully submit that meetings with Native leaders at all levels and meetings with Native businessmen would answer this question in the affirmative.

The best and most complete answer to any question concerning Native control is to look at what has actually happened when Natives received large sums of money. One Native group in Alaska, the Tyoneks, have already received substantial funds for oil rights on their lands. With the aid of hired professionals, they have utilized these funds. What have they shown about Native capabilities?

In 1964 the Tyoneks received $12,000,000 for granting oil leases on their reservation. They were offered one million dollars for a lease on an additional tract but they turned that offer down; subsequently, they leased this additional tract for two million dollars.

With these funds, each Tyonek family, including those not living in the village, has built a modern but modest home. Experts were retained and the bulk of the money was invested in various business enterprises. For example, the Tyoneks purchased control of the Braund Construction Company. They substantially expanded the operations of this company, and while the company is in business to earn a profit, it also contributes much to the improvement of Native life. At present Braund is constructing homes in Bethel (one of the poorer Native villages) under a program of the Department of Housing nad Urban Affairs, and, as part of this project, it is utilizing Native labor and training Native people in skilled construction trades.

The Tyoneks have also gone into the real estate business in a large way. They bought both improved and unimproved property in Anchorage and constructed, among other things, one of the city's most attractive commercial developments, the two Kaloa Buildings. The tenants in these buildings include the Bureau of Indian Affairs, IBM and AFN.

Other enterprises of the Tyoneks include: the Anchorage Water and Sewer Company, which handles all water and sewer services in the area surrounding Anchorage; a major local title company; a charter airline; and local electricity generation and distribution facilities. All of the Tyonek undertakings have been financially successful.

Like the Tyoneks, the Tlingit-Haida Indians are developing a comprehensive plan for the utilization of nearly $7 million which they will receive by virtue of a court of claims decision. Their plan includes: an industrial and commercial development fund; a revolving fund for loans which may eventually lead to the organization of a Tlingit-Haida bank; a community development fund; a program for scholarship grants and assistance for educational, pro-

fessional and vocational training; services for the elderly; and a housing guarantee and loan fund.

The Tyoneks and Tlingit-Haidas are obviously very able groups. However, there is no reason to believe that any other Native group is any less able to administer money. Among Native Alaskans, no group has a monopoly on administrative ability; the talents which exist among the Tyoneks and Tlingit-Haidas exist throughout the State.

It must be remembered that the Alaska Natives, as a group, are an extraordinary people. Long before Caucasians came to Alaska, the Natives had conquered an Arctic semi-continent without the benefit of any modern technology. The conditions which they endured and the environment which they mastered might have destroyed any other group in the world. Surely, any group that could overcome Alaska's geography and climate with primitive utensils has the ability and common sense to administer settlement proceeds wisely.

In short, Congress need have no fears about Native control of Native development corporations. Paternalism is neither required nor wanted.

B. The need for regional corporations

The concept of a development corporation is imaginative and can do much to improve the lives of all Alaskan Natives. However, the single state-wide corporation proposed in the Federal Field and Interior Bills would prevent optimum use of the settlement proceeds. This is so for several reasons.

In the first place, the proposed single corporation is much too big and widespread. Having resources in the hundreds of millions of dollars, it would become one of the most significant economic factors in the state—if not the most significant. The directors would be some of the most powerful men in the state. This would not be desirable for the State of Alaska or its Native peoples.

Moreover, given the number of Native villages, the economic and sociological differences between these villages, the great size of Alaska (it is more than twice the size of Texas, 17 times the size of all of the New England states combined, and 56 times the size of Maryland), and the variations in climate and terrain, it would be virtually impossible for a single state-wide corporation to meet the particular needs of all Native villages in Alaska. When it comes to social problems and economics, there is a greater difference between Barrow and the Aleutian Islands than there is between New Jersey and Arkansas. (The mileage between Barrow and the outer Aleutian Islands equals the mileage between Washington, D.C. and Colorado.) It is almost inconceivable that an enormous centralized superstructure located in Anchorage or Juneau would be able to formulate and carry out projects which would meet the real needs of the Natives living in Kiana and Kokhanok. As a matter of fact, if the Board of Directors contains only four Natives, it is most unlikely that any director would have ever been in Kiana or Kokhanok—or anywhere near those villages.

The Alaska Natives are, in fact, several ethnic groups living in several definable regions with different economies, heritages and social structures. Although they are completely united on the lands issue, they do not wish to become homogenized; they wish to maintain their differences and meet their real local needs.

Accordingly, AFN proposes that instead of one huge state-wide corporation, there be regional corporations which would be better equipped to fill existing needs. For example, if the Eskimos of Kiana feel that their primary need is to have trail markers pointing out the path between their village and the next, so that a traveler would not get lost in the winter and freeze to death, there is every reason to expect that a regional corporation would fill this critical need; but there is little reason to expect that a state-wide corporation would.

AFN has spent many hard days in determining the number and location of regions which should be recognized in the legislation. They have determined that twelve regional development corporations would be appropriate. Each of these regions would cover a specific and relatively homogenous area, and each has adequate leadership. We expect to submit precise definitions of these regions in the near future; preliminary descriptions are now set out at pages 4–5 of the AFN Position Paper.

The AFN bill will allow the villages to convey capital and other resources to the regional corporations, and we anticipate that that will be the practice.

When appropriate, the regional corporations would work with village corporations or with a relatively small and manageable state-wide corporation. If economies of size were important, or if a particular undertaking were beyond the resources of a single regional corporation, the regional corporations could

engage in joint economic ventures. To make maximum use of their resources they could also retain common expert advisors.

Perhaps the best argument for regional corporations is that this is what the Natives want. It is their money and their settlement and they are the best judges of what will fill their needs. (We understand that the Governor of Alaska supports all aspects of the AFN regional corporations proposal.)

We are now in the process of studying the structural and organizational aspects of these corporate arrangements, and the AFN bill will contain appropriate statutory language setting up the necessary entities.

A second problem with the proposed state-wide corporation is that it would take many years before it could begin to carry out any operations. Under section 7 of the Federal Field Bill, the corporation may not be able to engage in enterprises of benefit to the Natives until the Native members of the Board of Directors are elected, and this election cannot occur until there is an enrollment. It is not clear whether the election of Native directors must await the completion of the final roll or whether it can proceed on the basis of a temporary roll. If a final roll is necessary (and this seems to be the more literal reading of the statute), there might not be any functioning corporation until well after the December 31, 1978 date, as of which the final roll is to be taken (§ 5). (We have not had an adequate opportunity to evaluate fully the comparable provisions of the Interior Bill.)

If it is not made perfectly plain that the temporary roll can be used for electing directors, and if the criteria for the temporary roll are not well defined, the result will be confusion, delay, lack of progress and, quite possibly, litigation.

To avoid these problems, AFN proposes that directors of the development corporations be selected on the basis of a temporary roll. We expect to offer an enrollment provision which will enable the Secretary to complete a temporary roll in a matter of months. To avoid any abuses, the temporary enrollment would not vest any property rights in individuals, but would merely make it possible for the settlement proceeds to be put to work quickly.

All delay could be avoided if the temporary roll were completed before the effective date of the legislation. This could be achieved by the Department of the Interior without any special authorization. It could be best accomplished if the Department would contract the job to the organization which knows the most about who the Natives are and where they are located—namely, AFN. We have discussed the possibility of an immediate temporary enrollment with Department representatives, but, thus far, no progress has been made on this matter.

A third problem posed by the single corporation concept is that the corporation is asked to perform inconsistent functions. It is expected to operate as a profit-making enterprise, and at the same time it is expected to engage in non-profit eleemosynary activities. This will place the directors in a dilemma.

The death of Natives who have received stock by virtue of the settlement legislation and the birth of Natives who do not receive stock by virtue of that legislation will increase the dilemma because many beneficiaries of eleemosynary activities will not be stockholders who are interested in profits. When stock in the development corporations becomes alienable, the directors would have a hopeless conflict.

The problem is difficult, but it can be solved. We are presently studying various techniques by which settlement funds can be used for both strictly commercial and strictly eleemosynary purposes without placing the directors in an impossible situation. We expect that we will be able to propose a legislative solution to this matter shortly.

CONCLUSION

No matter what proposals may be offered, Congress must exercise the value judgments and effectuate the settlement. In so doing it will be writing an important page in our Nation's history on a subject which, up to now, has reflected little glory upon the United States.

We are confident that Congress wants a settlement which will reflect credit on the Nation, and we hope that the AFN proposals will aid in this endeavor.

Dated: August 4, 1969.

Respectfully submitted,

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Attorneys for the Alaska Federation of Natives.

Senator STEVENS. Thank you very much, Mr. Chairman and Mr. Goldberg. I want you to know, so Mr. Borbridge understands, I think many of these claims have a great deal of validity. They are property rights, and I hope we deal with and address ourselves to the total property rights of the Alaska Natives in this bill because whether we can ever marshal this much attention to a bill of this type again I do not know, and I would like to keep the concentration that we have now working on all of the property questions, including that.

Mr. GOLDBERG. May I just say, I suppose we could get agreement in 1 minute if the rights involved were confirmed. We could get agreement from everybody.

Senator STEVENS. This has a great deal of impact on the States of Washington and Oregon.

Mr. GOLDBERG. That is why I wanted to be careful and I wanted to address myself to a problem. I had not thought of it previously.

Senator METCALF. It will be useful to the committee, when it is available, in executive session.

Senator STEVENS. I want to go to the one area I consider to be the extreme controversy, and that is the revenue-sharing position and, as you know, I have always supported the revenue-sharing position, but I believe that there should be another way to get at it, other than taking on the Bureau of the Budget on this 2-percent basis.

Have your clients given consideration to any alternate proposal which would accomplish the same objective as the 2-percent concept? Let me point out to you the fee title to lands within the known geologic basin would accomplish the same thing obviously, or a percentage of the offshore production, which we have every reason to believe is greater than the on-shore production, would accomplish the same thing. Has consideration been given to alternatives?

Mr. GOLDBERG. Yes, they have considered the alternatives, and they have not found them to be appropritate because, in the first place, you are dealing with the land that they occupy and findings of oil that are present and current and known to be there as against the much more problematical finding, for example, on the offshore lands, and I think that is the reason they came to the determination they did, and I must say that it is a pretty realistic appraisal.

Senator STEVENS. I do not object to the concept involved in the 2 percent at all. I want you to know that, but I do believe that the Bureau of the Budget has made its position quite clear now in the course of four administrations that it does not, that I know of, that it does not, support this approach and I advisedly say that I would think that a group that wants to get a bill passed and signed by the President will take into consideration this adamant position of the Bureau of the Budget.

Mr. GOLDBERG. I, of course, have talked to my clients about that, and I also recall that when I was a member of the executive branch of the Government I appeared before Congress also under stringent inhibitions from the Bureau of the Budget. But Congress also has a voice, along with the executive, in determining what the disposition of a substantial matter is, and I found that after Congress has worked his will that that had a substantial impact upon the executive, as it ought to.

Senator STEVENS. I agree.

Can you tell me how the 2 percent figure was reached and what the projections would be as to its value to the Alaska Native people?

Mr. GOLDBERG. Mr. Notti and Mr. Borbridge will address themselves to that when they testify.

Senator STEVENS. They will? Then I will wait for them.

Thank you very much.

Senator METCALF. Senator Gravel.

Senator GRAVEL. Mr. Chairman, I only want to add at this time that it is a pleasure to hear the comments of the Justice. This is a new landmark being reached here in the handling of this bill, with your submission of this extension information.

All we see here, of course, is the distillation of your fine memorandum, a very fine distillation, and I know many of us on the committee will be going over it in detail to absorb it and relate it to the other stated positions.

I thank you for this. We have long waited for the AFN position, which we have now received. This position is vital to marking up the bill.

I have no specific questions. I will be diligently applying myself to the views that you have set out.

Mr. GOLDBERG. Thank you very much.

Senator METCALF. We, the entire committee, are grateful to you for your patience and understanding in being here all day while we were back and forth from the floor. We are grateful for your contribution to this very complicated and complex problem.

I think that when the confirmation of Secretary Hickel was underway, this committee made a commitment that we would try to resolve this problem this session of Congress, and the chairman and, I think, every member is determined to do this, and we welcome the assistance that you have given us today.

We are very sorry that time has run out for us today. We will meet at 9 o'clock in the morning and, Mr. Notti, you and General Clark and the rest of the members of the Alaska Federation will be the first witnesses.

The gavel will hit at 9 o'clock, and I admonish my colleagues from Alaska to be here at that time.

Senator STEVENS. Mr. Chairman, you know that is 4 o'clock in the morning for the Alaskans.

Senator METCALF. Yes, I know, having been in Alaska participating in hearings. When did we start those hearings, at 7:30 or was it 6:30?

Senator GRAVEL. Mr. Chairman, may I ask one question? Apparently the AFN attorneys are in the process of preparing specific legislative language as amendments to S. 1830. How long would that be?

Mr. GOLDBERG. That language is almost ready, Senator Gravel, and it is being checked with the various groups and various regional attorneys who also have been participating and offering useful and helpful suggestions, so we hope to have that very shortly.

Senator GRAVEL. Thank you.

Senator STEVENS. Along that line, Mr. Chairman, you recall a meeting in Secretary Hickel's office where we agreed to have that draft prepared by legislative counsel, which was prepared at our request, and we provided that to you.

Mr. GOLDBERG. Yes.

Senator STEVENS. I hope you got it. Is this what we are talking about, the amendment?

Mr. GOLDBERG. Yes.

Senator STEVENS. I assume they will also be introduced so we can have not only the amendment in the record but also introduced in the form of an amendment such as the one introduced by the chairman and the ranking minority member. We will have three separate documents to deal with, in other words, as we approach the markup on this bill.

Senator METCALF. If they are not introduced by the Senators from Alaska, I am sure that the chairman of the committee will introduce them, at least by request, so there will be printed copies available.

Senator STEVENS. I am ready to do so, but we yield to the ranking people on this committee. I shall continue to do so.

Mr. GOLDBERG. Mr. Chairman, may I express appreciation to you and the committee, and to the Senators for receiving me as you did and for your overly kind comments.

Senator METCALF. Thank you very much.

Senator STEVENS. May I close this with one comment. Mr. Goldberg, you will recall we talked about the prior difficulties that were encountered, and I am happy to see that you are back representing the Alaska Native peoples. I had a disagreement with my good friend, and I hope he is still my good friend, Mr. Weinberg, but we are willing to accept the decision as it was made, and I hope that we can now move ahead without any further problems concerning the representation.

Mr. GOLDBERG. Well, as you will see in the statement, there is no problem as far as I am concerned. We have come to a conclusion which is reflected in the papers that so far as my personal participation is concerned, it is going to be as a public service. I do not commend that to lawyers generally, they will go bankrupt if they do.

Senator STEVENS. I have one question though. What is the relationship—I do not think your statement covers it—of the Alaskan attorneys who represent the individual groups to the group that you now have, and I am happy to see former Attorney General Clark—I think it is a great thing we have attracted men of your caliber to represent our Native people—but what is the relationship of our Alaskan attorneys who had the long-standing relationship with the groups?

Mr. GOLDBERG. We do not intend to affect their relationship one iota. In fact, we support it.

Senator STEVENS. Are they included in the total reprsentation as far as this bill is concerned?

Mr. GOLDBERG. That is for your committee to consider. I certainly have no objection. I believe that the most appropriate way to do it would be in the legislation itself, to make provision for that.

Senator STEVENS. You think the committee should make provision——

Mr. GOLDBERG. Or establish a procedure for doing it.

Senator STEVENS. I think the chairman has some idea of getting together, and I hope that you would agree with that.

Mr. GOLDBERG. But we would support——

Senator METCALF. That is why we wanted to have the various contracts before the committee.

Mr. GOLDBERG. I believe they have rendered good service, and I believe they ought to be compensated for their service.

Senator STEVENS. Thank you very much, Mr. Chairman. I certainly appreciate it.

Senator METCALF. I think that this very complicated and rather unique situation has been summed up by your testimony, Mr. Goldberg, when you say it is a difficult problem, but it is also a challenge and an opportunity, and this committee regards it as an opportunity to do equity and justice to our Native citizens in Alaska.

Thank you very much.

Mr. GOLDBERG. Thank you.

Senator METCALF. We will be in recess until 9 o'clock tomorrow morning.

(Whereupon, at 5:15 p.m., the committee adjourned, to reconvene at 9 a.m., Friday, August 8, 1969.)

ALASKA NATIVE LAND CLAIMS

FRIDAY, AUGUST 8, 1969

U.S. SENATE,
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
Washington, D.C.

The committee met, pursuant to recess at 9 a.m., in room 3110, New Senate Office Building, Senator Lee Metcalf, presiding.

Present: Senators Metcalf (presiding), Anderson, Gravel, Hansen, and Stevens.

Also present: Jerry T. Verkler, staff director; Stewart French, chief counsel; William J. Van Ness, special counsel; Charles Cook, minority counsel; Denny Miller and Daniel Dreyfus, professional staff members.

Senator METCALF. The committee will be in order.

Yesterday at the recess, we heard Mr. Emil Notti, president of the Alaska Federation of Natives, and Mr. Arthur J. Goldberg testify in behalf of this group. The next witness on my list is Mr. Notti himself. You are here again accompanied by distinguished counsel, and we would be delighted to have you go ahead.

STATEMENT OF EMIL NOTTI, PRESIDENT, THE ALASKA FEDERATION OF NATIVES; ACCOMPANIED BY RAMSEY CLARK, COUNSEL; PETER A. A. BERLE, COUNSEL; EDWARD WEINBERG, COUNSEL; JOHN BORBRIDGE, JR., VICE PRESIDENT, THE ALASKA FEDERATION OF NATIVES; AND EBEN HOPSON, MEMBER, BOARD OF DIRECTORS—Resumed

Mr. NOTTI. Thank you, Mr. Chairman.

I think we will let Mr. Ramsey Clark testify.

Senator METCALF. Mr. Clark.

Mr. CLARK. I will make a statement, if that is all right with you.

Senator METCALF. The committee is honored, of course, to have you again in a little different capacity. I can remember when you used to come up here and testify before the Public Lands Subcommittee, and in your capacity as Attorney General. Now we are pleased to have you again representing the Alaska Natives.

Mr. CLARK. Thank you, Mr. Chairman.

It is a real pleasure to be before this committee. I remember my first appearance here in 1961 when you defended me somewhat with some questioning on Federal-State water rights. I testified a good many times back in those days. I have not been before the committee in 4 or 5 years but I am very pleased to be here again.

I am pleased, too, to have this opportunity to appear in such an important cause and a just cause, an important cause for all of our

people. In a real sense this is the last chapter in a not too happy history of our relations with native people. This will be the last major land settlement with native people, and it is fortunate for us that it is so large and such a great opportunity that a combination of elements at this time really give the Congress the opportunity to write an incredibly good last chapter in this history.

There is a chance here, by paying just compensation in a legislative settlement, to give the opportunity to the natives of Alaska for self-determination, with real independence and break our history with paternalism which hasn't proved too successful.

Let me ask that the written statement that I have presented be submitted in the record, and I will make a few remarks on its contents if that is all right.

Senator METCALF. Thank you. Your prepared statement will be printed in the Record at the end of your remarks and your summary will be welcome.

Mr. CLARK. Thank you.

This settlement really should have happened a long time ago, but we never quite bring ourselves to face these issues until we have to. It could have happened in 1867 when by political action with a foreign power we took sovereignty over this land, recognizing as we did, and as we always have, that we, within the competence of our domestic laws, would recognize and deal with aboriginal titles.

It could have come in 1896 with the gold discoveries in the Klondike. It could have come in 1959 with statehood, but it comes in 1969, and this is the last chance really, and it comes now because of a major oil discovery. Estimates are that the deposits on the North Slope may double the reserves of the United States.

To get some impression of the dimension, oil bonuses next month on State leasing of something over 400,000 acres will probably exceed the entire annual budget of the State of Alaska several times over. That budget, as I understand it, has never reached $200 million. Among the modest estimates on what the bonuses will be in September are $500 million and they range well up over a billion dollars. So this gives you some impression of the dimension of this opportunity.

The thing to me that we must not forget, and through our history we have forgotten too often, is that there are native people living on that Northern Slope; there is really no one else, there never has been. They have been there from time immemorial. There remain even today over 4,000 natives living there, and from all of the descriptions of the exploration and the development that has taken place even at this time, we know of the dislocations to families, to graveyards, to traditions, to ways of living that have and will take place.

The question really is whether we will let the exploitation of these valuable resources which must transpire, bypass the people who have always lived on, occupied, and used and held dominion over the land, the native peoples of Alaska.

The notion that the native people should have a participating mineral interest has been recognized by the Federal Field Commission, which proposed that up to $1 million from such sources go to the native people. It has been recognized by the State of Alaska in a number of forms, in the State legislature's Joint Resolution 66 of this year,

when they support not only the native position but the Federal field report position and the earlier Alaska Governor's position, all of which involved and contemplated participating in the royalty, the mineral interest, the real wealth that we know is there.

It is a little ironic for me today to see that there are some proposals now that would give the natives the locatables but not the leasables. Locatables include gold. I wonder, if it were 1896, whether the proposal would be that the natives could have the leasables, oil, because no one knew of oil, but not the locatables, gold.

It would be unthinkable to me that we would pull out from under the people who have always lived there, their best chance to share in the development and the wealth of the land that they and they alone, really, particularly on the Northern Slope, have lived on and used.

Two percent is quite modest. It is less than 5 percent, which has been proposed by others, including the State. It ought to be a perpetual royalty interest. Why shouldn't they share in the full opportunity of the State and its resources? Two percent is less; a smaller fraction of the standard royalty of one-eighth, or 12½ percent than the Alaska natives, 80,000 natives, who once held dominion over this entire area, are to the population of Alaska. They get less than their proportionate share really.

Now, of course, they are citizens of the State. Of course, they participate in all of the benefits of the State. But they don't live in Anchorage, and they don't live in Fairbanks, and they don't live in Juneau, or other major cities of Alaska. They live in villages and the State benefits there are hard to achieve, hard to fulfill. There is very little highway work up there.

The most important thing to me for the natives—Congressman Ed Edmondson of Oklahoma expressed it very pointedly; maybe it is because I am from Texas and he is from Oklahoma and we have experienced oil—is that the natives participate in this development, in this opportunity, that it not bypass them, and leave them as they were, having pulled out natural resources that were there all along.

Land—the natives seek 40 million acres. We have to disenthrall ourselves. This is a little embarrassing, but even a Texan has to disenthrall himself from his experience when he thinks about 40 million acres. That is a pretty big spread, but not in Alaska. It is realistic. Attorney General Boyko has expressed his opinion that 40 million acres was right and that the State would back it. It is 10 percent of the land area of the State. The natives are 20 percent of the people. The Governor just yesterday testified that he did not believe that the State would ever select its 103 million acres. That speaks volumes. Why would we save this land base that these natives use, for what purpose? Who will ever use it? What urban sprawl or development, industrial development, will ever cover this place? Give the natives 40 million acres and you still have left 3½ Californias.

Way back in the 1940's, I believe at the time that Senator Anderson was Secretary of Agriculture, Secretary Julius Krug of the Department of Interior, after an extensive study, reported it required 150,000 acres of land to support a native family in Alaska. You have been there and you have talked to the natives, you heard in the House the day before yesterday, I believe, State Representative William Hensley, an Eskimo from Kotzebue, a man, I think, who has a degree from

George Washington University. Incredible that he could come from that smallest place to achieve what he has, I rather think perhaps only the beginning of what he will. But that aside—described very graphically how his family would have to range to look for ducks, muskrats, and other game when he was a child. How they would cover over 100 square miles, one family. Julius Krug's report indicates that 150,000 acres would yield for one family about $1,200 a year. Forty million acres will never be missed in that vast land.

These natives love the land. We have recognized that about all of our natives, even the natives we have relocated from one coast to the other practically. No one else will use this land, it would be a shame not to give them what they seek, what has been recognized, by disinterested sources, as not excessive.

Finally, in terms of cash, the natives, in my judgment, have the most realistic approach of all. They ask for the same number of dollars that has been recommended by the Secretary of Interior. The number of dollars is less than half the dollars recommended by the Federal Field Committee. It is half a billion. We are talking about 60,000 to 80,000 people. We are talking about people whose average per capita income is one-fourth the average per capita income of white Alaskans. The natives, least of all, would want this in direct grants. They want development. But if it were a direct grant, merely to get a sense of proportion about it, with the anticipatable oil royalties, would not bring this income up to one-half the average per capita income of white Alaska. It really would not approach the annual guaranteed minimum income by almost anybody's estimate, something that may be coming, something we will probably hear more of later, and the Congress can be cognizant of this.

It is an amount of money that the State legislature in Resolution 66, as it has on the other factors, recognizes as reasonable. Others do also, and it is needed.

The settlement that the natives propose in many ways is not as great as other settlements that have been recommended as just compensation. They only want just compensation. They want to be paid for what they are really now being dispossessed of.

I think there are several quite unique things about Alaska and about this settlement, and perhaps the most unique is that in every real sense the dispossession is today, it is contemporaneous. These are not the Crow Indians, who have been moved from one reservation thousands of miles to another and another and yet another and are settled on a land that their ancestors did not know. It is not like the native in most of the 48 States, on the lower continent, whatever it is, to refer to the rest of us. They are where they were when we came. They are not as many as they were because pestilence and other things of our civilization have decimated them, and their condition today is really quite bad.

If you look at what they eat, the Department of Agriculture says it is less than half the calories, just calories, not vitamins, not other things that you need, just calories, medically recommended. Ninety-five percent of their dwellings need replacement. Ten percent, in village surveys, have adequate water from a health and volume standpoint. Education is very difficult. In 1960, 8 percent of high school graduating age, graduated from high school. These are only a few of the illustra-

tions. In terms of employment, the average unemployment in the winter is 50 percent and in some villages it reaches virtually 100 percent.

Here for the Federal Government is an opportunity to fulfill an obligation, a legal obligation, a moral obligation, solve a social problem that it will have to deal with anyway under much more miserable circumstances, if not now, and do what we have too often failed to do and what is most important, and critically important, provide justice to native people. And all of this, even under the native proposal, at no cost to the general Treasury necessarily, at no cost to the other taxpayers, but by giving the native people less than that proportion of the natural resources of the land they have always used. They are the population that is now there within our civilization. It is a great opportunity.

We are very grateful to this committee for its concern, for its commitment to this issue, for its determination to do something this session, and an exceedingly difficult effort, I know.

On behalf of the native people I want to say that we are available always, we want to be of every possible assistance to the committee, to every member of the committee in expediting this settlement and achieving justice for these great native people and citizens of our country.

With that, I will let you hear from people who can really tell you how it is, the president and other representatives of the Alaska Federation of Natives.

Senator METCALF. General Clark, thank you very much for a moving and eloquent and very persuasive statement.

The Senator from Washington, the chairman of this committee, Senator Jackson, and every member of this committee, has entered into a commitment with Secretary Hickel that we were going to put some sort of a bill, the most equitable bill that we can work out in executive session, out this session. I know that the chairman is going to do his best to get it through the Senate this session. We are resolved to keep the commitment we made with the Secretary at the confirmation hearings, and so we are grateful to you and to the other witnesses who have appeared here this morning.

Would you rather have Mr. Notti testify or would you rather be interrogated at the present time?

Mr. CLARK. It is entirely up to you, Mr. Chairman. I rather think, both in terms of your hearing and in the efficient questioning, that it might be as well to hear Mr. Notti and a couple of the other natives now.

Senator METCALF. Very well. We will hear the whole group, if the committee is willing, and then all of you in panel will be subject to interrogation. We will include your prepared statement at this point and then proceed with your group.

Mr. CLARK. Very good.

(The statement referred to follows:)

STATEMENT OF RAMSEY CLARK ON BEHALF OF THE ALASKA FEDERATION OF NATIVES

Resolution of the claims of Native Alaskan peoples to the vast northlands that largely remain their home, will be the last chapter in a long sad history. Our nation seized much of an immensely wealthy continent displacing, deci-

mating, subjugating, and segregating aboriginal tribes. A steady course of expansion toward a manifest destiny brushed Indian nations aside by violence, deception, hostile environment and sometimes well intended treaty from Massachusetts and Virginia through Oklahoma, South Dakota, and California. Solemn agreements reached by the Father of our Country with the Seneca Nation in the 18th Century yielded to a Kinzua Dam in upper New York just as a 20th Century contract securing waters of the Ahtanum River for the Yakimas gave way to irrigated orchards in eastern Washington. Through most of our history with insignificant exception our foreign civilization having crossed the Atlantic and established itself on the Eastern Seaboard, crossed the continent of North America taking what it wanted on its terms, or on no terms. As inexorably as a glacier we moved every obstacle in our path.

Perhaps, the dynamics of history were such that nothing else was possible. It may be that no vision or compassion or leadership could have significantly altered the course of events. But throughout, there was dim realization of wrong, a gnawing desire to be just. Still one treaty yielded to the next, one reservation to another more remote. We had our way.

As if to atone we created government agencies to protect the Indians. A people who had survived and often thrived in a self sufficient natural independence our culture had not known for milleniums, were made wards. In a spirit of paternalism, we spent billions, hundreds of millions annually, only to make the First Americans the last. In health, education, employment, housing the necessities and the amenities of life, and in the opportunity for personal fulfillment, the American Indian is our most disadvantaged citizen—without comparison.

Nearly a quarter of a century ago now, after decades of increasing effort and instances of special legislation, Congress in a spirit of hopeful idealism created the Indian Claims Commission, conceived to settle once and for all native claims, legal, equitable and moral against the all usurping leviathan.

The technique, an analogy to judicial process, was wrong, unrealistic and harmful. It created conflict between the United States and Indian tribes—the conflict of massive and protracted litigation with its frustrations and injustice. It looked backward when the need was to look forward. The issues of fact were what happened often a century, or more ago. It reopened old wounds, ancient wrongs, laid them bare, examined them minutely. The need was to uplift, to unite, to move ahead. It created fictitious issues. What was the fair market value of 68 million acres of land in California in 1853? But in 1853, there was no market, no ascertainable value, no buyer, no seller, and later developments known to all and inseparable to thinking persons had brought great cities, millions of people, gold and oil discoveries, orange groves, an agricultural product that would have fed the nation of 1853 twice over. It turned native people inward, toward themselves, set apart and against their government and their fellow citizens. Finally, for something that happened to ancestors they never knew in times they never lived, they were paid dollars that were soon gone and left them more impoverished and embittered than ever.

Now comes Alaska and an historic opportunity. Whether the chance will be seen and seized is for the representatives of all our people—the Congress. Only a sense of history, of where we have been, where we are and whither we tend will provide the vision needed to fulfill this glorious opportunity.

This last chapter must be the best—even as it is the biggest. In absolute numbers, there are 60,000 native people. Their proportion of the total population of the area involved, and indeed of all identifiable descendants of aboriginals in the 50 States, is close to 20%. Most significantly, perhaps, is the proximity in time of Congressional action and the most traumatic dispossession, not a century and a half, or even half a century, but contemporaneous. All combine to make this last hope the best: to show we can learn from history and that we are a just and generous people.

As Alaska is different, so is its history and its native people. The most vigorous climate supporting human life within our nation forged, as did the North wind the Vikings, a courageous, strong and self reliant people. When Western civilization reached Alaska in the person of Russian nationals, the three great indigenous groups of natives, Aleuts, Eskimos, and Indians, were thriving. From that day to this they have never fared as well. Not even their population has attained again its earlier dimension. Then, free of pestilences and human violence brought by our civilization and the deep depredations into their sources of subsistence, bear, seal, salmon, caribou, the Eskimo ranged

hundreds of miles over barren tundra, Aleuts voyaged scores of leagues through icy waters among the islands reaching the Eastern hemisphere, the Indians covered the forests and central southland of the Alaskan peninsula. All thrived.

Though intrusions were great and newly imposed hardships substantial, Western civilization did not dispossess and relocate the native people of Alaska as it had virtually all in the other continental states. Native villages, perhaps fewer, some relocated, most smaller, remain much as they were, generally where they were. There are no vast plains in Alaska that have yielded to the plow. There is no great urban sprawl. Industry does not occupy large land areas. Nearly all of the lands of the State remain in public custody. The natives occupy and use the great majority of all of the occupied and used lands of the State, while the whites generally live in the cities—Anchorage, Fairbanks, Juneau. There has been no substantial conflict between native use and occupancy of these lands and the expansion of our modern urban industrial society because we have not acclimated to their northland. The discovery of vast oil reserves changes all this. Now the conflict arises and now the issues of ownership, possession, and use must be resolved.

The direct impact of present and future oil development on the lives and manner of living of the native people is immense. On one hand, the whole fragile ecology that has supported them is risked. On the other, the way they live daily will be profoundly changed. Some flavor of what is happening and to come, can be gathered from an article by Paul Friggens entitled "The Great Alaska Oil Rush". It originally appeared in *Empire* magazine and is reprinted in condensed form in the July 1969 issue of the *Reader's Digest*. Pointing out that the Eskimos have known of the oil seeps on the North slopes for centuries, he recounts efforts during World War II to find new petroleum reserves, the long and difficult years of exploration, and the great discovery well, Prudhoe Bay No. 1, of March 1968, producing 2300 barrels a day.

"The black gold is there, all right—buried deep beneath the 'desert of the North'. And today an army of men and machines is battling to bring it out.

"The North Coast of Alaska, that 1,000-mile-wide, 150-mile-deep plain that slopes from the Brooks Range into the Arctic Ocean, has long repelled even the hardiest of men. In winter, its killing cold plunges to 65 degrees below zero, and the whole land is locked in ice. In summer, thaws turn the flat, featureless tundra into a spongy, mosquito-infested quagmire of shallow lakes and streams. Yet, today, men are rushing into this 'desert of the North' just as they rushed into the gold fields of the Klondike in 1896.

"The signs of boom are everywhere. Where once only polar bears and caribou roamed, there are now airfields and new roads, and the lights of oil derricks and isolated drilling camps and exploring crews twinkle in the arctic night. For here in a 77,000-square-mile-area of this deadly land lies what may be the biggest, most exciting oil field ever discovered in North America—a find of far-reaching significance not only to the United States but to the entire world. Says *U.S. News & World Report:* 'The Alaskan find may make the United States self-sufficient in reasonably priced oil for the foreseeable future. Almost overnight, the U.S. appears to have doubled its petroleum reserves.' "

Ignored in the article, as native populations have been through our history, are the 4,000 Eskimos whose villages cover this area.

The major question is whether our governments will permit the exploitation of these immense riches to by-pass the hardy people who have always lived there. Will we in the 1970's further encroach on their capability to continue their native ways, increasing their impoverishment and dependence? Will we finally in our time, subject them as the most hostile natural elements never could to the paternal care of remote and misunderstanding government that has failed throughout its history in its efforts to care for or give independence to its native populations?

Imminent development of oil with probable lease bonuses in excess of a billion dollars this year and royalty values of many billions directly threatens villages, environment and promises an overall and all desirable development that will deprive Native Alaskans of their heritage if foresight does not preserve it now. The wealth nature has stored in Alaska provides the opportunity for Congress to meet the legal and moral obligations of the nation and solve the major social problems of poverty, poor health, inadequate housing, unemployment, the lack of education opportunity for a whole area without calling on the rest of the nation to provide the means. All that is needed is effective action now.

The native people of Alaska are a proud and stoic people. They do not seek charity. They do not want welfare. They want what they have had from time

immemorial—the use of their native land and the independence it gave them. They need opportunities today unnecessary before the advent of our civilization, however. The Congress will not wish to ignore this. Our failure to realize and meet newly created needs through the history of our relations with Indian people is the reason for their plight and our bad conscience.

The present condition of the Native Alaskan is intolerable. His average age at death is 34.3 years, barely half the life of all our citizens. Infant mortality is nearly 2½ times that of white Alaskans. 95% of all native dwellings need replacement. A survey of 20 native villages in northwest Alaska found fewer than 10% of the households had water wells, the only satisfactory water source. Flush toilets were found in only two villages—a single flush toilet in one village, none in the other 18. But one-fourth of the households had privies and only half of these were adequate from a health standpoint.

A government report finds the native population averaging less than one-half the calories medically recommended and variety in food grossly deficient.

Joblessness in the winter averages 50% of the labor force and runs 80–100% in many native villages. The average per capita income of all Native Alaskans is less than ¼ that of white Alaskans. Prices in Alaska are the highest in the nation and prices in native areas are the highest in Alaska. 80% welfare in Alaska for aid to dependent children goes to Natives.

Educational opportunities for Native youths are terribly limited. Many villages offer nothing beyond the 8th grade. In 1960, only 8% finished high school.

The opportunity of the Congress today includes an imaginative solution of the major economic and social problems of Alaska, the fulfillment of a high moral duty of the nation and the full satisfaction of the land claims of Native Alaskans.

Everyone concedes our obligation to the Alaska Natives. Everyone concedes that obligation to be great. All want a just settlement. Both the Executive branch of the Federal Government speaking primarily through the Department of the Interior and the State through its Governor—recognizes obligations in the hundreds of millions of dollars. Both recognize the need to grant a land base. Too little land and too little money—a token—would be tragic. We know what we owe. We know what is needed. We know what must be done in the long run. If we do not do it all now the last chapter in our history of dealing with native people will end as our first began—with injustice.

The native people of Alaska must have land base adequate to their support and growth. This is their native land. They love it. In every real sense, political, legal and moral, it was once all theirs. Perhaps no single fact more graphically dramatizes the fate of native people in the advance of our civilization than that today from the hundreds of millions of acres they have used and occupied of the 375,000,000 in the State, 60,000 Native Alaskans now have deeds to fee title in 500 acres. This is roughly 400 square feet each, a room 20 feet by 20 feet. This in Alaska where hunters must still cover many townships to feed and clothe their families.

Native Alaskans ask for the fee title to 40,000,000 acres. They should have it. This is not urban, industrialized America. It is Alaska. The land is open. Except for the native population, it is essentially unused and will remain so.

Their request is modest. They are more than 20% of the population of the State. They seek only 10% of its area. Since they live in a place governed by our history and ways, they must own the land in our ways. Their villages, their hunting and fishing grounds, their grazing lands, campsites and trade routes should be made secure under our laws by vesting in them fee title. If we fail to do this, further exploitation of national resources, disturbing a delicate frozen ecology, insensitive to its future, will further isolate and impoverish the people who live there.

This grant will not deter the development of Alaska. It will enable Alaska Natives to share in that development. Land equalling 3½ Californias will remain in public ownership. What are the probabilities of the needs of our urban people exceeding that? In the meanwhile, Alaskan Natives will have the chance to shape their destinies from a land base—the only base they have known—the base they love. Forty million acres will be adequate, though barely, to support them somewhat as heretofore and permit them to control and share in development where they live.

To understand this we must disenthrall ourselves from our experience, from where we live and the cities and towns we know to which open lands must yield. Alaska is different. There we can do what is just, but what we could not do in Florida or Pennsylvania or Oregon without deterring progress. We can assure

native people forever a land base adequate to their historic mode of life. It would be tragic not to do so. In Alaska, we cannot raise the spectre of progress, of the white man's need. Denial of this land can only be from greed.

Land alone will not suffice. We are on this planet together and our influences on each other are inescapable. Native people must have the means of developing themselves, of building and growing to participate in, compete with and protect themselves from technologically advanced mass populations. They must have power, wealth and opportunity or their fate will continue the tragic history of native populations in the United States.

Almost incredibly, the power, the wealth, and the opportunity are available without cost to the general treasury, or the American taxpayer. It can be done by granting to them less than the value of that fracion of what was theirs that they are now of the Alaskan population. Preserve from undeveloped resources for Alaskan Natives less than ⅕ of what was once all theirs and their future, independent of paternalistic bureaucracy, is assured. They are 20% of the citizens. Grant them 10% of the land—the places they live and use—40 million acres. Of the remaining 90% of the State grant them a 2% interest in gross production of all minerals. How the State of Alaska participates is for the State and ultimately the Congress. Surely, it will not shirk its duty, or fail to appreciate the generosity of Congress in its Statehood Act, or of nature which bestow its priceless treasure. Even if the lands are not leased by competitive bidding as clearly they should be, the interest retained by the owner would be 12½%. The 2% the natives seek is only a fraction of even their proportionate share on a per capita basis of the standard royalty.

Of course, they are citizens of Alaska. Of course, they seek its development and share in its services and welfare. But most live in romote villages isolated from most services. How many miles of highway does the State Highway Commission provide for native villages? None. They have no pavement.

The most tragic thing is to sever native people from the resources where they live. To see Indians huddled in poverty in hogans and shacks among oil derricks, gravel pits, open face mines—the wealth of the land pulled right out from under them and they left with nothing.

Development will come slowly. The native population still dies young. Assistance is needed now. A mere cash gratuity would be cruel and demeaning. How often have we seen cash grants leave Indian people in greater poverty and bitterness than ever? But substantial annual cash compensation for a period of years will provide the opportunity to begin. One hundred million dollars to start and $50,000,000 a year for eight years is not substantial for tens of thousands of people whose per capita income is ¼ that of white Alaskans. Far more would be required to raise native incomes to ½ white incomes. At the very most, 50 million dollars is less than 10% of the oil royalty bonuses expected from the small beginning of state leasing 400,000 acres next month. It may be less than 2½%. Fifty million dollars a year is an insignificant fraction of the bonus value of Alaskan minerals at the probable rate of development. It is the chance for Native Alaskans to start development now. It can be financed from a fraction of the natural wealth of what was if not all theirs, certainly was not ours at all. To do less under these circumstances will not reflect well on our sense of justice, our recognition of legal obligation, or our duty to our citizens—citizens we have impoverished.

Beyond the question of the nature and dimension of the settlement, is the critically important issue of its administration. How can the greatest benefits for the Native Alaskans be attained? Experience with per capita cash distributions in similar matters precludes any serious consideration of that technique. Our experience with paternalism has been as bad. Is not this the clear lesson of the Bureau of Indian Affairs, indeed of our domestic welfare and poverty programs? You help people most by giving them the chance to help themselves. Nothing else works as well.

For these reasons, and further because of the very great challenge nature presents where Alaskan Natives live, the idea of Native Development Corporations is as exciting as it is innovative. Substantial, well-financed development capabilities not mere token play businesses, can give the Natives whatever opportunity there is for their independence in the new technological environment that is coming. With the dual purpose of profit and service to its public, the Native people, more and more the role of the major corporation in our society, regional development companies sensitive to vast local variations in need and opportunity, can go to work to develop resources including the greatest resource—people.

Well-planned business corporations for the dozen distinct geographic and demographic regions and service corporations responsive to the people served and controlled by them can improve health, build houses, educate and employ. Finally, they can afford for the first time a wise and courageous native people a meaningful opportunity for self determination—preservation of the old way or assimilation into the new—or, perhaps if either is to be, to do both.

Through the opportunity now available, this major native population, can be done justice. Old wrongs can be righted by Native lights—something that has not happened so far in our history. As is also just, those who have done justice, will be relieved of much of the burden, otherwise inescapable, of supporting a people deprived of the means of supporting themselves as they had since time immemorial. We will be relieved not only of an economically costly burden, but of the moral burden of yet another wrong to the Native people and at a time in history and place in geography when there could be but one reason—we are not a just people. Finally, all will profit from the liberation of talent and valuable human resources that so clearly exist among the Native people of Alaska. All will be enriched by the preservation of their incredibly vital and stoic character and their assimilation into the world of the last third of the 20th Century.

Will we be known as a people who went to the moon, but by-passed the clear duty and ready opportunity to find the way to justly resolve the last native claim in their history?

The Congress should act boldly and now.

Senator METCALF. Are you the next witness, Mr. Notti?

Mr. NOTTI. Yes, sir.

Senator METCALF. We are very pleased to have you here as a representative of the Alaska Federation of Natives.

Mr. NOTTI. Mr. Chairman, I am very happy to be here once again before the committee to testify on this important subject. We are pleased that the committee has made the commitment to put forth their best effort to get a bill through this Congress.

With me here today is, on my immediate left, Peter Berle, an attorney associated with Justice Goldberg. Also, Edward Weinberg, who is associated with former Senator Kuchel. On the far right is Eben Hopson, member of our board of directors in Barrow. Next to him is John Borbridge, first vice president of the Alaska Federation of Natives.

I have a formal statement. I think it fulfills the desires of the chairman for us to get to the specifics of the bill. With your permission, I would like to have it entered in the record.

Senator METCALF. The statement will be received and incorporated in the record.

Mr. NOTTI. Thank you. I will not read it, I will just make some comments based on what I think are some important points.

Senator METCALF. Your statement will be printed at this point and then you have the floor.

(The statement referred to follows:)

STATEMENT OF EMIL NOTTI, PRESIDENT, THE ALASKA FEDERATION OF NATIVES

Mr. Chairman and members of the committee, AFN counsel has spoken at some length, and, accordingly, I will be brief. As you know, I speak on behalf of The Alaska Federation of Natives, an organization which you have already heard about. You also know that we, as Alaskan natives, are seeking a resolution of a dispute involving our valid legal claims to land in Alaska. We do not seek charity. We seek to resolve, in the interest of all the people of Alaska, questions relating to native claims which are based on our use of the Great Land from a time which began before recorded history. You have seen that we, as natives, have resolved our internal differences and have come forward with a single settlement proposal. You have heard the details of the proposal and I hope you will agree that it is rational, modest and just.

I would like you to closely examine the Alaskan native and Alaskan native organizations and their capability to manage land and money which would be received as a result of the settlement. As I will show later, any stereotype of an ignorant Indian who comes into great wealth and loses it all in a matter of hours through purchases of "firewater," cars and as a result of fleecing by white con-men, does not apply to the Alaska native. The Native organizations which have received substantial sums have managed these with great success. I will also point out why a single statewide corporation without further subdivision formed to manage assets received by natives does not present the most effective vehicle for administration of whatever settlement is achieved.

First I would like you to consider what most native villages in Alaska look like.

Few can be reached by road. There is no telephone service, nor is there any scheduled air service. The only contact which the village has with the outside is by a single two-way radio and possibly a gravel air strip used by bush pilots. The people are dependent upon the land for their survival.

The village needs land to permit its population to survive. If the land is desecrated or spoiled, if the fish and game which the population has used as a subsistence resource since the beginning of time, are destroyed or die out, the people of the village will starve. As man is part of the ecological pattern, the grant of four townships to the village is not only sensible but just. It is sensible because less land cannot support the subsistence resources upon which the people of the village depend for survival, or promote the economic base required to make the village a viable social and economic unit. It is just because the people of the village have utilized an area of many times this size for many, many years.

Forty Million acres, which represents roughly 10 percent of land in Alaska is a small fraction of that which we would be seeking if native protest claims were being litigated. We are, after all, at least 20 percent of the Alaskan population, and in order to subsist we have used virtually 100 percent of the land.

I have talked about land. I wish also to address myself to the monetary aspect of the settlement.

We seek a cash settlement so that we are in a position to develop land which we receive and also to develop the resources which we as a people need to realize our full potentiality. I know that when some people think about giving cash to Natives the first image that comes to their minds is the drunken Indian who dissipates whatever wealth he may receive. I think that this image should be compared with what has actually happened in Alaska.

In 1964 it was determined that the Village of Tyonek, in Central Alaska, had the right to exercise control over the benefit of the income from the lease sales of gas and oil rights on the Moquokee Reservation. A bitter battle had taken place with the Bureau of Indian Affairs which sought to administer these funds, the Tyoneks prevailed and in 1964 received $12 million. In 1966 they received two million dollars more for rights which they had previously refused to sell for one million dollars.

The Village established areas of priority in which they wished to have their resources applied. These included housing, scholarship aids, health programs, family development and assistance, credit, community development and others. With the help of outside experts who were hired by the Village, plans were drawn up, and now five years later the Tyoneks have the following to show for their efforts.

Sixty modern homes have been completed by members of the Village through the construction program. These were built by their owner-occupants and are owned as personal property, on land which is owned by the Village.

A complete village water system was constructed which includes deep wells, storage tanks, and miles of buried underground mains. Estimated conservatively the current market value of the water system is now over one-half million dollars.

A gas turbine generating plant to provide electric power for the Village and capacity for future industrial expansion was constructed. That plant has a current replacement value of more than two million dollars.

Underground utilities lines were installed in the Village. The replacement value of these lines is estimated to be more than a quarter of a million dollars.

An airstrip was constructed which would now cost approximately $400,000 to duplicate.

The Village contributed to the construction of a school building which it now owns and which includes a complete junior high gymnasium. Teachers' quarters were also constructed, now worth at least $100,000.

The Village owns trucks and earth-moving equipment worth approximately $200,000.

The Village has a large and controlling stock position in utilities and other industries involved in the development of Alaska whose current market value is more than three and one-half million dollars.

The Village has acquired numerous pieces of commercial property in downtown Anchorage. It contributed, at a cost of over two million dollars, the two Kaloa buildings which are some of the most modern and best designed office buildings in the city. Tenants include IBM and the Bureau of Indian Affairs. Rent from these buildings alone now comes to more than a quarter of a million dollars per year.

In addition, management of the income from the oil and gas sales has created many other benefits for the members of the Tyonek Village. Jobs are now available in the Village and thus there is a substantial payroll. A trust fund for individual members of the Village has also been established.

These results were achieved by a native village through its native leadership with the help of specialists such as accountants, planners and lawyers, which the Village hired to work for it. No paternalistic federal bureaucracy supervised this activity. Indeed, the results I have described could not have been achieved if the village and its professional assistants had to work through layers of bureaucracy prior to undertaking any project. Tyonek Village has broken the dependency cycle which has gripped many native peoples. As a result it has made tremendous progress. Progress has been made in both physical development of the Village and also in the development of the most important resource of any State—its people.

The Tyonek experience is not the only example of the capacity of native leadership effectively to manage assets received in settlement of land claims. The recovery of the Tlingit-Haida Indians in the southeast is a prime example of what can be expected after regional corporations are formed such as those envisioned in our position paper.

In January 1968 the Tlingit-Haida Indians were awarded $7,500,000 in settlement of their claim which arose as a result of a taking by the Federal government of Annete Island, the Tongas National Forest, and Glacier Bay National Monument. The settlement requires that a plan be drawn up and that Congress approve this plan prior to the disbursement of funds. At the moment a general constitution for villages has been formulated, a constitution for the General Council of the Tlingit and Haida Indians has been drawn up, and an initial Statement of Plans for use of monies to be received has been drafted. Currently, $6,500,000 belonging to the Tlingit-Haidas are invested in United States securities. A small amount has been made available to the Central Council to operate the planning program. Six separate plans are now being worked on which include: a program for scholarship grants and assistance for education, professional and vocational training; plans for services of the elderly; a housing guarantee and loan fund; a community development fund; an industrial and commercial development fund; and a revolving fund for loans which may eventually involve the organization of a Tlingit and Haida bank.

These plans are being formulated so that native peoples and native villages in the southeastern region may develop themselves and their resources.

In light of these examples, I hope you will agree with me that the native record on both the village and regional level in the matter of making arrangements for the application of substantial funds towards profitable business enterprises, towards developing our people, and towards solving the social problems which we encounter is outstanding.

We believe that under the provisions of our settlement proposal, this record can be repeated throughout Alaska.

In our proposal we make provision for the establishment of twelve separate regional corporations which, along with the villages in the areas they comprise, will receive the bulk of the settlement.

It is absolutely essential that provision for these twelve corporations be provided in the legislation. The single corporation proposed in both H.R. 10193 and the bill submitted by the Department of the Interior will not be as effective a means of permitting the native people to develop themselves and to participate in the development of the State as the twelve.

I have told you about the typical village. The people of the village have very specific needs and a general plan submitted by a general statewide corporation cannot effectively deal with the problems of the village. Alaska is too large and the cultural differences are too great between our native peoples to achieve optimum utilization of resources if this is done by a single corporation.

I note that none of the bills before you other than our own proposals make provision for the twelve statewide corporations. However, our proposal for regional cooperations is endorsed not only by ourselves but by the State of Alaska. Those of us who live in Alaska know that the State is so vast that a single corporation cannot be responsive to the specific needs of particular regions. We also know that the ethnic and cultural differences between native peoples are so great that a statewide corporation cannot be as responsive to local conditions as it needs to be. Travel expenses alone would prevent many natives from participating in the management of the corporation since they could not afford to reach the principal offices of this single entity.

If such a situation is permitted to develop by a statewide corporation, we have perpetuated conditions which deny natives the opportunity to participate in their own development and may well simply substitue one paternalistic bureaucracy for another.

Furthermore, the needs of native peoples living on the coast are quite different than those living several thousand miles away in the interior. Their heritage is different, their customs are different, and in some instances their values are different. Therefore, it is extremely important to us—and I reemphasize that we have received full backing from the officials of the State of Alaska in this matter—that the legislation provide for twelve separate regional corporations.

We understand that there may be instances in which the corporations will seek to cooperate and jointly engage in some particular project. We also recognize that the corporations may seek to pool management talent or jointly employ certain specialists. Legislative provisions implementing our proposal which our attorneys will submit to this Committee will make this type of cooperative effort possible.

In summary, I hope you consider our great need for land and that you will discard the "conventional wisdom" with respect to the ability of native peoples to manage the proceeds of settlement claims. In your analysis of the situation in Alaska, please remember our record in the management of funds we have already received, not stories you have heard about other parts of the country. The safeguards with respect to alienation of stock in the corporations, the requirement for a GSA audit, as well as the requirement that expenditures of the corporations be authorized by an Alaska Native Commission, should allay your fears that the sums may be squandered. Most important, however, is that you consider the best judgment of those of us that are closest to the scene—ourselves and the officials of the State of Alaska—when we say that there must be twelve separate regional corporations provided for in the Act, if the social and economic goals which we hope to achieve through this land settlement are to be achieved.

Mr. NOTTI. First, on the 2-percent overriding royalty that we have proposed, which we have not come before this committee with before, one important reason for our proposal is that we think it will forestall future claims, and the reason I say future claims is that I think our position is reasonable. When we say $500 million for all of Alaska, it is somewhere in the neighborhood of $1.30 an acre.

If the State of Alaska gets the $1 billion that is being talked about up there for 431,000 acres, we would be accused of making another Manhattan Island deal if we were not reasonable, and I don't think this is justifiable.

Some of the concern I have heard about whether we are capable of handling our own affairs, I think can be delayed if this committee gets acquainted with some of the representatives who are here today. I could repeat many successful stories of our native people around the State but I will only illustrate with those who have traveled to Washington with us.

John Borbridge has a bachelor of arts degree in political science, has done graduate work at the University of Alaska. He has had 12 years of secondary teaching and junior college.

Willie Hensley has a degree from George Washington University and is a State legislator. He has done graduate work at the University

of Alaska in economics. He has one semester of law school at UCLA.

Ray Christensen, an Eskimo from Bethel, is a commercial pilot, instrument rated; is a State senator; is the chairman of the State Democratic Central Committee. He owns his own flying business in Bethel.

Eben Hopson is a former State senator and is a captain in the National Guard in Barrow. Not only do they live on the land but we are all willing to defend it. I hope they never have to do it but we are all willing to do that.

Flore Lekanof is an Aleut and has a master's degree in education and administration.

Al Ketzler, from Nenand, owns his own business and he has managed what would be the equivalent of the Irish Sweepstakes in Alaska, which is about $300,000 bet on when the ice is going to move 100 yards and he is the one who has managed that.

Cecil Barnes is an A.D. mechanic with four children. He has achieved something that many of us working people never do, he owns his own home. He is a young man.

For myself I have a bachelor's degree in engineering.

Some of our people are in State government. Eben Hopson is a former State senator; Ray Christensen is presently a State senator; Willie Hensley is presently a State representative. John Sackett, who is a State representative, is a graduate of the university in accounting. Carl Moses, who now lives in Alaska, owns his own business and is a State representative.

Frank Peratovich owns his own store in Klawock and is a State representative now. He is past president of the Senate in Alaska. These are a few examples of some of our people and I think we are very capable of handling our own affairs and determining our own future.

In the federation we have been in existence now since April of 1967, and we have had somebody full-time, and in that short time we have now going, an economic study along the coast from the Canadian border down to the mouth of the Kuskokwim in an area where there never has been an economic study, aimed at getting some projects going. They are involving local people and we have in Kotzebue and one in Bethel a full-time man and secretary working on this project.

In Anchorage we have the first major OJT project in Alaska, 200 trainees on a statewide basis. We got that about a year and a half ago.

We operate other grants for education and health. In 2 years time, we started off with $4 in a bank, our payroll now is in the neighborhood of $150,000 a year. This is a bootstrap effort, something we have done for ourselves and in areas that do concern us in employment, education, and health in the remote areas of Alaska.

As far as judgment goes, I think no one can question our judgment in acquiring the best legal help and the best legal talent in the legal team that we have put together in this cause.

As to the 160 acres that have been proposed for the urban native, I think we should not deny the person who has moved from the village to the city. To give an example, in most cases of people I have known they have moved because they want to give their children the opportunity for a good education, because hospitals are close by, because

other conveniences are not available in the rural areas. Because they have moved, I don't think they should be denied a share in their birthright and the proposed 160 acres of land for these people.

It would be very difficult, I think, under other circumstances to get land. In my own case where I trapped as a child, where our family trapped, after the land is left to the State there is a 90-day priority, I think, to reclaim the land—and the areas that we used are the choice areas of land. They are along the ranges where the timber is, where the other resources are. I think we would have a difficult chance of getting land.

Concerning the extent of the use of land, I was talking with my mother who is 63 years old and she was telling me when she was 9 years old they wintered up in Rampart, up on the flats and trapped. In the spring the whole family got on a raft and went 300 miles downriver where they had relatives and friends all along the way, where they would stop overnight. They fished in Nulato and they did early winter trapping in that area.

In the wintertime, in February, when she was 9 years old, the family started back the 300 miles up to the spring camp and in order to get there she was given one dog and a sled and she ran behind the family for 300 miles. In that country it can get down to 60 below in February. So we did use extensive areas of land, and Eben Hopson will give some idea of the extensive use of the land even today.

I would suggest $500 million as the correct sum and with conditions around the State this would not be enough to give everybody a little home, a water system, an education and everything that is needed. However, it will give us a base to build on and guarantee that the children of our children will have a chance.

In many areas of Alaska where we talked to the people, the older people, many of them don't speak English. You can go into some of the villages where half the people don't speak English and don't understand what you are talking about. If they were just sitting there and going on the way they are the next thing you know there would be a State selection and they would be told they could not hunt. I should not say a State selection but there would be a form of restriction of the land in some way.

You talk to them and as far as they are concerned through an interpreter they tell you that "This is my land. My grandfathers and my forefathers used it and hundreds before us, and it is mine," and they will say, when you start talking about land settlement, "We don't want any money. We want land. We want to continue the use of our lands." Nobody is going out there and using that land in many areas now, and I suggest they won't until the economics of the world demand the resources that are out there.

The land base is needed for future generations of these people who are out there now who don't speak the language or don't speak English, and it will guarantee that their children have a base for education, for training, and if they make the choice at some later date that they can make the transition to what is considered the American way of life.

Now, we asked John Borbridge, who is first vice president of the AFN, and president and general manager of the Tlingit-Haida people, to talk about the development of one of the regional groups who are

associated with the AFN and he can expand on some of the points I have brought out and following him will be Eben Hopson.

Senator METCALF. Mr. Borbridge.

Mr. BORBRIDGE. Mr. Chairman and members of the committee; my name is John Borbridge, Jr., and I appear as first vice president of the Alaska Federation of Natives. I also serve on the Central Council of the Tlingit-Haida Indians, as president and general manager.

I do not have a formal statement to submit for the record but I would like to make some comments which I feel are germane to lines of inquiry posed by members of the committee.

In reference to the Allotment Act, concerning which there has been some discussion, our experience in southeast Alaska has been one of discouragement with the effectiveness of this act. With over 20 million acres of land in southeast Alaska, since the passage of the Allotment Act in 1906, the purpose of which was to make it possible for Indians to gain title to some land within their ancestral areas, we found that over the total life of this act 3,211 acres actually passed in title to the Tlingit-Haida Indians, this right from the heartland of their ancestral lands. Most of the applications we made would either be denied or reduced, and great difficulties arose due to administrative interpretation which made it almost impossible for us to gain title to the allotments that we sought. Furthermore, we have received word that not 1 acre is presently available for this purpose in southeast Alaska.

As to the national forest, we have found that the restrictive administration and interpretation of both the intention and the actual administration of the act has made it necessary for an applicant to be around either 81 or 84 years of age, a very unhappy history.

I would like to refer to our experiences——

Senator ANDERSON. What was that again, about 84 years of age?

Mr. BORBRIDGE. Yes, Senator. The way it has been interpreted now, the national forest was created by an executive proclamation in 1907 and 1909—yes, I was going to give the background which will lead to the age requirements. The national forest in southeast Alaska was created in 1907 and 1909, and the requirement was that one had to be able to demonstrate 5 years of continuous use and further be 21 years old at the time of the passage of the act, all of which would virtually, by the process of age alone, eliminate most of us from consideration. Needless to say I would not even get into the door with that type of interpretation.

Senator ANDERSON. What about the 84 years of age?

Mr. BORBRIDGE. Yes.

If the individual was 84 and had occupied the area for 5 years—and this is assuming that they could satisfy the national forest people that this was a valid occupation within their view—and the person was 21 years at the time the act was passed, then they might possibly, at least, be considered as an applicant for an allotment.

Senator ANDERSON. This is within the Tongas Forest?

Mr. BORBRIDGE. Yes, this was within the Tongas Forest, Senator.

Senator ANDERSON. Did you apply?

Mr. BORBRIDGE. I was somewhat discouraged by the statistics, and I have not applied.

Senator ANDERSON. Do you know anybody who did apply?

Mr. BORBRIDGE. Yes. I have an uncle, a Mr. Frank Kitka who lives in Sitka, Alaska. His family has used, since time immemorial, a camp-

site throughout the months of the summer, a fishing campsite where they have put up their fish for use during the winter. They have been working for quite a time to try to have their title recognized through the 160-acre allotment and they have experienced great difficulty in having this application validated. They may have the possibility of having part of the allotment applied for recognized, but for Mr. Kitka in this specific case we have encountered a great deal of difficulty, Senator, in trying to gain title to what he has used since time immemorial, and his is a case that all of his people in the area clearly recognize. This was an example where no one else came into Deep Bay because they knew this was the Frank Kitka area, so that everyone else recognized and respected his use of it.

Senator ANDERSON. In the statehood bill did they provide for some forest land to be used?

Mr. BORBRIDGE. I am not clear.

Senator ANDERSON. When we granted statehood.

Mr. BORBRIDGE. As I would understand it, if I am answering correctly here to your line of inquiry, Senator, the Allotment Act was not adversely affected by the Statehood Act and applications could still be processed. Am I addressing myself correctly to your question?

Senator ANDERSON. Yes.

Mr. BORBIRDGE. With reference, Mr. Chairman, to matters of administration of the proposed settlement, we recognize that there is a valid concern by members of the committee who have clearly demonstrated their interest and their concern for this complex and important issue. We feel that it would be germane at this time and very pertinent not only to touch upon the successful experiences of the Tyonek as they have benefited, and this is covered in detail by the statement submitted by our president of the Alaska Federation of Natives, Mr. Emil Notti, but I would like to touch briefly on our experiences as a central council.

Since we have as a regional organization received a partial settlement which we are presently directed by the Congress to administer, the central council received $7½ million as the result of a successful land suit case before the court of claims. We are at the present time directed by the Congress to draw up plans relative to the disposition and ultimate disbursement of the funds. Our organization, composed of 18 member communities totaling approximately 14,000 Tlingit and Haida Indians, is governed by a central council, by our formal rules of election approved by the Secretary of the Interior and drawn up by our people in consultation with our attorneys. We further have a constitution before the member communities. In addition to this, as we are disbursing moneys to the communities for purely administartive purposes, we are asking further that there be a formalization of the use of this money and the bonding of the people who are to handle the moneys.

In our planning relative to the use of the moneys, I think it would be of real pertinency to the committee to take a preliminary look at what we, as a central council, propose to do with the moneys which will shortly be forthcoming to us.

We are concerned with services for the elderly. We recognize that after all it was their vision and their foresight and their persistence which resulted in the successful lawsuit in southeast Alaska for the Tlingit and Haidas. We therefore want to supplement services and provide those which may not be provided at the present time.

Our second point is relative to community development. We recognize that there are not only economic and industrial concerns but there are concerns which can, if met, go a long way toward uplifting the qualities of life in the community. I think that this is particularly important, if the community itself is doing this.

We are concerned further in providing a scholarship fund and other educational aids which will not only apply to our younger people, who are going to be encouraged and are being encouraged to attend institutions of higher learning, but we feel further that we have people who fall in the category between those going to school and those who are no longer interested, so that we want to encourage those who wish to increase their earning capacity.

We have a program being developed for economic and industrial development, housing and loan guarantee, and we even envision the possibility that there may some day be a Tlingit and Haida bank.

We feel, however, that the important stress here is not solely upon the return of money, not solely upon the expenditure of programs with results being somewhat uncertain, but we want to consciously stress a people development type of activity whereby we are trained to assume the responsibilities for our own programs and to develop and to continue to make our own decisions.

I think that this, in effect, covers the points, Mr. Chairman, and members of the committee, that I wish to make at this time. And I thank you for the opportunity.

Senator METCALF. Thank you very much, Mr. Borbridge.

Mr. NOTTI. I think Mr. Hopson has a few words to say.

Senator METCALF. We are very delighted to hear what you have to say, Mr. Hopson.

Mr. HOPSON. Thank you, Mr. Chairman.

My name is Eben Hopson. I come from the farthest north community under the American flag, Point Barrow, Alaska.

I would like to fill in on a little testimony that has already been made concerning the Eskimo people on the northern slope. As I have indicated in previous testimony, we have always asserted that the land belonged to us and there are very definite reasons why we feel that the land does belong to us. In several instances I had indicated that in the history of about 150 years prior to today there were very bloody conflicts that happened up on the north slope that is now today a written history.

I would like also for this committee to know that the same took place as far as the Russian rule, prior to the purchase of Alaska by the United States. Several attempts were made by the Russian people in convoy attempting to exploit the north country. They could only go so far. At a certain point landings were made and total convoys were just annihilated by the Eskimo people. We had conflicts with our Indian neighbors on the southern side of the mountain, just to prove our strong feeling about our land up there, and I think we have today protected it, and I think we can rightfully say that we own the land.

The Eskimo people, Mr. Chairman extend all the way from the Canadian country, from the Hudson Bay area and not to exclude any other Eskimos that might be on the Greenland side, all along the northern coast of the continent, Canadian northern coast of the north-

ern coast of Alaska. They also go into the Siberian side and on the small islands that are on the Bering Sea.

However, Mr. Chairman, while we cover a great expanse of territory up there, we have several languages. The language that I speak extends from the Hudson Bay area all the way to Kotzebue. As you get west of Kotzebue all of the communities of Nome have a different dialect. Mostly influenced by the languages on the small islands on the Bering Sea including the Little and Big Diomede land which are only a few miles from the Siberian coast. You go south of Nome into the Unalakleet, Norton Sound area, you also run into another dialect, and on into the mouth of the Yukon River, Yukon and Kuskokwim Rivers.

The people on the Aleutian Range and the Alaska Peninsula also call themselves Eskimos but they are mostly influenced by the Russian people in that they were dominated all during the time the Russians were in Alaska. They are called the Aleuts, and also have their own language.

The land even today, Mr. Chairman, is used by my people on the north slope, in that we have rivers that we can reach by dog team or by boat, both in the wintertime and in the summer. You travel on the average of about 40 miles to go to your fishing campsite. Like I said this can happen both in the winter and summer. Once you get up into the river that does not mean that you fish right at the spot where you camp because you have to go look for a real good place to put up a fish net, and this may involve some 10 miles of river banks in order to locate a good fishing site. So when we speak about 160 acres that we are asking for, in fact we are using more and perhaps dominate more area than what has been brought out before both committees.

Mr. Chairman, the land being used by hunters and trappers comes more or less on a seasonal basis. The land is used for fishing in the summertime, then again you go down the coast either east or west during a particular part of the season, which is springtime, and camp for seal hunting.

As far as hunting on the sea is concerned that is continually being used on a year around basis by the Eskimo people, and the same holds true wherever you find an Eskimo village along the coast.

The use and occupancy aspect of this land, Mr. Chairman, I think, holds true even with the people in the interior. I would not want to respond too much on the interior part of Alaska because Alaska is so huge that even my closest neighbors on the southern side of the Brooks Range from where I come from, have altogether a different way of livelihood if you compare it to mine. While they do hunt and fish like we do, they hunt different species of animals, and I am not totally prepared to talk on it.

But the use of the land is the same throughout Alaska. It really doesn't make any difference where you are and I think this is a real important point. I feel, Mr. Chairman, that I should be very happy to answer some questions concerning use and occupancy of our land.

This concludes my statement. I want to thank the chairman for the opportunity to say a few words.

Senator METCALF. Thank you very much, Mr. Hopson, for a very graphic description of the way in which you live in your area.

Mr. CLARK. Mr. Chairman, I believe that concludes our direct testimony, if you would care to go to questioning now.

Senator METCALF. Thank you very much.

Now, if you will all remain at the table and sit as a panel we will call on Senator Anderson.

Senator ANDERSON. Did the Russians buy land in that area?

Mr. CLARK. No, Senator. That was not a land purchase such as private citizens buy property rights.

Senator ANDERSON. What rights did the U.S. Government buy?

Mr. CLARK. The Government, under the law and the purpose of the purchase, bought sovereignty. It brought that land into the United States. By the treaty of purchase it recognized that we had as a people, even before our Constitution and from the earliest days of our Constitution, from the opinions of Chief Justice John Marshall to all of our dealings with the Indians, and specifically in the treaty purchase, the jurisdiction of Alaska from the Russians, that we under our domestic law would deal with Indian title, with aboriginal title, with native title to the lands.

Senator ANDERSON. Did the Russians pay a full price for it or did they expect to give us only the custody of it?

Mr. CLARK. There is a very interesting history to that, Senator, and I am not fully familiar with it. I have been educated on it some here recently, but I think you will find that generally the Russians, even though they claimed political jurisdiction over this entire area and purported to convey political sovereignty to the United States, would buy land from the natives when they wanted it. For instance, when they established their capital at Sitka, my understanding is that they would deal with the native tribes and buy the land because they recognized the need for this under their system, as they were driven off the land in a number of areas down there. They did not deal with the natives in terms of conventional property rights, because the native people did not have the concept of property that we have had. But there is nothing throughout our history and our relations with the natives at this time that has demonstrated an intent under our law to extinguishment of native title, aboriginal title. This is the unique quality of Alaska. In fact, when you take the Indian Claims Commission cases that I litigated on behalf of the United States for 4 years, you were dealing with takings by treaty or by war with native tribes or whatever it was 150, at the very least generally 150 years ago. Here the natives have not been dispossessed. There has been no extinguishment of the title. The extinguishment comes now when we hear the descriptions of armies of oil workers and others going to the northern slope and the probabilities of pipelines and other things that may dispossess.

Mr. BORBRIDGE. Senator, may I inject a comment in response to that, please?

Senator ANDERSON. Yes.

Mr. BORBRIDGE. We in southeast Alaska, the Tlingit-Haidas, have been fortunate, we have come into the court relative to our aboriginal claims by virtue of a jurisdictional act passed in 1935 and we had dealt specifically as one of the issues with the question of whether or not the treaty of cession or purchase had actually extinguished Indian title. The Court of Claims had held, in a unanimous decision issued in October of 1959, that the treaty of cession in effect had not extinguished

the Indian title, and this was recognized in 1884 by the act which conferred civil government on Alaska, and in which it was expressly declared that such rights as the natives might have relative to lands, used, occupied and now claimed by them would be deferred as to the spelling out of its extent for future action by Congress, and this was further stated in the Statehood Act in the section 4 disclaimer clause which provided for this.

But perhaps a more graphic illustration might serve to make the point in that we in southeast Alaska had come into conflict with the Russians in the village of Yakutat where they had set out to establish a post and they were driven out. This also occurred in 1882 in Sitka where they were driven out and where, through further negotiations, they were able to reestablish the post. We did this because frankly the Russians were not, we considered, in Russian land. They were in Tlingit and Haida country.

When the Russians sought further to acquire fish or game for food they did not do the hunting themselves or the fishing themselves, because they were in Indian country. So what they did, in effect, was to trade with the Indians for such foods as they might require, recognizing, of course, that after all, since this was Indian country, they had to have permission to gain from the fruits of the lands.

Senator ANDERSON. We have to come back to this land question often, because if all the people who claimed aboriginal title were granted land there would not be enough for the rest of us, would there?

Mr. CLARK. Senator, that is one of the very great differences between Alaska and our other States. There are more than 350 million acres of land up there. The natives are 20 percent of the population. If the natives were granted only 10 percent of the State, the 40 million acres that they seek, they being 20 percent of the people, there would still be 3½ Californias in size left for future development. The people are on the land, there has been no conflict between our civilization, or very minimal conflict comparatively, and here is one place that this can be done.

Now the history of the lower 48 States does not lend itself to this. As we moved across the continent we moved the Indians in front of us generally so there would be a movement of reservations from treaties even, and the natives would be moved and herded, if you will, frequently from one place to another, and finally settled in some reservation many, many miles from their aboriginal claims.

Senator ANDERSON. But not all of them were aboriginal claims.

Mr. CLARK. No, not all, most.

Mr. BORBRIDGE. Mr. Chairman, and Senator, with your permission, there was one additional point which I should have made. Relative to the case of the *Tlingit-Haida Indians* v. *The United States*, Docket No. 47900, the court, in addition to finding that our aboriginal title to all of southeast Alaska was upheld and in addition to finding that there were takings for which we should receive compensation, there is a unique facet to this case in that the court held that as to 2,628,000 acres there is today a survival of Indian title, in effect judicial validated and confirmed Indian title. Perhaps the main difference between ourselves and other areas is that we have had an opportunity to adjudicate the issue of the Indian title.

This is somewhat unique, and I thought it might be worthwhile to point this out for the committee's benefit.

Senator ANDERSON. As to the land, you spoke of land granting, wasn't that provision also in the Alaska statehood bill?

Mr. BORBRIDGE. I am sorry, Senator, I did not understand.

Senator ANDERSON. Didn't the statehood bill set aside certain land for the State of Alaska?

Mr. BORBRIDGE. The question here is whether or not the statehood bill was conferring——

Senator ANDERSON. Yes.

Mr. CLARK. The Statehood Act, if I might make a statement here, Senator Anderson, provided, first, that it did not purport to affect or in any way extinguish the right or title which may be held by Indians, Eskimos, or Aleuts or held by the United States in trust for such natives.

It did give options to the State to select the land in many ways. It gave options to select forest lands. It gave 103-million-acre selection opportunities to the State. That is more land than there is in all of California, 103 million acres.

Senator ANDERSON. Is it more land than in all of Alaska?

Mr. CLARK. No, more land than there is in California. There are 370 million acres roughly in Alaska and the State was given this opportunity to select about 30 percent of the land area.

Now, the only State among the public land States that even got four sections out of a township was Utah. Most got one section, some got two sections. Alaska got a 103-million-acre selection right. This did not mean it would be checkerboarded. It just would be chance where it fell. This meant that you could choose as there was development, and so when oil comes in or when some other minerals come in and when you find sulfur or when you see timber you can select those lands, the most valuable lands.

In addition the State was given, at least under the statute for the present, the 90 percent of the income from the production of leaseables on Federal lands over and above option or the opportunities to select this 103 million acres. But none of this purported in any way to encroach upon native title or claims to title, and this was recognized specifically by the State of Alaska and the people of the State of Alaska, as they came into the Union as a State.

Senator ANDERSON. I thought the committee was satisfied with the amount of land they had.

Mr. CLARK. As a Texan, I would say the grant to the State of Alaska, what this Congress set up in terms of land rights for the State of Alaska was very, very generous.

Senator METCALF. As you point out, the State of Montana was fortunate enough to get two sections but they were two specific sections checkerboarded over the entire State, and here Alaska was given a choice, and I think it is appropriate, I think we should have, but none of that redounds to the benefit of the native population except insofar as they are generally citizens of the State.

Mr. CLARK. That is right. But it has nothing to do with their aboriginal title or their rights, legal and moral, on the benefits of the land which they had always used and occupied and had dominion on.

Senator METCALF. Senator Stevens.

Senator STEVENS. I just have a few questions.

General Clark, the present reservations in Alaska for Federal purposes, specifically reservations for wildlife areas and other areas, total 85 million acres. Some of the lands that are involved here in the claims are within these specific areas. It is my understanding that where this situation occurs the position of the AFN is that the rights of the Alaskan native people should have priority over the Federal reserves; is that correct?

Mr. CLARK. Their position, as stated in their position paper which is in the record, is that wherever their villages may fall, wherever they may be and have been since time immemorial, that here the human use, the only human use, the historic human use, should have precedence over other set-asides and reserves that we might make for future development.

I have not really seen anyone of any interest that would have any intention of moving natives from their historic surface usages. The question is whether they are going to have title in the way that we have title, title in the way that gives them the opportunity to survive, title that gives them the opportunity to really utilize and develop their lands.

Senator STEVENS. Well, I am trying to get into the the record the fact that there are some withdrawals, for instance the withdrawal which was made right at the end of the last administration for some of the fish and wildlife areas. So there is no partisan implication, some were made right at the end of the Eisenhower administration. There seems to be a penchant on the part of administrations as they leave to withdraw Alaska land.

In those areas that were withdrawn last year, there were a number of villages, and the effect of this bill will be to revoke those withdrawals to the extent that they conflicted with the native aboriginal title. Isn't that the position of the AFN, and in the bill you have submitted?

Mr. CLARK. Senator, you seem to be saying two things. First, villages and second aboriginal title.

My recollection of the withdrawals, and it has been a long time, both those made during the latter days of the Eisenhower administration and the latter days of the Johnson administration, was that they reserved and exempted the native village areas, so they did not purport to withdraw the land from under natives living in villages in the area.

Senator STEVENS. Well, I think that both the withdrawal orders that I am referring to reserved the right of the people to live there but they certainly could not put a steel plant in there or they could not develop the land as though they owned it. That is my understanding of it. It could not be incompatible developments by the people within those areas. As a matter of fact, the last one, as I recall, withdrew the end of the lake that was not included in the wildlife reservation. The Arctic Wildlife Range, which I helped establish, withdrew an area that had been traditionally used for hunting by Eben Hopson's people. We preserved their right to hunt but we do not preserve their right to take you or me in there to hunt. We did limit their rights.

My point is, I want to make clear that the record shows my understanding that this bill, under the proposal of the AFN, would revoke those reserves to the extent that they are incompatible with the ownership of the land, that the AFN position of 40 million acres, the original S. 1830, the 10 million acres that Secretary Hickel has talked about, the title that goes to the native people, whatever the amount of acres it is, if those lands are within the reserve will revoke to reserves. Don't you agree?

Mr. CLARK. I think those reserves are indistinguishable from other Federal reserves that you had mentioned earlier, the 85 million acres, whatever it is, and the purpose here, would be to confirm now as a superior right the human right of the aboriginal occupiers who are still there.

Senator STEVENS. Just one other question, Mr. Chairman.

Taking into account these 85 million acres that are reserved, which are not available for State selection, and the topography of the land of Alaska, it is my understanding that the comment made by the Governor yesterday was to the effect that the State would not be able to select 103 acres of usable land. Now, I think that is correct unless we want to select mountain tops.

In effect, if the AFN position of 40 million acres is recognized, we are then really reducing the amount of lands that will be available for the State. Don't you agree?

Mr. CLARK. No, no, I would not. I would not desire to try to interpret what the Governor said. My impression was that what he was saying was that 103 million acres were so much that he just doubted that they would ever get around to selecting it. As a matter of fact, there are States today that have been in the Union for many, many decades that have not selected all of their new land option rights at this time.

Senator STEVENS. I think you misunderstood him. He specifically referred to the 3,000 foot line.

Mr. CLARK. Yes, he did.

Senator STEVENS. Which was the determining factor to the selections that were made prior to this date. And the problem that the State faces is to find useable land, land that would have some value if the State takes over the land and the responsibility for maintaining it, for protecting it, which is not, in view of fires and what not, an insignificant cost.

He was not saying that the State was not trying to find 103 million acres to select. But with the 85 million acres that the Federal Government has already reserved, that is not available to the State, and the land that is either in ice condition, glaciers or completely mountainous and, therefore, unuseable, when you deduct that, plus the reservations, there just are not 103 million acres that you or the Governor or anybody else as a capable administrator would want to select and put on the State rolls for protection and for the cost of supervision. He was not saying we don't want 103 million acres. He was saying there are not 103 million acres unless we revoke some of those withdrawals.

What I am trying to get you on to is the problem of withdrawal really. If the native people are going to have 40 million acres and the State is going to have the dowry thatwas given us in the Statehood Act

some of these withdrawals such as the naval petroleum reserve, and some of the historic withdrawals that have lost their original utility, are going to have to be revoked, in my opinion, and I would like to seek your support and that of Ambassador Goldberg, as you represent the natives, to assist in that position.

For instance, I just call your attention to 23 million acres of Naval Petroleum Reserve No. 4, the powersite withdrawal for Rampart. The powersite withdrawal for Rampart; as I recall, is almost 9 million acres. Those lands are not available to the State for selection and they certainly are not available to the native people under this bill unless we do revoke them.

I would like to enlist your support for that purpose. This was the basic recommendation of the Federal field committee, if you will recall, that the Naval Petroleum Reserve No. 4 be revoked and I think if Mr. Hopson's people are going to have their traditional and aboriginal rights recognized that the Naval Petroleum Reserve No. 4 has to be revoked.

Mr. CLARK. Let me make a few comments about that, Senator Stevens.

First, of course, and as your very substantial experience directly and as solicitor of the Department of Interior supports what you say, the withdrawals, the reservations are subject to the plenary power of the Congress just as is this whole subject matter. The override and the grant of land, the Congress has the full power under the supremacy clause and under the property clause. Many of the reservations are foresight. They are efforts to prevent inconsistent development now. We need that foresight for the natives, too. Many will be altered and modified from time to time up or down, depending upon the needs of the people and the general welfare as the Congress sees it from time to time.

Now, actually the 40 million acres that the natives seek, they don't say:

> We want the most valuable 40 million, we want 40 million acres where the gold and oil and timber are. We want the 40 million acres which is a very small fraction of what we have to use and occupy to subsist in areas where no one else is occupying or subsisting or probably ever will around our village. That is what we want, where we fish and where we hunt and around our camp site and villages and trails. That is what we need if we are to withstand encroachments of civilization.

Now, actually the 40 million acres, about half, as I understand it, would fall into what are presently Federal reservations. That would mean no real encroachment or interference with the purpose of the reservation, in fact the most compatible use to which it could be put, and I think it is on that basis that Governor Hickel had indicated as Governor the general approval of the motion of 40 million acres.

I could not, as a lawyer here, make a judgment on what the Congress should do with the naval petroleum reserves and these other matters. If the native peoples have views, they want to be constructive, they are citizens of Alaska and they believe in that State, in its future, and if they have views, I am sure they will consider it. But I don't know that, as a lawyer here, it would be either meaningful or appropriate for me to make a comment on any particular reservation.

I do know this: I think that these 40 million acres that they seek, are around their villages which are so frequently in remote places that there is no probability of any other use.

It would be a shame to look back some 20, 30, 40 years from now and see some development, whatever it may be, in this very fragile, frozen ecology. If there is pollution in northern Alaska, nature cannot purify it as it could in a temperate climate, as it could a stream in Montana or New Mexico in a few years. It would take millenia probably.

Now, we can protect these areas, we can permit their development in consonance with the interest of the people who have always lived there, and I just cannot see that the State would ever really want to come right up to the edge of the village. These villages are unique. They are not like a suburb in Washington, D.C. They need the support of vast areas of the surrounding environment.

Another thought that I have about the 103 million acres is that I would not make judgments for the State of Alaska, although I have had a romance with it ever since I first went up there when I was about 12 years old and spent a whole summer, but I would hope that the State of Alaska would have a greater interest in it than just the commercial values of its lands.

As I see the future of this country, recreation is one of our very major industries, has to be with this mass population.

The potential Alaska has in recreation is immense, and recreation lands are not the same as other land uses to select from your 103 million acres vast areas for recreation uses. This does not have anything to do with the 3,000-foot elevation or whether there are valuable mineral deposits under it, and I would certainly hope the State would be very cognizant of conservation and recreation needs of its people in its selection.

Senator STEVENS. Well, again, my point is if these claims are going to be recognized to the extent of 40 million acres there is only one way to recognize them, and that is to take the major portion out of the reserves that surround the villages today.

Point Barrow is surrounded by Naval Petroleum Reserve No. 4; the villages in the Dillingham area, that whole area down there, are surrounded by wildlife reserves. Southeastern Alaska is surrounded by forest reserves. Your clients, and I think rightfully, are asking that their claims be recognized, but they can only be recognized if they are taken out of the reserves that surround those areas, and if they are, then there will be no conflict with the State's selection rights.

Mr. CLARK. This is something that can be put on a map. The lands they seek are where they are. They are not what they would like. It is not "We will take this land up here where we know there is oil." It is where their villages are, and you can put them on the map, and they are either in Federal reserves or they are not in Federal reserves, but it is not meaningful in terms of the purpose that the natives have in seeking this settlement to say, "Give us land down here where here never has been a village, where we have never lived, where we have never fished, where we have never hunted, and we have had dominion and we have good trappers and guides going through there. But this is not the land we want. We want the land where we live, where we have our villages, and enough surrounding area to support us," and wherever that is where it is.

Senator STEVENS. I think the record is clear on that point.

One last question, or really a comment: I would like to see that the record clearly shows the areas that are included in the 40-million-acre request from the AFN. Is there a map that could be furnished and, perhaps, reduced in size so that we could show where the area is?

Mr. CLARK. It is, the 40 million as the proposal states is four townships. Four townships are not enough to support one family in the Julius Krug report, around your villages, plus for the villages that have a greater population, I think the figure was 182 natives or something like that, but it is in the report, about 500 acres apiece in a generally contiguous area.

Senator STEVENS. General Clark, what I am trying to get at——

Mr. CLARK. There is no survey on it. There are no cornerstones, I am sure.

Senator STEVENS. I am sure of that. What I am trying to get at is that in some of these villages, if you take four townships you are going to have two or three villages in those four townships. I would like to see a map in here or, somehow, an area, it does not have to be precise, but an area around these villages, sort of blacked out as to how we reach the 40-million-acre figure, and I am trying to do it so my colleagues can see that, again, there is no conflict between this request and the present utilization of the lands for industrial development or for State development, and that there is no conflict between this request and the State selection rights.

I have seen such a map. Senator Jackson had it. I think it is for the benefit of the AFN that I am asking for it, to put it here in the record somewhere.

Mr. CLARK. We think it may be in the July hearing record, but what you are really talking about, I guess, is just locating the villages on a map of Alaska.

Senator METCALF. These are the villages that are enumerated in some seven pages.

Senator STEVENS. So the rest of the members of the committee can see what we from Alaska know, and that is, these lands are out around the State, they are not conflicting with Fairbanks, with Anchorage, with Juneau, they are not conflicting with the Alaska Railroad, they are not going to hurt the Military. They are areas that are around these villages throughout the rural part of the country. Forty million acres might scare most people, but it does not scare me at all because I know where they are. This is what I am trying to get in the record if we can get it.

Mr. CLARK. I think it is, you know, a very constructive thing to do. I think you are exactly right, and I did not intend to appear negative about it. I just wanted to be sure that you know that we do not have metes and bounds.

Senator STEVENS. If it is, maybe Bill can tell us.

Mr. BERLE. Mr. Chairman, I would point out for the record that on page 113 of the hearings held on July 11, 1968, there is the testimony of Mr. Wright who did present, I gather, a map designating villages and land areas which would match this 500 acres per person.

Senator STEVENS. Now, this is the old proposition, though, of 500 acres per person. This is not the four townships per village. We have

a change this year in terms of the approach, and it is not a per capita approach. It is a village approach, as I understand it.

Mr. CLARK. A little of both.

Senator STEVENS. So we need the map to delineate this approach that I understand the Governor supported yesterday, and this is the same position as the AFN, up to four townships per village.

Mr. CLARK. Well, it would be in excess of four townships for some of the larger villages. But, you know, I think your idea that we ought to see where the villages are, that is what we are really doing because on any map that we could get in this, we could put four townships.

Senator METCALF. Would it be satisfactory, Senator Stevens, if we requested the Secretary of the Interior to provide us with a map showing the location of the villages mentioned in the substitute bill, S. 1830, on pages 18 to 25?

Senator STEVENS. Yes, I believe so, Mr. Chairman. But I would like to have that map show the general location of these eight—well there are actually nine—townships that will be affected by the Secretary's suggestion, and I think we ought to have graphic representation of the recommendations of the AFN and the State and the Interior Department so, again, I say, if you see them, 40 million acres may disturb you a little bit about this in terms of this bill.

Senator METCALF. It does not disturb me a bit.

Senator STEVENS. It does not disturb me because I know where the acreage is, and I think we ought to demonstrate that to our colleagues here.

Senator GRAVEL. Mr. Chairman, I would like to join in that request, if we had a comparative map of the three proposals, land proposals, I think it would tell a very strong visual story.

Senator STEVENS. One last question.

Senator METCALF. The staff will make the appropriate requests, and I think the Secretary of Interior will prepare that map for us, and then, perhaps, we can consult with Mr. Notti's organization, the American Federation of Natives, and others to amplify it as to overlays and other information that needs to go in.

Senator STEVENS. Maybe just one last question, and this will be directed to all of your people, General Clark. It is my understanding there is no conflict between the recommendations that are made here today and existing State rights, that is, in terms of State selections, already patented or State selections to which there has been tentative approval given is that correct?

Mr. CLARK. There is no effort in the native settlement proposals here to interfere with vested property rights, so where there has been a full and unconditional patent or deed to fee title, the natives recognize that as to that particular place and they do not propose selection rights.

Senator STEVENS. Let me interrupt you there, though. The Statehood Act set up a unique thing, and we are forever going to be indebted to Congress for this unique approach, and that is, the State of Alaska is going to be able to treat it as though it owns the land, the land to which the Secretary of Interior had given tentative approval on selection.

Again, my point is, as I understand it, the native people of Alaska are not contesting the State's title to lands that have been patented or the State's title to lands to which tentative approval has been given.

DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF LANDS

ALASKA

SYSTEM OF RECTANGULAR SURVEYS

SCALE IN MILES
50 0 100 150

PREPARED BY THE GEOLOGICAL SURVEY

MAP E BASE

VILLAGES LISTED IN SECTION 8 (a) (1) OF S. 1830, 91ST CONGRESS

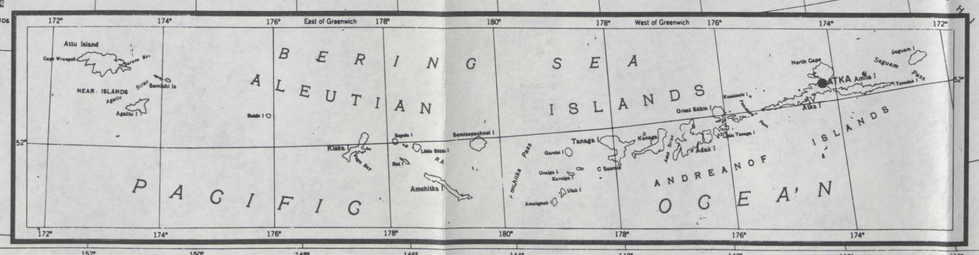
Prepared by
U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
May 1969

■ VILLAGES LOCATED WITHIN OFFICIALLY PROTRACTED AREAS
● VILLAGES LOCATED OUTSIDE OFFICIALLY PROTRACTED AREAS
▭ LANDS SELECTED BY THE STATE

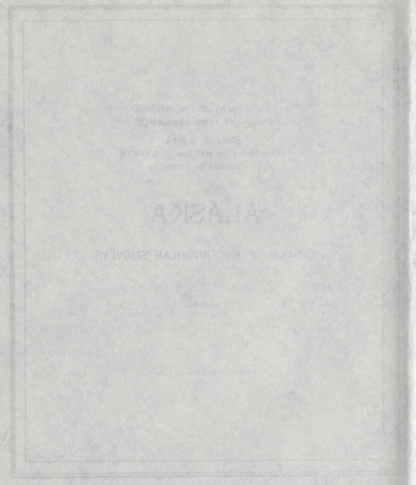
PET 4

ARCTIC OCEAN
BEAUFORT SEA
CHUKCHI SEA
BERING SEA
BERING STRAIT
NORTON SOUND
BRISTOL BAY
GULF OF ALASKA
PACIFIC OCEAN
ANADYR GULF
CHUKOTSK PENINSULA
ALEUTIAN ISLANDS
FOX ISLANDS
PRIBILOF ISLANDS
ST. LAWRENCE ISLAND
ST. MATTHEW
NUNIVAK
ARCTIC CIRCLE
NORTHWEST TERRITORIES
YUKON
BRITISH COLUMBIA
YUKON RIVER
KUSKOKWIM BAY
KOTZEBUE SOUND
ALEXANDER ARCHIPELAGO
DIXON ENTRANCE
HECATE STRAIT
QUEEN CHARLOTTE ISLANDS

BARROW, WAINWRIGHT, ATKASUK, NOORVIK, PT. LAY, POINT HOPE, KIVALINA, NOATAK, KOTZEBUE, KIANA, SELAWIK, SHISHMAREF, WALES, DEERING, BUCKLAND, CANDLE, BREVIG MISSION, MARY'S IGLOO, TELLER, NOME, GAMBELL, SAVOONGA, NORTHEAST CAPE, KOYUK, WHITE MTN., GOLOVIN, ELIM, SHAKTOOLIK, UNALAKLEET, ST. MICHAEL, STEBBINS, KOTLIK, EMMONAK, ALAKANUK, HAMILTON, CHANIKLUT, BILL MOORES, SHELDON PT., HOOPER BAY, CHEVAK, SCAMMON BAY, ANDREAFSKY, MOUNTAIN VILLAGE, PITKAS PT., ST. MARYS, PILOT STA., MARSHALL, RUSSIAN MISSION, OHOGAMIUT, CHUKWUKTOLIGAMUTE, RALSKAG ANIAK, LOWER RALSKAG RUSSIAN MISSION, NAPAIMUTE, CROOKED CREEK, GEORGETOWN, RED DEVIL, SLEETMUTE, STONY RIVER, LIME VILLAGE, TUNUNAK, MEKORYUK, TOKSOOK BAY, NIGHTMUTE, CHEFORNAK, TUNTUTULIAK, NUNAPITCHUK, KASIGLUK, NAPAKIAK, AKIACHAK, AKIAK, ATMAUTLUK, OSCARVILLE, NAPASKIAK, EEK, NEWTOK, KIPNUK, KWIGILLINGOK, QUINHAGAK, KONGIGANAK, KOLIGANEK, NEW STUYAHOK, KLEMNAK, EDWOK, LEVELOK, DILLINGHAM, CLARK'S PT., KEKUK, PORTAGE CREEK, NAKNEK, SAVONOSKI, EGEGIK, PILOT PT., UGASHIK, PORT HEIDEN, NELSON LAGOON, CHIGNIK LAKE, CHIGNIK LAGOON, CHIGNIK, CHIGNIK LAKE VILLE, FALSE PASS, KING COVE, SAND PT., KUDIAK HARBOR, PAULOF HARBOR, AKUTAN, BIORKA, NIKOLSKI, NOWDALTON, ILLAMNA NEWHALEN, IGIUGIG, KOKHANOK, PEDRO BAY, ENGLISH BAY, PORT GRAHAM, BARREN ISLANDS, UYAK, KARLUK, LARSEN BAY, OUZINKIE, PORT LIONS, AKHIOK, KODIAK, KODIAK HARBOR, UNIMAK ISLAND, SEMIDI ISLANDS, KUKAK BAY, KAKTOVIK, ARCTIC VILLAGE, ANAKTUVUK, CANYON VILLAGE, VENETIE, SHALKYFTSIK, FORT YUKON, BEAVER, BIRCH CR., CIRCLE, ALATNA, HUGHES, HUSLIA, STEVENS VILLAGE, RAMPART, TANANA, MANLEY HOT SPR., MINTO, EAGLE, KOYUKUK, GALENA, NULATO, RUBY, KALTAG, NENANA, LAKE MINCHUMINA, TELIDA, MEDFRA, MCGRATH, NIKOLAI, CANTWELL, DOT LAKE, TANACROSS, TETLIN, NORTHWAY, MENTASTA, SLANA, NABESNA, CHISTOCHINA, GAKONA, GULKANA, COPPER CENTER, TYONEK, KALTNA, TATITLEK, VALDEZ, CORDOVA, YAKUTAT, KLUKWAN, HAINES, SKAGWAY, HOONAH, ANGOON, KAKE, KASAAN, KLAWOCK, HYDABURG, METLAKATLA, KETCHIKAN



29-111 O - 69 - pt. 2 (Face p. 44) No. 1



DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

NATIVE PROTEST MAP

PROTEST	ACRES (Approx.)	PROTEST	ACRES (Approx.)
1 A-061650 (F-033402)	592,800	30 F-166	14,622,000
2 A-061646 (F-033429)	2,245,000	31 AA-574	23,000
3 A-062051	1,102,300	32 F-387 (F-392)	4,252,900
4 A-062052	260,000	33 AA-681	9,383,700
5 A-056255	59,000	34 F-028756	50
6 F-031865	1,604,300	35 AA-699 (F-440)	20,028,600
7 F-031708	882,900	36 AA-714	4,540,500
8 F-028755	1,160,300	37 F-456	5,167,000
9 F-030957	2,966,400	38 AA-872 (F-	53,719,300
10 F-028758	6,544,400	39 F-504	3,345,000
11 AA-648	25,401,500	40 F-630	2,753,300
12 F-427	8,551,200	41 F-1049	2,214,144
13 F-028757	6,348,390 (AA-897)	42 F-1281	2,351,466
14 A-067508	640		
15 A-067547 F-035181	1,336,900		
16 A-067702	58,000		
17 AA-368	437,000		
18 AA-373 (F-108)	33,685,000		
19 AA-431	3,088,800		
20 AA-541	366,700		
21 AA-545 (F-155)	13,401,400		
22 F-035271	15,740,300		
23 F-035268	9,081,000		
24 F-035294	37,837,400		
25 F-035252	422,500		
26 F-035257	58,017,300		
27 F-28	7,920,600		
28 F-035292	25,628,500		
29 F-035287	529,700		

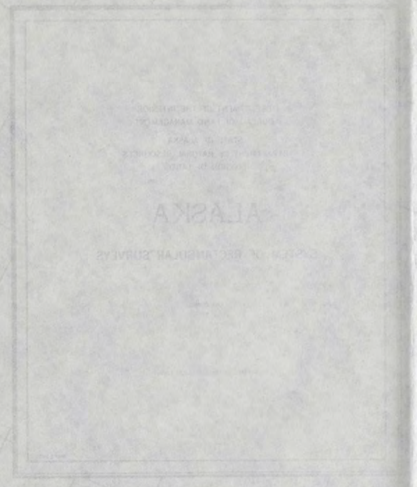
(Current to July 1, 1968)

STATE SELECTIONS

- Under Application
- Field Survey Begun
- Field Survey Completed
- Final Returns sent to Washington
- Final Returns Accepted

(Current to June 1969)

39-111 O - 69 - pt. 2 (Face p. 44) No. 2



In other words, we are not going to go back and try to reverse anything that was done prior to the time the land freeze was put into effect; isn't that correct?

Mr. CLARK. Well, it is right as to the patent insofar as the settlement proposal is concerned. On tentative approval, the federation has not taken a position on that here. Frequently you have a question of a matter of weeks or months before the land freeze, the selection based upon a discovery, the discovery only came in in the spring, and caused an application by the State or selection by the State to be filed, and the legal significance of tentative approval has not been presented to the natives and to the federation. The federation has not stated in this proposal that it makes no claim.

Senator STEVENS. Let us make sure we understand one another. There are three divisions. There is the filing of a State selection which gives the State no rights. There is tentative approval which gives the State equivalent title, and all that is left is the issuance of patents; and there is the issuance of patents.

Now, are you saying that your clients have not taken a position on the land to which the State has been given tentative approval after State selection? I hope you know what you are saying, because that is what Prudhoe Bay is on, and that is what all of the North Slope discoveries are based on; they are based on tentative approval. If there is a conflict in approval here for tentative approval, I want it in the record, and I want to be very clear that everyone understands it.

It is my understanding, and to this date I never have heard an AFN representative or attorney or anyone else contest lands that the State had received tentative approval for selections on.

Mr. CLARK. Well, let me have President Notti, who can speak better for the federation than I, as counsel for it, address himself to that. But before he does, let me say that this does not mean that there is any irreconcilable conflict necessarily there. You are talking about whether there is a quitclaim or a waiver only to tentatively approved land.

Mr. NOTTI. Senator, we have discussed this in our meetings, and as far as patented lands go to State or individuals, we here make no claim against that.

Lands that have not been patented, have not gone to final patent, and that includes tentative approval, we are not willing to concede at this time that we do not have selection rights in these areas. We think we do.

Senator STEVENS. You are not willing to concede that the Statehood Act, which gave the State the right to receive lands that have not been given final approval, that is the TA lands, you are not willing to concede that those are, in fact, State lands and will not be affected by this bill?

Mr. NOTTI. No, sir; we are not conceding that.

Senator STEVENS. Can you tell me what villages would be within any of those areas?

Mr. NOTTI. Well, I think the major portion of these villages would be around the Fairbanks area and in the North Slope area.

Senator STEVENS. I hope everyone realizes the effect of the statement you have just made, which is probably the most significant statement that I think has been made in the whole hearing. I have never before this time had any indication that the Alaska Federation of

Natives did not concede the validity of tentative approval of State selections issued, made prior to the land freeze. Now, we understand there has been no tentative approval since the date of the land freeze.

Mr. NOTTI. I understand that they have made selections around the Copper River area, and the Alaska Peninsula area. They have surrounded villages and have no land base. We have not conceded that the mere selection of the land should prevent villages from getting land, and we do not concede that land that has tentative approval on it should prevent villages from getting land.

Senator STEVENS. Well, I would like to have this map——

Senator GRAVEL. Will the Senator yield for a second?

Senator STEVENS. Yes.

Let me make this request: I would like to have these maps include reference to State selections, have the outline of State selections that are subject to tentative approval. The Secretary of Interior can do this so that we can see the conflicts that are involved in this testimony. I yield.

Senator GRAVEL. The map should also include Federal withdrawals, because I think the AFN take a similar position on Federal withdrawals, be it the Tongas Forest, be it refuges in the north or the west. So I see the point you are making in stressing this feature, however, I cannot help but ask the question—is this not the same approach they have used toward Federal withdrawals? They are not treating the State any differently than the Federal Government.

It is in their request for consideration.

Senator STEVENS. With this exception, if my colleague will permit me to explain my concern over this. The only reason the State has not gotten title to these lands to which tentative approval was given was the fact that they had to have a survey or something else, which was the same thing as the homesteader receiving his certificate of final proof. From that day on, as you know, after the issuance of the certificate of final proof, the homesteader can treat the land as his.

When we had the statehood bill here we convinced the Congress this was necessary in Alaska because of the time taken in surveying, and the State would have had those patents without any question and, as I said, until today I did not know there was any contest over the tentative approval lands.

I do not know the figures, but my memory is that the State has patents to some 4 million acres, and has tentative approval to about another 13 million acres. Mr. Price is back there.

Mr. PRICE. I believe that is correct, Senator.

Senator STEVENS. He is the assistant attorney general and he was here yesterday.

I want to eliminate any conflict with the State. We are protecting the rights of private individuals. As I understand the position of everyone who has been here so far, if there are private existing rights they will be recognized. That would include the homesteader who has filed and received his certificate of final proof. It would include the man who has the trade manufacturing site or the various other entries, who has gone as far as he can and has received final approval of the Interior Department, subject to only one thing, and that is the issuance of a patent after survey.

Now, the State is in that same position, and I think the position of the AFN is treating the State differently than other private rights, non-Federal, nonnative rights, because they are not recognizing the validity of a tentative approval in that sense, the sense that, in fact, put Alaska where it is today.

If it had not been for tentative approval, the State of Alaska could not have proceeded to lease Prudhoe Bay, could not have proceeded to lease most of the lands that have been leased, and I am sure that anyone familiar with the State government would tell you that without the right to issue leases on tentative approval land, we would not have had the income we have had.

The State would have been bankrupt, and I think it will drastically affect the outcome of the sale in September if this point is not cleared up before that time.

We are expecting $1 billion from that lease sale. Now, here is a cloud, a definite cloud, on that sale because those are tentative approval lands, and I think it must be cleared up. If it is not cleared up, it is going to affect all Alaskans drastically, and I urge you to clarify your position and to state that you are not going to contest lands to which tentative approval has been given to the State before the land freeze, because if you do not, I would predict that the income from the land sale in September is going to be somewhere around $50 million instead of $1 billion.

Senator GRAVEL. If the Forest Service sells timber from the Tongas Forest, would this not be a similar situation? The State's tentatively approved land is being claimed; just as is the forest lands. AFN has already talked of protecting the rights of individuals, and they are looking upon Government, the State or Federal, in the same light.

Now, I personally—maybe you could explain to me—do not see why the tentative approval area should be sacrosanct if the Tongas National Forest is not sacrosanct.

Senator STEVENS. Well, but this is the point: the State was given certain rights under the Statehood Act, the right to select these lands. Where the lands have been patented, there is no dispute. The only reason the patent was not issued under tentative approval was because the survey had not been done. The State and Federal Government have done everything there is to do except issue the patent.

Senator GRAVEL. I understand that. But suppose the State does have patent. The natives would still be looking to the State for participation if there are certain areas of State land needed to fill out the allowable land grant area around the village. If that is the case they would get land from the State, just as they would from Federal Government lands, such as the Tongas National Forest or some wildlife refuge.

That does not disturb me one iota, and I do not see an economic change of significance that will alter the wealth because they are not going to disturb the oil companies under the lease. That lease will be there.

Senator STEVENS. That is not true. If the tentative approval is not recognized as equivalent of title, then the title goes to these people and the State does not have any right. The State-issued leases in this area are dependent upon State title, and that title under tentative approval is the equivalent of title under the Statehood Act and, as I say, this is the first time I have ever heard that the AFN has disputed this significance of tentative approval.

I point out it is the same thing as telling the homesteader after he has a certificate of final proof that he does not have the equivalent of title to his land.

Senator GRAVEL. The ambiguity might occur as to whether or not the natives have a claim on the lease interest or the State's interest in it. There is a difference. I believe AFN stated earlier that as far as the homesteader is concerned they recognize his rights, just as the rights of the oil companies would be recognized. But possibly there may be inferences here of which I am not aware.

Senator STEVENS. As you all know, I insisted on getting a bill through the legislature to compensate the native people of Alaska for the lands that the State had taken interest to before this matter was settled here, and that included, in my opinion, lands that had been patented and lands that were subject to tentative approval.

Senator GRAVEL. Yes, if you make a separate category as to where their interests might lie, and state that tentative approved land is sacrosanct and they cannot touch it, then it is not on the same plane as Tongas National Forest and other State and Federal lands.

Senator STEVENS. It is in the same category as lands patented, that is my point. It must be, and if not, we are in trouble, in my opinion.

Senator GRAVEL. If the land is held by the State of Alaska and it is adjusted to satisfy part of the claim, where is the harm done to any individual?

Senator STEVENS. What are we compensating? Why is the State of Alaska willing to pay $50 million to extinguish the potential claims presented by the native people against lands that were given to the State by the Federal Government?

Senator GRAVEL. As I understand the State proposal, it was an act of a past legislature which has since expired. That act expressed that legislature's will, but now there is no law in existence that will appropriate any sum of money. It would have to be reaccomplished, as I understand it. Right now we are concerned with what the U.S. Senate does.

The State of Alaska will have another similar action to perform if it chooses.

Senator STEVENS. I want to make it very plain.

Senator METCALF. I wonder if the Senators from Alaska will let the witnesses respond.

Senator STEVENS. All right, please do so.

May I make this point: I, as a Senator from Alaska, will not support the Alaska native people in contesting the title of the State of Alaska to the lands patented or to lands to which tentative approval was given before the land freeze. I think that should be understood, because I agreed to support the Alaska native people, and I am trying to do my best. But I am not going to put people in a direct conflict with actions taken by the State of Alaska in good faith, and by the Secretary of the Interior, who was Secretary Udall, in good faith, prior to the time this dispute reached the point of the land freeze.

I think, in fairness, you should know it, and in fairness that the people of Alaska should know it because there is a direct conflict, and these are rights of all the people that have already been perfected under the Statehood Act, in my opinion.

I do not invite comment, Mr. Chairman. Thank you.

Mr. CLARK. Let me say, first, Senator Stevens, that I think it would be terribly unfortunate if we exaggerated the risks here. There is nothing that I can see that the federation has ever done that would challenge a lease that may have been entered into and, therefore, I do not see how their claiming their villages, whether it falls in tentatively approved land or the Tongas National Forest, could affect the bonus value of the lands. The lessee is not really threatened.

Now, there is a legal premise in your position that is before the U.S. Court of Appeals for the Ninth Circuit, and the question is what is tentatively approved land there? Part of the questions in the case, and you say, as I understand you, that tentatively approved land is the equivalent of patented land.

My understanding in that case—Mr. Arthur Lazarus is here, who is an attorney in the case. I am not in the case, I am disqualified from the case because of my earlier position in the Department of Justice, but my understanding is that the United States in that case, which is representing the Department of the Interior, takes the opposite position.

Senator STEVENS. You are talking about the case that was filed to compel Secretary Udall to issue patents to tentatively approved land. As I understand it, the position taken by the Interior Department was that there was something more than a ministerial act involved, and, therefore, he could not be compelled to issue it.

But I do not understand that the Interior Department has ever taken the position that after tentative approval the Statehood Act did not give the State the right to treat those lands as though they were State lands, and the Statehood Act specifically so says, General, and I really believe that your clients should reexamine their position, and I urge you to do so.

It is not the same as the Tongas Forest, because these lands have gone out of Federal ownership as far as the Statehood Act is concerned, and I think that it is important for us to prevent any conflict between the rights that were established for the people of all of Alaska prior to the land freeze and the rights that we are trying to reconfirm and reestablish here for the native people through this bill.

That is a conflict that I think is unique and is direct, and I would urge you to reconsider it.

Senator GRAVEL. Could I, Mr. Chairman?

Senator METCALF. Are you through?

Senator STEVENS. Yes.

Senator METCALF. I am going to call on the junior Senator from Alaska.

Senator GRAVEL. There may be an inference here that the rights in tentative approval are superior to the rights in patent. From a lay person's point of view and from an economic point of view, if not from a real point of view, I would see no difference.

Senator STEVENS. They are superior to patents in this sense: you can treat tentative approval land as though it were patented, but prior to the time you get.

On a normal patent, on normal land transactions with the Federal Government you must have the patent. The homesteader can treat his homestead as the equivalent of a patent after final proof, but he cannot sell it until he gets his patent, he cannot confirm title.

The State was permitted specifically by the Statehood Act to confirm title on tentative approval.

Senator GRAVEL. Let me just add, whether I be in error or whether I be correct, that we have heard testimony from the Governor of Alaska stating that he would think it proper to transfer patented land that the State owns to satisfy some of the township requests.

Now, if that patented land is superior to the tentative approval request, then I see no great significance in the fact that the natives would want to hold a viable interest in tentatively approved lands.

Senator STEVENS. May I interrupt, Mr. Chairman? The differences are, it would take action to do it. The State legislature could transfer some of the land that has been patented or to which, tentative approval has been given to the native people, in my opinion, if they want to do it.

But to have them come here and say that the Federal Government can now change the impact of tentative approval by a subsequent act of Congress raises so many questions about the validity, the legal consequences of tentative approval, and the right of the State to treat them as though they were patented, that I think this is a massive cloud on tentatively approved lands and, General, I am not just talking from the point of view of leasing the land.

The State is permitted to treat it as though it does own the land, and I think there are legal consequences here that are far beyond the problem of the Tongas Forest.

Senator GRAVEL. Certainly I would not want to suggest that the natives should compromise any rightful claim that they might have solely because possible legal consequences and clouds are now perceived. If that were the case then, of course, they would not have raised their claims at all.

I think it is our task, as concerned human beings and legislators, to meet the challenge of these problems and to solve them no matter how difficult and controversial.

I am not at all frightened by the magnitude of these problems or what is involved to solve them. I know we can address ourselves constructively to this problem both on the national level and the State level.

Senator STEVENS. I can only disagree with my colleague and state we are compensating the Alaska native people in cash for some taking, and part of that taking is in the area where the property to which they seek title has already been conveyed to somebody else, and if it happens to be the State, I want to protect the State's rights to the same extent that I would want to protect an individual's right, be he native or nonnative, and we had better keep this clear.

We are compensating the Alaska native people in some instances for lands actually conveyed to natives. We know this under the Homestead Act.

Senator GRAVEL. But the interesting point is that we have not compensated them a dime yet. What we are doing is talking about compensating them and looking at the whole picture in order to make a just settlement. The native people are saying, "We think we have a claim on all of it."

If that claim is upheld and makes their settlement more substantial, then I say so be it. Not being an attorney, I really cannot delve

into the intricacies of all the ramifications, and I am sure that now the question has been raised we are going to see a number of legal briefs on this. I think the fact that the senior Senator from Alaska has been a Solicitor for the Interior Department is going to stand us in good stead. I believe that future study will be a vital contribution and a valuable analysis, and I am glad the point has been raised.

Let me add that the testimony I have heard from General Clark, is certainly one of the finest we have heard. I also think the testimony from the native leaders has been fully adequate.

A point that has been discussed here is important, Mr. Chairman, and that is the discussion of large acres of valuable land. The dichotomy that has now been created in leasables, and locatables because now there is oil being discovered and there is a recent tendency to feel that it belongs to "all citizens."

You know, the land had that oil stored away, and these native people who were there, living there for centuries; we now say it is no longer part of their inheritance, that it is our inheritance. I suppose it is a normal human reaction that when somebody finds something valuable, and if you can find a way to share in it, you do.

Certainly, we cannot see anything too terrible in that, but I think it is interesting that there are proposals brought forth now where a change in leaseable mineral ownership is now in order. A point can be made that if this were a different point in time, such as 1898, then the change might be the other way to exclude locateables. I think that is a very, very graphic consideration.

It is too bad we could not have settled the land claims before oil was discovered. There probably would not have been such a rhubarb over it.

Another point relative to the land itself, and one of the factors that would endanger a large settlement of land, would be the feeling that it might be valuable 50 years from now, and maybe we ought to hang on to it just in case it does become valuable. We might then be able to make a good trade further on. These considerations should not be allowed to alter the fact of this issue. When we do effect a large settlement of land it is going to belong to the natives 50 years from now; and the point was made by Mr. Notti that when the economy of the world demands certain resources that only exist in that area, these people may become very wealthy as a result.

Some people may want to hedge their bet and say, "We will hedge this a little bit, so in case it does get good, we will still have a piece of it."

I think that this is a point of logic that has not been used in our inheritance traditions. When somebody inherits or owns something it is theirs. You do not try to set up a structure whereby you can euchre them out of it. I believe that is one of the issues we face and can only underline it. What was a very, very eloquent statement by General Clark, probably one of the best I have heard on the whole land subject, and it is unusual that it should come from a man from Texas.

Thank you.

Senator METCALF. The Senator from New Mexico has a question.

Senator STEVENS. May I state for the record, my colleague and I are leaving this hearing because there is another hearing going on involving Alaska natives.

Senator METCALF. My understanding is that Senator Gravel was there and attended the other hearing, and it is Senator Stevens' turn to attend. That is a Senate Judiciary Committee meeting with respect to the hire of Alaska natives. That will go on for the rest of the morning, and for the benefit of the people who are here, if we get through shortly they might adjourn to that meeting, which is in room 6202.

Senator GRAVEL. Mr. Chairman, I also attended a Mines and Minerals Subcommittee meeting.

Senator METCALF. The Senator from Alaska has been busy this morning.

Senator Anderson.

Senator ANDERSON. I am not a lawyer, and I am not stating a legal point, but I just want to discuss the Indian Claims Commission Act. Section 2 states:

> The Commission shall hear and determine the following claims against the United States on behalf of any Indian tribe, band, or other identifiable group of American Indians residing within the territory limits of the United States or Alaska.

Why should not this go to the Indian Claims Commission?

Mr. CLARK. Well, there is quite a history to that, Senator Anderson. I guess I should state it is a hard thing to say because I represented the United States in that Commission for 4 years, and I said then what I say now, I have not changed my views, that was something that began in idealism and, hopefully, in technique and analogy to litigation proved awfully unfortunate from the standpoint of justice.

It turned people backward, it minutely examined ancient wrongs, and it droned on and on beyond Jarndyce and Jarndyce that lasted in Dickens' England for many generations.

We tried for 4 years to settle and dispose, as fairly as we could, of every case, and in 4 years, the 4 years that I was there and most intimately familiar with the work of the Commission, we disposed of more cases by settlement and probably more dollars than in the entire history of the act theretofore, and I still believed when I left that virtually 80 percent of the litigation remained; it remains now a quarter of a century after the Commission was authorized.

There are many reasons. The Indian Claims Commission was created in 1946. It provided that all claims would have to be filed within 5 years, 1951; it contemplated that all claims would be settled by 1956 or 1961, 5 or 10 years after the final date for filing, and one of my earlier appearances before this committee was for an extension of time, and I am afraid there will be more extensions of time.

The natives of Alaska were not natives of a State. They did not have knowledge of the claims. I think the United States raised the question as to whether Eskimos were Americans. In fact, I am quite sure the United States raised such a question. Did the Congress intend to include Eskimos because they are of a basically different ethnic origin?

Here are 55 percent of the natives of Alaska in one lump. Nevertheless, some claims were filed. They were not adequate, they were not comprehensive. There was not adequate knowledge there and adequate feel.

When you look at it historically, the pressure for the Indian Claims Commission Act has been generated over a period of many decades. There were special legislative acts for major tribes of Indians here in

the United States, and they tended to be bigger tribes and the older tribes, the tribes that had had a long history of negotiation and claims with the United States going back to the inception. The natives of Alaska were in the New World, a new thing comparatively. The fact is that, with minor exceptions, they were not there, that this was recognized.

A very major factor is this: The Indian Claims Commission standards for recovery contemplate generally in a land sense now, it speaks of nonland claims, too, unconscionable acts, fair, and honorable dealings—but it contemplated generally in a land sense that there had been a taking, an extinguishment, a title, and when you look at the suits that were filed you will find one tribe—this is hypothetical, I do not have a specific tribe in mind—is suing for a reservation that was taken from it, perhaps in North Carolina or, perhaps, in the Mississippi Valley in 1820; another reservation west of the Mississippi in 1843; another reservation up in Wyoming, perhaps, or some place like that, 25 years later—takings, takings, takings, extinguishment of title.

In Alaska, the natives lived where they were. Our civilization had not acclimated to the north slope, and we did not dispossess them. We did not extinguish their title, and we recognized this as late, the Congress itself recognized this, perhaps more recently, but certainly as late as 1959 in section 4 of the Statehood Act.

Now, the natives would have been in a most awkward position, in fact, I do not think you would have been legally supportable to bring an action in the Indian Claims Commission Act before 1941 for an extinguishment of title to lands which had not occurred.

It is true there had been very significant interferences with their use, there had been depredations in fish and in wildlife, and even, I think, not substantally, particularly outside of southeastern Alaska or the Gulf of Alaska area, even possession of lands, but insignificant in the overall picture.

Generally, these villages, even today, are where they are, where they were. The people are living much as they were, they have not been dispossessed. Their title has not been extinguished, and they really would have had no standing before the Indian Claims Commission.

But I must say from my experience with the Indian Claims Commission—and I do not mean any disrespect to the Congress, I think its idealism in creating that act was very great indeed. I do not know of another nation anywhere, any time, which has created a commission or a court to settle aboriginal land claims for unconscionable acts it may have done, and this was a noble and an idealistic thing to do.

But in practical terms, I sat in my office too many days and heard, for instance, the Blue Lake Taos Pueblo, New Mexico, come in and say, "We want Blue Lake, with their beer cans and deer carcasses up there, from hunters. This is a sacred lake to us."

I said, "The Indian Claims Commission has no jurisdiction. I have no power except what the Indian Claims Act gives me, and all we can do is tell you that whatever compensation you may be entitled to is under the standards set by Congress."

Justice and even just compensation was very difficult. The issues before the Indian Claims Commission Act are largely hypothetical. What was 68 million acres in California in 1853 worth?

In fact, there was no buyer, there was no seller, there was no market. And since then there has been gold and oil and all these other things.

Alaska is different. The real taking is now. The real taking is now and later. This could have been settled by the United States earlier, and there is no better illustration of the fact that it should have been than the fact that we are worried now about tentatively approved lands, the State moving in weeks or months after an oil discovery to endeavor to establish title where the natives had always lived.

The title should be established now, and the natives of Alaska, in my judgment as a lawyer, never have been compensated except in peripheral ways and in claims just as John Borbridge has described for specific types of acts where there was physical conflict and other things in southeast Alaska.

Senator ANDERSON. You understand I do not know what the law is except the language here. It does not say perhaps and maybe it should go to this court; it says "The Commission shall hear and determine." One of the reasons was, you could not bring a private suit before the Indian Claims Commission.

Mr. CLARK. I guess I have talked too long already, but I would just state, not as a comprehensive answer, but as, perhaps, the single most substantial answer, that you cannot file a claim before the Indian Claims Commission before the claim arises, and the Commission was empowered in the land area to compensate for takings of land, and there had been no taking in this sense of the lands in Alaska.

Senator ANDERSON. I cannot believe that is a good answer. The law says "shall hear and determine" certain things. It says it has to be decided in a court of claims.

Mr. CLARK. It says determine things that have happened heretofore, and if you are thinking about Andrew Jackson and George Washington and the Seminole Indians in Florida in 1850 that is one thing. But it was not thinking about Alaska in 1969. It could not have prospective application. It did not have the power to settle future claims, only past claims.

Senator ANDERSON. It says it can solve future claims, does it not?

Mr. CLARK. No, sir. The claim has to arise before the date of the act in 1946, and the claim had to be filed within 5 years, by 1951.

Now, 1959 the Congress recognized the Indian land rights in the Statehood Act as not being extinguished. It is still there. You could not file in 1951 for dispossession that had not occurred in 1959, or a taking.

Senator METCALF. While you are here, General Clark, I want to take advantage of some of your experience in public lands and ask you a question not on a tentative taking but on reserved land. Probably the highest grade Federal land would be a national park, would it not, reserved by congressional action, and at a high level, and yet if there is a homestead in a national park that is an inholding that is still in the hands of the homesteader?

Well, now, isn't this an analogous situation where we have a reservation, whether it is a national forest or a wildlife refuge or any other such Federal reservation, there is a prior domiciliary right that is analogous to the homesteader, the inholding in a park?

Mr. CLARK. Very much so. I lived in national parks almost more than anybody I know, and I think the homestead, the domicile, the native

villages are a direct analogy, and have a prior right, have a priority. This is what the law says.

Senator METCALF. While the State coming in and making a selection is a selection after the reservation has been made. It would be a subsequent holding rather than a precedent holding. Wouldn't there be a difference as far as the attitude toward Federal land is concerned?

Mr. CLARK. Yes, sir.

Senator METCALF. Because the contention here, as I understand it, is that these villages are the traditional homes of these Alaska natives with 25 to 30 or more natives composing a village, and that is their home, and it has been their home ever since the United States and Russia have been in Alaska.

Now, we have no right to make a reservation there, to set up a wildlife refuge, to establish an oil preserve and take these homesteads, these traditional homes, away from them any more than we had a right to create a park or a wildlife refuge or a reservation down in Texas or Montana or New Mexico. If there was a holding in Yellowstone Park and a lot of inholdings in Glacier Park we had to buy them and we are still buying them.

Mr. CLARK. In addition, you wanted to buy them.

Senator METCALF. Yes.

Mr. CLARK. In other words, you would not say, "Well, we want this national park and you live there, that is too bad, we are taking your land." You wanted to buy them. This is an obligation of the Nation, and you would not take these people's land.

Senator METCALF. It would seem to me we would have the same responsibility for somebody's land in the Tongas National Forest or the Kenai Wildlife Refuge.

Mr. CLARK. I think that is right.

Senator METCALF. Would that be a valid analogy?

Mr. CLARK. I think that is a direct analogy; yes. I do not think that we would give a national forest a higher priority than a home and subsistence for people who have always been there, and we recognized homestead rights, and we are recognizing here the village rights of those natives who have always lived there, who have to live there, who have no other place to live, who know no other life, and who need much greater opportunity than they have, and not more deprivation.

Senator METCALF. And somebody who has a prior right within the confines of a national forest in one of our other States continues to exercise that right.

Mr. CLARK. That is right.

Senator METCALF. Senator Anderson calls my attention to, and perhaps you can answer, the jurisdiction of the Court of Claims as far as Indian claims are concerned, and some of these, of course, have been appealed, and so forth. Would you, for the record, comment on the jurisdiction of the Court of Claims.

Mr. CLARK. Yes, Mr. Chairman.

Senator METCALF (reading).

The jurisdiction of the Court of Claims is hereby extended to any claim against the United States accruing after the date of the approval of this Act in favor of any Indian tribe, and, or other identifiable group of American Indians residing within the territorial limits of the United States of Alaska.

I think it would be his contention that even though the claim had not ripened under the Indian Claims Commission that may give jurisdiction to the Court of Claims to entertain any claim that ripens in the future.

Mr. CLARK. The Court of Claims has appellate jurisdiction of matters determined by the Indian Claims Commission, and then it was given additional jurisdiction in matters to arise but not as to aboriginal title, and we are talking here of aboriginal title.

Senator METCALF. I do not read it as exclusive as that.

Mr. CLARK. We can supply a brief. I will tell you, about 4 or 5 years ago I left the Land Commission, and I get a little rusty on some of these points, but I have a clear recollection, and I am advised by counsel who are working contemporaneously in the field, and they say aboriginal land title, and you can understand it because it was contemplated that the Commission would be dealing with the last aboriginal claims really.

Senator METCALF. We are in the same condition that you are. It is only about once in every 5 years that we deal with the Indian Claims Commission, and that is when they come up and ask for a renewal, and it has been several years since the last renewal, and it will be a couple of years until the next one, so we are kind of rusty, and it would be valuable for the record, if we had some brief as to why the Indian Claims Commission does not have authority over aboriginal titles.

(The brief referred to follows:)

JURISDICTION OF THE COURT OF CLAIMS

During the hearings held August 8, 1969, Senator Anderson and Senator Metcalf asked whether the Court of Claims had jurisdiction over the Native Land Claims in Alaska (unofficial transcript page 435). This memorandum is submitted by attorneys for The Alaska Federation of Natives in response to that question. As shown below, the Court of Claims does *not* have jurisdiction to settle claims asserted by the Alaskan Natives based upon aboriginal title.

The Court of Claims has jurisdiction over Indian claims in two circumstances:

1. For claims accruing after August 13, 1946, the court has direct jurisdiction under 28 U.S.C. § 1505 (1964) "whenever such claim is one arising under the Constitution, laws or treaties of the United States, or executive orders of the President, or is one which otherwise would be cognizable in the Court of Claims if the claimant were not an Indian tribe;"

2. For claims accruing prior to August 13, 1946, the court has jurisdiction to review decisions of the Indian Claims Commission under 25 U.S.C. § 70(s) (1946).

The claims asserted by the Alaskan Natives do not fit into either category. The Supreme Court held specifically in *Tee-Hit-Ton Indians* v. *United States*, 348 U.S. 272 (1955), that claims of the Alaskan Natives based upon aboriginal title were not cognizable under 28 U.S.C. § 1505, and that a special jurisdictional act would be necessary for the court to adjudicate such claims.

The Indian Claims Commission has jurisdiction over claims arising before August 13, 1946, including:

> Claims which would result if the treaties, contracts, and agreements, and agreements between the claimant and the United States were revised on the ground of fraud, duress, unconscionable consideration, mutual or unilateral mistake, whether of law or fact, or any other ground cognizable by a court of equity.
>
> Claims arising from the *taking* by the United States, whether as the result of a treaty of cession or otherwise, of lands owned or occupied by the claimant without the payment for such lands of compensation agreed to by the claimant.

Claims based upon fair and honorable dealings that are not recognized by any existing rule of law or equity. 25 U.S.C. § 70(a) (1964). (Emphasis added.)

The claims asserted by the Alaskan Natives could not now reach Court of Claims through the Claims Commission because the deadline for filing claims has long since passed. 25 U.S.C. § 70(k) (1964). The claims of the Alaskan Natives, with which these hearings are concerned, were not brought within the five-year period following August 13, 1946, it should be noted, because, with limited exception, there were no "takings" by the United States of Native lands before 1946. With very few exceptions, the Alaskan Natives still occupied their lands then, as indeed they still do today. Consequently, in the absence of treaties or "takings", the Indian Claims Commission did not have jurisdiction within the five-year filing period.

Thus, the Court of Claims does not have the jurisdiction over the claims of the Alaskan Natives either directly under 28 U.S.C. § 1505 or in reviewing the decisions of the Indian Claims Commissions under 25 U.S.C. § 70(k). This absence of jurisdiction affects only the availability of the Court of Claims as a forum for relief, of course, and not the validity of the claims now asserted. Congress has consistently recognized the existence of Native claims when legislating with respect to land in Alaska, and left the resolution of these claims for a later day—which is now here.

Mr. CLARK. I would add this, not to indicate that I have any doubt about the legal judgment that I made, because I really do not. I may develop a doubt when I look at the law again, but right now I have no doubt that the court of claims does not have jurisdiction.

If the court of claims has jurisdiction today that does not mean that this Congress does not have jurisdiction, that does not mean that the power of the Congress does not remain full, complete and plenary and, in my judgment, it would be a very great tragedy to relegate the natives of Alaska to a judicial determination. It has not worked; it just has not worked.

Senator METCALF. It is not appropriate at this time, yes.

Senator ANDERSON. Blue Lake that you mentioned awhile ago was based entirely on aboriginal claims.

Mr. CLARK. Yes. The taking occurred before 1946, though, and I saw three generations of them, and the youngest generation was a teenager, and he said he hoped he did not come in with his grandchildren someday still seeking a final resolution of that claim.

Senator METCALF. Generally, I think the point you made about Blue Lake, as it was with others, the jurisdiction of the Indian Claims Commission, I believe appropriately given by Congress, provided for a monetary compensation, and the problem with Blue Lake is the Indian Claims Commission has not any jurisdiction to give the land back to the Indians. We had considerable hearings on that as to whether or not we, the Congress, should do that, and we, I think, have jurisdiction to give that land to the tribe if the Congress so wills. But the Indian Claims Commission does not have that authority as a compensation. They have to pay money, and that is the only judgment that they can give; isn't that right?

Senator ANDERSON. Yes.

Senator METCALF. For the record, Mr. Notti, I want you to tell me a little bit more about the composition of your membership. In the bill that is before us there are about seven pages of names of Indian villages. There are many tribes that come up in the record. Does your organization substantially represent all of them?

Mr. NOTTI. Perhaps, Senator, it would be good to give some history of our organization, how we were formed, and that would, I think, answer the question.

Senator METCALF. I wonder if you could just supply it for the record, because somebody is going to say, "Well, who is Notti talking for and what is he the president of, and who is General Clark and Ambassador Goldberg representing anyhow." There are other lawyers and other contracts representing specific tribes and specific villages, and I think that for the record when we start into executive session we would like to have something of that sort.

I do not want to drag the hearing on any more, but I would like to have it for the record.

Mr. NOTTI. OK. I will be very brief and just give our structure and we can supply the other material.

We are composed of 19 groups around the State based on ethnic origins. Now, this is an example: The Arctic Slope Area represents seven villages in the Arctic Area north of the slope range. They have village elections and they elect officers. They also elect the members of the board of directors of the Alaska Federation of Natives. By democratic process each village is represented from that area, and that is the same with the village council presidents which composes 44 villages in the Bethel Area. It is the same with the Alaskan Native Brotherhood.

The Tlingit-Haida, through village elections, get representatives to come to the Alaska Federation of Natives, and we have a structure at that level, and for that reason we purport to speak for all villages and all natives in Alaska on this issue.

Senator METCALF. If you want to amplify that statement and give more detail it will be welcomed and received. I am not challenging your right to speak; I just want to be able to answer a challenge that may be presented on the floor or in committee when this bill is considered.

Mr. NOTTI. I think it might be useful to say that in October 1966 in the first meeting we had 300 people. In October of 1967, the second meeting, we had in the neighborhood of 400 people. In October of 1968, at which time there was an election held and Secretary Udall attended our meeting briefly and a banquet during the evening, we had in the neighborhood of 600 people from around the State.

Senator METCALF. Were they elected delegates?

Mr. NOTTI. They were people named by the villages to attend our annual meeting; yes.

Senator METCALF. From various tribes and villages all over the State of Alaska?

Mr. NOTTI. Virtually every village in the State of Alaska.

Senator METCALF. Thank you very much.

Senator Hansen.

Senator HANSEN. Thank you, Mr. Chairman. I am sorry that I could not be here sooner. I have been attending some other committee meetings also, and I am not going to take the time to go into any great depth in my questions because there were probably some that may have occurred to me which have been asked. I would like to pursue one point that General Clark made, if I may.

Did I understand you correctly, sir, to imply that, insofar as your feelings go, it is your judgment that the question facing the Government now is not to see that redress is given the Indians for an act that occurred sometime in the past, but one which takes place today. Is that what you said?

Mr. CLARK. Yes, Senator Hansen.

Let me explain it this way. The United States from even the time of the Confederation recognized as a matter of high public policy Indian titles and rights, and this is found in the earliest opinions of the Supreme Court, opinions by Chief Justice John Marshall, and all through our history in treaties dealing with native people.

In the case of Alaska, when we purchased Alaska in 1867, this was the way that we achieved our sovereignty over the area, and the aboriginal rights of native people have been held by the courts not to have been extinguished but were left to be dealt with at some time in the future.

We could then have said, "Well, let us see what these rights are and let us extinguish them, and in extinguishing them let us give just compensation."

But we did not, and we did not do that in 1896 when the Klondike gold discoveries were made, and little by little, as we have done in many parts of the United States, we encroached on native life, but not very substantially in Alaska, because it was so unique, because it was by geography and climate so different, and in the Statehood Act in 1959 the Congress and the State recognized that Indian title had not been extinguished, that it still exists, and is something that remains to be dealt with.

Now, we see new developments. The oil development is the primary thing. It will make a tremendous difference environmentally for 4,000 Eskimos on the North Slope, and I think it is important, critically important, that we really and finally settle these native aboriginal rights now and Congress has full power, and it should do it once and for all, so that everyone knows where he stands prospectively.

There are no more claims. If the settlement is just, there is no more ill feeling which has arisen in the past from failure to act earlier.

Senator HANSEN. Well, maybe I have not stated my question very clearly. Are you talking about values as of today or are you talking about values as of 1867 or 1959, or what values are you talking about?

Mr. CLARK. I think in terms of just compensation that the valuation date, as we say, would be now, the date of the act.

Senator HANSEN. You are saying that as of the date of the act, assuming the legislation comes out of here, and I have no doubt about that, that the payments should be made and the values should be, the whole consideration should reflect the values as of today. Do I understand you to say that?

Mr. CLARK. That is correct, Senator Hansen. Through our history we have extinguished aboriginal title in a number of ways but, say, basically by treaty. So for the third time and for the third or fourth or fifth generation we negotiate with the tribe again and say: "We are taking this land which was given you in a reservation four or five Presidents ago, and we are paying you for it now. This is not 1787 when the Constitution was ratified. We did not claim we took all Indian title then.

"This is, maybe it is, 1878, and we are giving you in consideration for taking this reservation, for extinguishing this title, this new reservation in Wyoming or in Montana or wherever it may be, and we are giving you x dollars or we are setting up x schools or whatever else it is you may do under the treaty."

This has not been done in Alaska. That is, in effect, what the Congress would do now for people who are living where their ancestors have always lived. We have not moved the natives of Alaska as we moved the Indians in the lower 48 States.

We have not, as we pushed across the continent, displaced and dislocated them and taken their land in a succession of acts, as we did here. They are still there very much as they were. The villages are frequently right where they were. They are generally not as large because there are not as many natives, so the taking is to be done by the Congress now.

Senator HANSEN. You say the villages, while they may be somewhat smaller in size than they were at one time, have not had any discernible dislocation, the villages are still where they were; is that what you said?

Mr. CLARK. Well, I think it requires a little amplification. These native people moved from time to time before we came. Their villages were not necessarily permanent like our cities. But in a very general way their village life remains as it was, in a very general sense their villages remain where they were and as they were, because the incursions in this huge area, or intrusions of our civilization that have actually displaced or dislocated native populations have been minimal.

Senator HANSEN. I am sorry.

Mr. CLARK. I say, the actual dislocations of native people have been very minor. There have been some, and even where there has not been dislocation, there have been fewer fish, because where it used to be maybe 100,000 native population which was living off the fish, now maybe 100 million people from South America and Japan and northern Europe are living off the salmon there, eating the salmon there, and fishing is a little harder, but the natives remain there just about as they were.

Senator HANSEN. Would you tie in the values then as nearly as you could identify them to the villages and the surrounding area that may have been used significantly by these tribes?

Mr. CLARK. No, I really would not because I think use and occupancy is only a test of dominion. It only shows that there was dominion, and the real value is the area over which you held dominion, and this is the law, this has been the law. So you do not have to show that we just used this little plot of land when, in fact, we hunted these buffalo over these entire plains. We did not have campsites there necessarily, but we had dominion over the land and, therefore, to relegate it—actually, there has been a diminution in title, and erosion, but there has not been the taking, there has not been the cutoff; that has not come yet.

The Federal Field Commission made a very careful study. Its value comes to, assuming the adequate production of mineral wealth, and in addition to fee title, at least 5 million acres under their standards, to about $1,100 million.

The natives have a different approach that may not be quite that much in value, although I cannot imagine who should have a larger say, where possible, than the very people who own the claim and once owned and used all the land.

There they divide between land that they need for their life's subsistance, plus the opportunity to participate in the development and growth of that land through sharing in its mineral wealth which will

be the major economic development through most of this area, plus cash, because the arrival of our civilization made it imperative that they have new opportunities that they have not had before, and they need cash for this. So when you look at the three components that they seek, 40 million acres, half a billion dollars in cash, and 2 percent mineral override, you come to a value that may or may not be as much as the Federal Field Commission's value.

Senator HANSEN. Well, what I understand you to say, then, is that, or you are implying that the natives, through their hunting activities and their other related actions, just as well as their actual occupancy of certain area, really had dominion over the entire State of Alaska; is this what you are saying?

Mr. CLARK. I think that is true, Senator Hansen.

Now, we have to disengage ourselves from narrow property concepts and give some—it involves really a political theory, too. To the extent that there were people in Alaska, to the extent that it supported any human life, it was native life.

Now, actually the claims that they have filed at this time with the Department of Interior cover only about 90 percent of the total land area. I think we know that once all of this land was held in dominion by someone.

Now, sometimes the boundaries would waver back and forth, and sometimes they were very obscure, but where there were antelope and other means of supporting people in Wyoming, there were natives who would be there from time to time, and generally while they were there, they exercised the dominion, and that dominion meant that anyone else who tried to come there had better watch out, because we had not fenced it, and we have not surveyed it, and we do not have a deed in conformity with Anglo-Saxon jurisprudence or anything like that, but we were there, and we use it and we live on it, and we intend to keep it for our people and our benefit, and we exercise dominion over it, and I think that would include the whole State.

Senator HANSEN. When you say that, would it be fair to assume that 90 percent—and I am not trying to quibble with the figures, I just thought that was the figure that you more or less arbitrarily stated—of the surface of the State of Alaska contributed in a more or less meaningful fashion to the subsistence and life of the Alaska natives?

Mr. CLARK. Let me say that in particular since hearing President Notti on this subject the other day, I think it was 100 percent, and I think the 90 percent that the claims cover come from the fact that there are many—it is really amazing that there were not greater gaps than that.

Basically, these are gaps between claims by people who were not in communication with each other. The fact is that no one else could ever have gotten into these areas, and it would not be vacant land in any sense that it had no potential use or no historic use by some people. So the 90 percent is the proportion of the surface of the State that is now subject to direct specific claims. I think, in fact, the claims would have covered the whole area.

I think the same would have been true of Texas. There are parts of Texas that provided the poorest subsistence of almost any native people on the North American Continent.

Senator HANSEN. Would you think that it would be fair to assume that a particular piece of real estate conceivably could have greater value to one person or to one group of people than to another?

Mr. CLARK. Well, I think the question involves many levels. In my judgment, our burden is to deal with the natives in our way because, for better or for worse, from their standpoint they must live in our civilization.

Senator HANSEN. I am not arguing this at all, but I just ask you again, would you say that every bit of Alaska would be just as valuable to an Indian or an Eskimo as it would be to anyone else?

Mr. CLARK. Today, today without question.

Senator HANSEN. What?

Mr. CLARK. Today without question; yes. I think that these natives are citizens of the United States; that they—you know, I may own a corner piece of land, I may not be able to build a big building on it, but I want fair market value for that corner piece of land. If somebody is going to build a big building on it I want him to pay me what it is worth per square foot, and if I am a poor east Texas farmer, and I have 60 acres down there, and I broke my back all these years growing cotton, and I want to drill for oil but I cannot drill for oil because I lack the funds, but it is under there, I do not think, because some oil developer in Dallas who is wealthy and who can, that this land is not worth in dollars a fair market value, that I should be paid every bit as much as he or anybody else should be paid.

I think they are citizens fully participating in our economic standard today, or they should be. Actually, their income is one-fourth of ours, their life expectancy is one-half of ours, but the fact is they should get fair market value because they are American citizens and they need to be American citizens, and they need us as we need them, and to think we would give them less for land that we would give anybody else would not square with justice, as I see it.

Senator HANSEN. I was not trying to say it would, but I was simply asking the question.

Mr. CLARK. The law provides this, as I said earlier. The law contemplates that we deal with them by our standards because they live in our country.

Senator HANSEN. How many people are we talking about?

Mr. CLARK. Well, that is a very important point, Senator Hansen. It is a huge population comparatively. It is a major part of the total aboriginal population of the 50 States. It is better than 20 percent of the population of Alaska, probably 80,000 people.

If you take the Northern Slope, the Northern Slope in the most recent issue of the Reader's Digest is described as 77,000 square miles, something like that. Eben Hopson, who has represented the people of the Northern Slope in the Senate of the State of Alaska, says that you could probably account for the white people on the fingers of your hands.

There are 4,000 natives up there. Those natives have lived there from time immemorial. They are Eskimos. In the late 1940's, I think it is probably 1948 or 1949, I am not quite sure——

Senator HANSEN. Do you have a figure in mind? I asked what I thought was a fairly simple question: How many people are we talking about?

Mr. CLARK. I said 80,000.

Senator HANSEN. 80,000.

Mr. CLARK. Probably only; yes. Sixty to eighty thousand.

Senator HANSEN. Is that more than there were at the time of the purchase of the State, or fewer; would you have any idea?

Mr. CLARK. I think it is fewer. I think among the Aleuts you can see a decimation of the population. It is not a third of what it was.

Senator HANSEN. There may have been 240,000 there in 1867?

Mr. CLARK. Well, I do not know the number. I do not think anyone knows the number, but I think everyone tends to agree there were a lot more.

We brought diseases and things. It is almost like California. The Indian population there were hundreds of thousands who died with the advent of the white man from pestilence and violence.

Senator HANSEN. Your feeling is that they used at least 90 percent of the State. Is there any relevance, in your judgment, in the sort of life that the State made possible, insofar as their past history is concerned in trying to arrive at present-day values, or should we project them on the basis of the possible recovery of oil and the presence of other minerals that our sophisticated technology is bringing out?

Mr. CLARK. Well, I am a skeptical person. I might say that most people would say our culture is vastly superior to theirs and, therefore, they owe us something. I cannot say that. I do not know. I do not think that is the question or standard, really. I know this, they are American citizens, they share in this country, they fought in our wars, and we all recall their record in World War II, incredibly courageous people.

I know this, too, that their life expectancy, for instance is 33.4 years. I would observe it was considerably higher before we came. Life expectancy is a pretty valuable part of your whole opportunity, you know.

Their income, as I indicated, is one-fourth the average per capita income of the white people of Alaska.

They are impoverished. The native American is the last person in every opportunity as far as I have been able to see, and I have worked in civil rights rather extensively for some time, and I am deeply concerned about it.

They really have not fared well, in my judgment, with our civilization. I feel rather bad about it.

Senator HANSEN. But we should base the values on, I mean we should——

Mr. CLARK. Fair market value.

Senator HANSEN. The debt we owe them ought to be based on civilized value, that is what you are saying.

Mr. CLARK. That is the law, and that is justice, as far as I can see. I do not know how you can ever say we could give them less than fair market value by our standards. The highest and best use to which the land can be put in the light of our civilization is what determines value.

Senator HANSEN. I have no further questions.

Senator METCALF. Thank you very much, Senator.

Ironically, Senator Hansen and I the other day were in Wyoming, and out there the controversy was over grazing land. We had grazing homesteads, and the problem was uranium which, in this case, was a locatable, and the contention was that it should be made a leasable, so it was just the other side of the coin.

Well, I have no more questions. I think that this contribution has been outstanding, it has been most helpful, been very persuasive, and we will ask the staff to keep in touch with you to keep us advised as progress on this bill goes forward. We want more information and more briefs and more maps, and more discussions, so that we will have the fullest and most complete information at the time we markup the legislation.

I can assure you, on behalf of the chairman of the full committee, and on behalf of every one of us, that this has high priority, that we are going to make every effort to get this bill out of the Senate of the United States, at least, during this session of Congress.

Mr. NOTTI. Mr. Chairman, on behalf of the federation I would like to say we appreciate very much appearing here. We feel it is a vital issue. We know you feel it is. We appreciate the courtesy you have extended us, and on behalf of our attorneys also. You have treated us very well, and we thank you very much.

Senator METCALF. Thank you very much.

Mr. CLARK. Thank you, Senator.

MEMORANDUM ON BEHALF OF THE ALASKA FEDERATION OF NATIVES CONCERNING THE POWERS RESERVED BY CONGRESS (AND DISCLAIMED BY THE STATE OF ALASKA) UNDER SECTION 4 OF THE ALASKA STATEHOOD ACT TO PROVIDE FOR AN OVERRIDING ROYALTY FOR, AND OTHER LAND RIGHTS IN, THE NATIVES OF ALASKA

This memorandum is submitted by The Alaska Federation of Natives, in response to the Committee's request for a legal opinion substantiating AFN's position that the Alaska Statehood Act (Pub. L. 85–508, July 7, 1958, 72 Stat. 339, 48 U.S.C.A. (1968 pocket part) p. 5) leaves unimpaired the power of Congress to reserve for patenting to Alaskan Natives, land to which the United States still holds title in Alaska and to reserve for the Natives a 2-percent royalty interest in the proceeds from the disposition of surface and mineral resources of such lands.[1]

For the reasons hereinafter set out, we believe that the Congress by virtue of Section 4 has retained the full power, authority and jurisdiction to decide, as a matter of legislative policy, whether or not to provide for the recognition of legal title in the Natives of Alaska as to lands not yet patented and to provide for the reservation to the Natives of an overriding royalty interest in the mineral and surface resources of those lands. In making its policy decision the Congress is free to act untrammeled by any claim that the Statehood Act vested overriding and contrary rights in the State of Alaska.

In approaching the question, we wish to be crystal clear as to our concept of the Natives' existing rights. We do not assert that Section 4 of the Statehood Act has converted Native rights arising from aboriginal occupancy or under the Acts of May 17, 1884 (23 Stat. 24), and June 6, 1900 (31 Stat. 321), into compensable property rights as against the United States, entitled to just compensation under the Fifth Amendment of the Constitution if extinguished by Federal action. Under the controlling decision of the Supreme Court, *Tee-Hit-Ton Indians* v. *United States*, 348 U.S. 272 (1955), the Congress has not, to this date, transformed aboriginal or occupancy rights into a Fifth Amendment property right.

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[1] This 2-percent royalty interest is sometimes referred to in this memorandum as an overriding royalty.

AFN's proposal contemplates that a sum equal to 2 percent of the value of the minerals and other resources disposed of would accrue to the natives out of the rentals, bonuses, royalties and other proceeds received from the disposition of the mineral and surface resources of "public lands" in Alaska after the effective date of legislation to settle the Native land claims. The overriding royalty would also be applicable to proceeds from "public lands" mineral leases made during the period from January 1, 1969, to the effective date of the settlement legislation, whether made by the Federal Government or by the State.

By the term "public lands" is meant all Federal lands and interests therein as of the effective date of the settlement legislation. The term includes lands selected by the State but not, as of that date, patented to the State, including selections that have been tentatively approved by the Secretary of the Interior.

Since the Natives' 2-percent overriding royalty would come out of proceeds received by the lessor (or the vendor), it would not affect the amount of the royalties, bonuses, rentals or other payments required of the lessee (or the purchaser).

We do assert that Congress has preserved its options and retains the right and power to vest rights in the Natives as against claims of a third party, in this case the State of Alaska.

We see the legal issue, then, as one in which the United States and the Natives have an identity of interest. The *legal* dispute upon which the Committee has requested our views is between the United States and the State of Alaska. It involves the extent of Congress' power to dispose of public lands and to exercise its plenary authority in the administration of Indian affairs.[2] We do not question that such power remains available to the Congress as to all land in Alaska not yet patented. The State, however, does. In his testimony before the Senate Committee on Interior and Insular Affairs, Governor Miller asserted, on advice of his Counsel, that Congress could not legislate in this area because to do so would be contrary to the provisions of the Statehood Act and would, therefore, in order to be effective, require the consent of the legislature and possibly an amendment to the State's Constitution. In his testimony before the House Committee on Interior and Insular Affairs, Governor Miller took a similar position.[3]

I

Presumably the State of Alaska would not question the power of Congress, were Alaska to have remained a territory, to dispose of unpatented public lands therein to the Natives or to anyone else. Nor do we suppose that the State would dispute the power of Congress in such circumstances either to reserve land for the Natives so that such land could not be the subject of conveyances or grants thereafter made by the Congress, or to make provision for an overriding royalty for the benefit of the Natives just as it has made provisions for royalties for the benefit of States themselves[4] or has otherwise provided grants-in-aid to State and local entities out of Federal moneys.[5] The authority of Congress to do so is plenary and springs from, among others, the property and the general welfare clauses of the Constitution.

It is likewise plain that Congress has plenary authority in the administration of Indian affairs by reason of Article I, Section 8, Clause 3 of the Constitution.

In the light of the Federal Government's plenary powers over public lands and Indian affairs there can be no serious disagreement that *only* if it has previously made an irrevocable disposition of such lands and itnerests, is the Congress precluded from conveying some of the federal lands to the Natives and reserving a royalty interest for the Natives in other lands as an element of legislation by which it extinguishes aboriginal and occupancy rights.

Alaska argues, as a matter of law, that such an irrevocable disposition occurs upon selection by the State of lands under Section 6 of the Statehood Act because, in the words of Governor Miller:

". . . At the 1958 election on the question of statehood, Alaskans voted on the Statehood Act which had been enacted by Congress. The terms of the Statehood Act provide that the Statehood Act constitutes an amendment to the Alaska Constitution and, therefore, the State Constitution and the Statehood Act form a single document which controls the affairs of Alaska. As the Chief Executive of the State, I am charged with the obligation to defend the State Constitution and the Statehood Act. Any changes in the Statehood Act which undermine the provisions of that compact must be consented to by the people of Alaska as an amendment to the State Constitution. S. Tr. 256; H. Tr. 109."

As is clear from the testimony before the Senate Committee (S. Tr. 303–307), Governor Miller took this position on the basis of legal advice from Alaska's Attorney General, Mr. Edwards.

As will be shown in detail herein, not only does the Statehood Act not prevent the exercise of the Congress of the power to reserve lands and a

[2] The term "Indian" includes all Natives, Eskimos, and Aleuts, as well as Indians. Natives of Alaska are "Indians" within the ambit of the Congress' constitutional authority over Indian affairs. *United States* v. *Native Village of Unalakleet*, — Ct. Cl. — (June 20, 1969).

[3] S. Tr. 256, 264, 297, 303–304. H. Tr. 109, 117. See also Attorney General Edwards' testimony, H. Tr. 161–166.

At the earlier hearing before the Senate Committee on April 29, 1969, the Governor had endorsed revenue sharing in principle He said at that time that, "It would not be difficult to draft provisions to accomplish these objectives which will not violate the Statehood Act or the [State] Constitution." S. Tr. 85. His change of position was on the advice of his Attorney General, Mr. Edwards. S. Tr. 303–307.

[4] § 35, Act of February 25, 1920, as amended 41 Stat. 450; 30 U.S.C. § 191.

[5] E.g., Federal Aid Highways, 23 U.S.C., ch. 1; Federal Water Pollution Control, 33 U.S.C. §§ 466–466g, 466h–466k; Federal Aid for Public Airport Development, 49 U.S.C. ch. 14.

mineral interest for the Alaska Natives, but, more particularly, Section 4 of the Statehood Act was carefully tailored to accommodate just such a possibility.

As background to a consideration of the provisions of the Statehood Act, it is well first to review the nature of Indian title or aboriginal rights under Federal law.

To that, we now turn.

II

From the earliest days of our history, including the Confederation which preceded the Constitution of the United States, it has been the policy of our Nation to protect the use and occupancy of the aboriginal people. This policy is embodied in a long series of statutes and Supreme Court decisions. Under these statutes and decisions, continuous occupancy of land from time immemorial creates a protected property right as against third parties which the United States alone has the power to extinguish.

As early as 1783, the Congress of the Confederation issued a proclamation prohibiting all persons from making settlement "on lands inhabited or claimed by the Indians", and "from purchasing or receiving any gift or cession of such lands or claim without the express authority and direction of the United States in Congress assembled." 8 Journals of Cong. (1783) (1800 Ed.) 274. The Ordinance of the Northwest Territory provided that the land and the property of the Indians "shall never be taken from them without their consent" and that "their property, rights, and liberty . . . never shall be invaded or disturbed, unless in just and lawful wars authorized by Congress . . ." 1 Stat. 50, 52.

Judicial recognition of Indian possessory rights, based upon aboriginal occupancy, has been consistently expressed in various contexts, from the first announcement of the legal validity of such claims in 1823 in *Johnson* v. *M'Intosh*, 21 U.S. (8 Wheat.) 543 (1823) to the present day. The classic opinion of Chief Justice Marshall in that case defined the status of the original inhabitants as "the rightful occupants of the soil, with a legal as well as just claim to retain possession of it." (p. 574)

In the famous case of *Worcester* v. *Georgia*, 31 U.S. (6 Pet.) 515, 544 (1832), the Supreme Court reiterated the principle that the right of discovery "could not affect the rights of those already in possession", and further stated that under the Indian Trade and Intercourse laws, the Indian communities had territorial boundaries and have a right to all the lands within those boundaries, which is not only acknowledged but guaranteed by the United States.

Again, in *Mitchel* v. *United States*, 34 U.S. (9 Pet.) 711, 745–47 (1835), the Supreme Court declared that "friendly Indians were protected in the possession of the lands they occupied" and "that their right of occupancy is considered as sacred as the fee-simple of the whites."

See also: *Chouteau* v. *Malony*, 57 U.S. (16 How.) 203, 239 (1853); *Holden* v. *Joy*, 84 U.S. (17 Wall.) 211, 244 (1872); *Buttz* v. *Northern Pacific Railroad*, 119 U.S. 55, 66 (1886); *Cramer* v. *United States*, 261 U.S. 219, 227 (1923); *United States* v. *Shoshone Tribe of Indians*, 304 U.S. 111, 117 (1938).

This consistent policy of respect for the Indian right of occupancy was summarized as follows in *United States* v. *Santa Fe Pacific R.R. Co.*, 314 U.S. 339, 345 (1941):

"Unquestionably it has been the policy of the Federal government from the beginning to respect the Indian right of occupancy, which could only be interfered with or determined by the United States."

Shortly thereafter, in *United States* v. *Alcea Band of Tillamooks*, 329 U.S. 40, 46 (1946), the Supreme Court stated that the sovereign's title "was deemed subject to a right of occupancy in favor of Indian Tribes."

Finally, where land is held by aboriginal or Indian title, the ownership of the Natives is the complete beneficial ownership. It includes timber and minerals. In valuing the land, all surface and subsurface resources are to be included under the same rules as would govern the valuation of land held in fee simple title or under "recognized" Indian title. The value of such land is not limited to the value to the primitive occupants relying upon it for subsistence. *United States* v. *Shoshone Indians*, 304 U.S. 111 (1938); *Tlingit and Haida Indians of Alaska* v. *United States*, 389 F. 2d 778 (Ct. Cl. 1968).

As is clear from the cases, the rights embraced in the concept of aboriginal title have different impacts against the United States and against third parties. As against the United States, aboriginal occupancy is subject to the plenary power of the Congress and may be extinguished as Congress sees fit.

As the Supreme Court expressed it in *Santa Fe:*

"Extinguishment of Indian title based on aboriginal possession is of course a different matter. The power of Congress in that regard is supreme. The manner, method and time of such extinguishment raise political not justiciable issues. *Buttz* v. *Northern P.R. Co. supra* (119 U.S. p. 66, 30 L. ed. 334, 7 S. Ct. 100). As stated by Chief Justice Marshall in *Johnson* v. *McIntosh, supra* (8 Wheat. (U.S.) p. 586, 5 L. ed. 691), "the exclusive right of the United States to extinguish" Indian title has never been doubted. And whether it be done by treaty, by the sword, by purchase, by the exercise of complete dominion adverse to the right of occupancy, or otherwise, its justness is not open to inquiry in the courts. *Beecher* v. *Wetherby*, 95 U.S. 517, 525, 24 L. ed. 440, 441. (114 U.S. at 347.)"

Against third parties, however, until and unless extinguished by the United States, aboriginal title or Native occupancy gives the Natives a "legal as well as just claim to retain possession." *Johnson* v. *McIntosh*, 21 U.S. (8 Wheat.) 543, at 574.

The right is judicially enforceable on behalf of the Natives against third parties receiving land from the United States which is subject to a claim of Native occupancy. *Cramer* v. *United States*, 261 U.S. 219 (1923); *United States* v. *Santa Fe Pacific R.R. Co.*, 314 U.S. 339 (1945). Viz-a-viz third parties, the Natives' right of occupancy "is considered as sacred as the fee-simple of the whites." *Mitchel* v. *United States*, 34 U.S. (9 Pet.) 711, at 746.

Grants of public lands to States are not excepted. *Beecher* v. *Wetherby*, 95 U.S. (5 Otto) 517, 24 L. ed. 440 (1877); *In Re Wisconsin*, 19 Land sec. 518 (1894).

In *Beecher*, the Court, while recognizing the right of the United States to transfer to the State of Wisconsin lands subject to the Indians' right of occupancy, nevertheless, made clear that Wisconsin took these lands (they were school lands granted pursuant to the Wisconsin Admision Act, Act of August 6, 1946 (9 Stat. 56)), subject to the right. "The grantee", said the Court, "would take only the naked fee and could not disturb the occupancy of the Indians . . ." (24 L. ed. at 441)

Strikingly similar to the situation in Alaska, the Court in *Beecher* noted that most of the land in Wisconsin at the time of its Admission Act was subject to claims of Native occupancy, and that that right of occupancy extended to the very sections of land involved in the case. While the court concluded that naked legal title had passed to Wisconsin (there was no disclaimer by the State, unlike Section 4 of the Alaska Statehood Act, and by the time the lawsuit occurred, Indian title had been extinguished) the Court recognized that Wisconsin could not take the beneficial interest in the property until the Native title had been extinguished. The Court spoke of the undoubted expectation of Congress that "at no distant day the State would be settled by white people . . . and it contemplated by its benefaction to carry out in that State, as in other States," the policy of devoting Section 16 in every township to educational purposes. 24 L. ed., at 442. The point is, however, that until that United States acted to extinguish the Natives' title, the receiving state was not entitled to the beneficial ownership of the granted lands.[6]

In more recent times, 1941, the Supreme Court reaffirmed the principle that a Federal grantee of lands subject to aboriginal rights takes subject to those rights. *United States* v. *Sante Fe P. R.R. Co.*, 314 U.S. 339. The railroad company was required to account for the benefit of the Indians for all rents, issues and profits derived from the use and leasing of the lands to which the Indians' aboriginal title was sustained. *Sante Fe, supra*, at 359.

Tee-Hit-Tom Indians v. *United States*, 348 U.S. 272 (1955), well illustrates the distinction between the quality of the aboriginal right when asserted by the Indians against the United States, and when asserted by or on behalf of the Natives against a third party. The case is all the more illustrative because it involves Native claims in Alaska.

See also *United States* v. *Sante Fe, supra*, at 347.

In *Tee-Hit-Ton*, the right of the Natives was asserted against the United States; not against third parties. The Indians brought suit in the Court of Claims

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[6] The lands involved in *Beecher* and *In Re Wisconsin* were reservation lands. However, the principle that Indian occupancy is protected against third-party intrusion until and unless extinguished by the United States is applicable in the case of nonreservation as well as reservation lands. See *Cramer* v. *United States*, 261 U.S. 219 (1923), citing both these cases with approval (at 22) and stating (at 229):

"The fact that such right of occupancy finds no recognition in any statute or other formal governmental action is not conclusive. The right, under the circumstances here disclosed, flows from a settled governmental policy."

under 28 U.S.C., § 1505, seeking compensation for the extinguishment by the United States of their rights of occupancy, as a property right entitled to the protection of the Fifth Amendment of the Constitution. The Court concluded that Congress had not to that date recognized the aboriginal occupancy of the Indians as a property right protected by the Fifth Amendment against taking or extinguishment by the Government. Nevertheless, it described that right as amounting to "a right of occupancy which the sovereign grants and *protects against intrusion by third parties.*" *Tee-hit-Ton, supra*, 348 U.S., at 279 (emphasis supplied).

Against this background, we examine the Statehood Act.

III

For the Committee's convenience, the text of Section 4 of the Statehood Act, as originally enacted by Public Law 85–508, is here set out, followed by the relevant provisions of Section 6:

"SEC. 4. As a compact with the the United States said State and its people do agree and declare that they forever disclaim all right and title to any lands or other property not granted or confirmed to the State or its political subdivisions by or under the authority of this Act, the right or title to which is held by the United States or is subject to disposition by the United States and to any lands or other property (including fishing rights), the right or title to which may be held by any Indians, Eskimos, or Aleuts (hereinafter called natives) or is held by the United States in trust for said natives; that [all such lands or other property, belonging to the United States or which may belong to said natives], shall be and remain under the absolute jurisdiction and control of the United States until disposed of under its authority, except to such extent as the Congress has prescribed or may hereafter prescribe, and except when held by individual natives in fee without restrictions on alienation: *Provided*, That nothing contained in this Act shall recognize, deny, enlarge, impair, or otherwise affect any claim against the United States, and any such claim shall be governed by the laws of the United States applicable thereto; and nothing in this Act is intended or shall be construed as a finding, interpretation, or construction by the Congress that any law applicable thereto authorized, establishes, recognizes, or confirms the validity or invalidity of any such claim, and the determination of the applicability or effect of any law to any such claim shall be unaffected by anything in this Act: *And provided further*, That no taxes shall be imposed by said State upon any lands or other property now owned or hereafter acquired by the United States or which, as hereinabove set forth, may belong to said natives, except to such extent as the Congress has prescribed or may hereafter prescribe, and except when held by individual natives in fee without restrictions or alienation (Brackets added.) [7]

"SEC. 6(a) . . . the State of Alaska is hereby granted and shall be entitled to select, within twenty-five years after the date of the admission of the State of Alaska into the Union, from lands within national forests in Alaska which are vacant and unappropriated at the time of their selection not to exceed four hundred thousand acres of land, and from the other public lands of the United States in Alaska which are vacant, unappropriated, and unreserved at the time of their selection not to exceed another four hundred thousand acres of land, all of which shall be adjacent to established communities or suitable for prospective community centers and recreational areas. . . .

"SEC. 6(b). The State of Alaska, in addition to any other grants made in this section, is hereby granted and shall be entitled to select, within twenty-five years after the admission of Alaska into the Union, not to exceed one hundred and two million five hundred and fifty thousand acres from the public lands of the United States in Alaska which are vacant, unappropriated, and unreserved at the time of their selection: . . .

"SEC. 6(g). . . . Where any lands desired by the State are unsurveyed at the time of their selection, the Secretary of the Interior shall survey the exterior

[7] By section 2(a) of the Alaska Omnibus Act (Pub. L. 86–70, June 25, 1959, 73 Stat. 141), the bracketed language was replaced by the phrase "all such lands or other property (including fishing rights), the right or title to which may be held by said natives or is held by the United States in trust for said natives." The change in language was proposed by the Bureau of the Budget in order that property held by the United States in its own right would not be subject to the "absolute jurisdiction and control" provision. See letter of March 24, 1959, from Budget Director Stans to Richard M. Nixon, President of the Senate, appearing in S. Rept. No. 331, 86th Cong., 1st Sess., U.S.C.C. & AN 1697–99.

boundaries of the area requested without any interior subdivision thereof and shall issue a patent for such selected area in terms of the exterior boundary survey; where any lands desired by the State are surveyed at the time of their selection, the boundaries of the area requested shall conform to the public land subdivisions established by the approval of the survey. All lands duly selected by the State of Alaska pursuant to this Act shall be patented to the State by the Secretary of the Interior. Following the selection of lands by the State and the tentative approval of such selection by the Secretary of the Interior or his designee, but prior to the issuance of final patent, the State is hereby authorized to execute conditioned leases and to make conditional sales of such selected lands. . . ."

Let us now examine these provisions in detail for it is upon their meaning that the issue turns.

First is the State's disclaimer. As a compact with the United States, the State forever disclaims all right and title to two distinct classes of property.

The first class of property disclaimed is:

". . . [*A*]*ny lands or other property not granted or confirmed to the State or its political subdivisions by or under the authority of this Act*, the right or title to which *is held* by the United States or is subject to disposition by the United States. . . ." (Emphasis supplied.)

The second class of property disclaimed is the class with which we are here concerned. That class of property is described as:

". . . [A]ny lands or other property (including fishing rights), the right or title to which *may* be held by any Indians, Eskimos, or Aleuts (hereinafter called Natives), or is held by the United States in trust for said natives; . . ." (Emphasis supplied.)

By the next provision of Section 4 (as amended by the Alaska Omnibus Act of 1959), the State and its people agree and declare that:

". . . [A]ll such lands or other property (including fishing rights), the right or title to which *may* be held by said natives, shall be and remain under the absolute jurisdiction and control of the United States until disposed of under its authority, except to such extent as the Congress has prescribed or may hereafter prescribe, and except when held by individual natives in fee without restrictions on alienation. . . ." (Emphasis supplied.)

Two distinctions between the classes of property embraced by Section 4 are at once apparent. First as to property which the United States holds in its own right, the disclaimer speaks of the United States right or title as an existing fact. It is property which *is* held by the United States or which *is* subject to disposition by the United States which the State disclaims. But with respect to the second class of property, i.e., Native claimed property, the State disclaimer is as to those lands or other property, the right or title to which *may be* held by any Natives.

The second distinction is that as to land or other property held by the United States in its own right, Congress expressly provided that the disclaimer would be operative only if there was no grant to the State pursuant to the Act. That is to say, lands or other property of this class which the State might select under Section 6 is free of this disclaimer. Examples are national forest lands selected under Section 6(a), the lands referred to in Section 6 (c) and (d) and property transferred or conveyed under Section 6(e). However, the exception is pointedly omitted in the case of lands that may be subject to Native claims.

What this comes down to is that as between the Natives and the State, the State has, under Section 4, disclaimed any interest as to any lands which *may be* subject to Native claims. And no exception is made in the case of such lands if they are selected by the State under Section 6. This can mean only that until and unless the Congress extinguishes the claim of aboriginal Native title to a particular parcel of land claimed by the Natives, or unless it is established in litigation that the Natives' claim of aboriginal title is not substantiated, or unless the Secretary of the Interior in administrative proceedings properly brought for the purpose of determining the existence or nonexistence of aboriginal title or possessory interest, determines that such claim is not established and his determination is upheld upon judicial review, the State's disclaimer is effective and applicable.

That Section 4 embraces lands claimed by Natives under aboriginal title was settled by the Supreme Court in *Organized Village of Kake* v. *Egan*, 369 U.S. 60 (1962).

In *Kake*, the Court rejected Alaska's argument that the protection afforded the Natives by Section 4 was limited to property owned by or held for Indians under provisions of Federal law. The Court said of Section 4:

"Its concern was to preserve the status quo with respect to aboriginal and possessory Indian claims so that Statehood would neither extinguish them nor recognize them as compensable. 369 U.S. 60, at 65."

In the companion case of *Metlakatla Indian Community* v. *Egan*, 369 U.S. 45 (1962), the Court dealt with the question of whether Section 6(e) of the Alaska Statehood Act, which contemplated transfer to the State of the same measure of administration and jurisdiction over fisheries and wildlife possessed by other States and which provided for the conveyance by the United States of certain properties used for conservation and protection of the fisheries and wildlife of Alaska to the State was subject to the disclaimer provision of Section 4. The Court so held. The Court said of Section 4:

"Clearly this section does not protect only 'recognized' Indian rights—those the taking of which would be compensable by the United States. Committee reports demonstrate the aim of Congress to preserve the status quo as to a broader class of 'right,' including in the case of land, mere possession or occupancy. 369 U.S., at 71."

These cases establish (1) that the land and other property grants and conveyances provided for in Section 6 of the Statehood Act are subject to the States' disclaimer and the retention of control in the United States mandated by Section 4, and (2) that Section 4 embraces claims based upon aboriginal title.

The first proviso of Section 4 gives emphasis to Congress' intent to preserve its freedom of action as against selections by the State of Alaska founded upon Section 6 of the Act.

The proviso establishes that Congress by the Statehood Act was adopting a policy of strict neutrality as to whether the Native rights disclaimed by the State themselves constitute a claim compensable as against the United States. The proviso makes it clear that Congress was not attempting to tip the scales either for or against the Natives in relation to whether they could assert a claim against the United States; that is to say, whether the Natives could enforce the payment of money by the United States for the taking of any Native rights. But, manifestly, the Congress did not extend that neutrality to the State's disclaimer of land claimed by the Natives. In other words, by virtue of the disclaimer Congress retained its absolute jurisdiction and control, i.e., the authority to extinguish or not to extinguish, the authority to convey to the Natives a fee or a more limited interest or to reserve for the Natives a royalty, or not as Congress might decide. But, by reason of the proviso, it took no position on whether the Natives have compensable claims against the United States.

What we are saying, in other words, is that by Section 4 the Congress has preserved, as against the State of Alaska and its selection rights under Section 6 of the Act, full freedom to take whatever future action it might in its wisdom decide. This conclusion, as we have already demonstrated, is apparent on the face of Section 4. It comports with long-established principles applicable to Native or aboriginal title which are discussed and summarized in Part II of this memorandum. Specifically, it comports with the concept expressed by the Supreme Court in *Santa Fe*, *supra*, that the question of extinguishment raises political not justiciable issues. It comports with the concluding observation of the Court in *Tee-Hit-Ton*, *supra*, where the Court said:

"Our conclusion does not uphold harshness as against tenderness toward the Indians, but it leaves with Congress, where it belongs, the policy of Indian gratuities for the termination of Indian occupancy of Government-owned land, rather than making compensation for its value a rigid Constitutional principle. 348 U.S., at 292."

We assert that on the face of Section 4 Congress has reserved the full power to discharge what in *Tee-Hit-Ton* the Court described as "the duties that rest on this Nation."

Finally, we say that on the face of Section 4 Congress has reserved its full power when acting to extinguish Native title in favor of a third part, in this case the State of Alaska, to do so in keeping with the historic policy of this Nation, with due regard for "the rightful occupants of the soil, with a legal as well as a just claim to retain possession of it." *Johnson* v. *M'Intosh*, 21 U.S. (8 Wheat.) 543 (1823).

These conclusions are reinforced by a consideration of the legislative history of the Alaska Statehood Act.

In reporting out H.R. 7999, 85th Congress, 1st Session, which became the Statehood Act, the House Committee on Interior and Insular Affairs said of Section 4:

"Section 4 provides that the State of Alaska and its people forever disclaim all right and title to any lands or other property not granted or confirmed to the State or its political subdivisions by or under the authority of this Admission Act, the right or title to which is held by the United States or is subject to disposition of the United States. This disclaimer likewise applies to any lands or other property (including fishing rights), the right or title to which may be held by any Indians, Eskimos, or Aleuts, or is held by the United States in trust for them. The section also provides that except for property held by Indians, Aleuts or Eskimos in fee without restrictions on alienation, it would be under the jurisdiction and control of the United States and would not be taxable by the State, except as prosecuted [sic] by Congress.

"Finally the section provides that no attempt will be made to deal with the legal merits of the indigenous rights but to leave the matter in status quo for either future legislative action or judicial determination. H. Rept. No. 624, 85th Cong., 1st Sess., at 19."

The explanation of the Senate Committee in reporting out the almost identical Senate version (S. 49) was, if anything, more explicit:

"Section 4 is a compact between the United States and the State of Alaska and its people. The State and its people disclaim all right to property held by the United States or subject to disposition by the United States except the property granted or confirmed to the State or its subdivisions under authority of the act.

"The disclaimer also applies to property which is owned or held by natives, or by the United States in trust for natives, and states that such property remains under the absolute control of the United States, as prescribed by existing *or future acts of Congress*. The disclaimer concerning native property does not apply to property held by individual natives in fee without restrictions on alienation.

"The purpose of the disclaimer is to protect the rights of the Federal Government in public lands which are not disposed of by the act and to protect the rights of the native inhabitants.

* * * * * * *

"The first proviso of section 4 directs that nothing contained in the act shall be construed to effect the existence or validity of any claim against the United States nor be construed as an interpretation of the meaning or application of any Federal law pertaining to such claims. The purpose of the proviso is to leave the legal question as to the existence or validity of any claim against the United States, including native claims, in exact status quo, and to leave the question for subsequent legislation or judicial decision without expressing any opinion or mandate in this act. S. Rept. No. 1163, 85th Cong., 1st Sess. 15." (Emphasis supplied.)

In other words, Congress waived none of its control as to property that might be subject to Native claims, and that control could be as it might prescribe in future acts. This is a clear recognition that Congress retained authority to provide for an overriding royalty from, or the transfer to Native ownership of the fee in, lands selected by the State under Section 6.

The nature of the freedom of action reserved by Congress is further illuminated by the reports of the Congressional Committees reporting out Alaskan Statehood measures in earlier Congresses. Significantly, these earlier bills contained more narrowly drawn disclaimer provisions than those eventually enacted.

In 1948, the House Interior Committee reported out H.R. 5666, which required disclaimer by the State of Alaska of ". . . all lands . . . *owned* or *held* by any . . . Natives, the rights or title to which shall have been acquired through or from the United States or any prior sovereignty. . . ." (Emphasis supplied). In reporting out this bill the Committee offered the following explanation:

"The basic intent of paragraph "Second" of section 3, insofar as it deals with matters affecting the Indians, Aleuts, and Eskimos, is to protect the natives of Alaska against the possibility of infringement of their property rights by the proposed new State, and to maintain unimpaired the authority of the Congress over the use and disposition of native property in Alaska. Provisions to this effect are a customary feature of enabling acts admitting new States to the Union. As proposed to be amended, this paragraph would preserve all existing valid native property rights in Alaska, including those derived from use of occupancy, *together with all existing authority of the Congress to provide for the determination, perfection or relinquishment of native property rights in Alaska.* H. Rept. No. 1731, 80th Cong., 2d Sess, 15." (Emphasis supplied.)

Obviously, "all existing authority of the Congress to provide for the determination, perfection, or relinquishment of native property rights" includes the power to subject selected and tentatively approved lands to an overriding royalty as an element of a final settlement by Congress.

In the following Congress (the Eighty-First), the House Committee reported out H.R. 331 containing an identically worded provision and described it in identical terms (see H. Rep. No. 255, 81st Cong., 1st Sess. 13).

In the course of the Senate Committee hearings on S. 50, 83rd Congress, considerable attention was given to the disclaimer provision. The version of the bill which the Committee reported out limited the disclaimer to property that for a period of at least three years immediately prior to the enactment of the bill had been in the possession and actually in the use or occupancy of any Native. This, of course, is a far more restrictive condition than that eventually enacted.[8] The bill as reported out also continued, for the first time, a proviso essentially identical to the first proviso included in Section 4 of the Act as enacted. The Committee adopted the narrower disclaimed and added the proviso because it was concerned lest the action of Congress might otherwise be construed as going beyond merely avoiding the passing of judgment on the validity or invalidity of Native claims based upon aboriginal title. S. Rep. No. 1028, 83d Cong., 2d Sess. 4.

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[8] Compare the disclaimers in S. 50, 83d Cong., and H.R. 5666, 80th Cong., and H.R. 331, 81st Cong. with the disclaimer as enacted: "* * * Any land * * * the right or title to which may be held by any * * * natives * * *." (Pub. Law 85–508, § 4).

S. 49, 84th Cong., contained a disclaimer similar to S. 50, 83d Cong. Mr. William Zimmerman, representing the Association of American Indian Affairs, appeared at the Senate Committee hearings on S. 49 and submitted a written statement pointing out the difference between the term "owned by" and the phrase "may be held" which appeared in the House bill in the 84th Congress (H.R. 2535). His statement said in part (Hearings, Senate Committee on Interior and Insular Affairs, 84th Cong., 1st Sess., 98–99):

"Section 203, paragraph 'second' of S. 49 would require that the future State of Alaska, in its constitution, stipulate with regard to native rights as follows:

" 'That said state and its people do agree and declare (1) that they forever disclaim all right and title in or to * * * any real property that is *owned by* or, for a period of at least three years immediately prior to the enactment of this act, has been in the possession and actually in the use or occupation of any Indian, Eskimos, Aleut (including any Metlakahtlan Indian or Metlakahtlan), or any community of such natives; and (2) that the title to any such property of * * * such natives shall remain subject to the disposition of or extinguishment by the United States to the same extent as though this act had never been enacted. * * *' [Emphasis supplied.]

"Section 203, paragraph 'second' of the statehood bill under consideration in the House of Representatives (H.R. 2535), on the other hand, would require the future State of Alaska, in its constitution, to stipulate in part as follows: 'That said State and its people do agree and declare that they forever disclaim all right and title * * * to any lands or other property (including fishing rights), the right or title to which *may be held* by any Indians, Eskimos, or Aleuts (hereinafter called natives) or is held by the United States in trust for said natives; that all such lands or other property, belonging to the United States or which *may belong* to said natives, shall be and remain under the absolute jurisdiction and control of the United States until disposed or under its authority * * *." [Emphasis supplied.]

"As the following discussion will demonstrate, the foregoing differences in language are not mere matters of form, but rather have an important bearing upon future native land rights in Alaska.

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"With this background in mind, particularly the failure of Congress to confirm possessory land titles in Alaska, the vital distinction between protecting lands which 'may be held' by natives (H.R. 2535) and protecting lands 'owned' by natives (S. 49) immediately becomes apparent. Real property which 'may be held' by natives would include all lands to which they assert a claim of title, pending a determination of the validity of that claim as promised in the 1884 act; real property which is 'owned' by natives, on the other hand, would not include any lands to which they assert only an unconfirmed claim of title, regardless of the validity of that claim. Because of delay by Congress in recognizing or settling possessory rights in Alaska, therefore, the net effect of the latter provision would be to authorize the State of Alaska to appropriate lands which legally should now belong to native groups and which morally should belong to them until they agree to a sale.

* * * * * * *

"If enacted into law, therefore, S. 49, unlike any previous enabling act, would establish procedures whereby lands claimed by natives may freely be selected and disposed of by a future State, regardless of the validity of those claims.

"This immediate loss of native property interests would be mitigated under the pending bill only by (1) a provision protecting native rights to certain lands owned outright or actually possessed and occupied by them, and (2) an implied promise that at some indefinite time in the future native claims may be adjudicated, and that they may then receive a money judgment from the Federal Government for the lands taken from them and perhaps title to the lands which remain unappropriated. Realistically, the former provision would be of little practical benefit, since the areas covered thereby are relatively small. The latter promise sounds particularly hollow to the natives who want their own lands now and not Federal money later, who already have waited 70 years for the United States to carry out its promises to grant them title to their real property, and who now know that they are not entitled to compensation for the loss of their lands in the absence of a specific legislative direction to pay."

However, while the Committee wanted to make sure that its action would not in itself give rise to a legal claim against the United States or intensify the potential cloud on land titles arising from such claims made in the past, it left no doubt that the Congress would retain full jurisdiction over the future treatment of whatever lands the disclaimer might affect. The Committee said:

". . . [T]o assure a clear title to the State on all land grants, the bill reserves to the United States the customary right of extinguishment of title, along the lines of enabling acts of most of the States recently admitted. Without some such guaranty of a clear title, the committee feels that the grants of land might be of little value."

In other words, to perfect its grant Alaska would require further Congressional action and, of course, that action could extinguish on condition, such as the reservation of a royalty, as well as unconditionally.

Later in the same report, in its sectional analysis of the bill, the Senate Committee was even more specific with respect to the powers reserved by the United States by the disclaimer clause and the proviso.

"Thus the Federal Government would retain for example, all the rights that it now has to extinguish occupancy titles in Alaska. The question of whether such rights should or should not be exercised, however, is left for future legislation. This is in full conformity with the acts providing for the admission of other States with substantial Indian populations (*ibid.*, 30)." (Emphasis supplied.)

It is apparent from these statements, appearing as they do in the carefully prepared Committee reports, that the Congress intended more than the mere preservation of an opportunity for the Natives to bring suit against the United States to recover damages for lands selected by the State under Section 6, or the reservation on its part of a right merely, in the alternative, to legislate a monetary settlement solely at the expense of the Federal Treasury or to vest jurisdiction in some tribunal to hear the Natives' claims and to award compensation solely at Federal expense.

Indeed, if the Congress had merely intended to go no further than that, it need not have bothered with the disclaimer at all. No disclaimer by the State of Alaska would be required if all that Congress had in mind was the preservation of whatever opportunity might otherwise exist under the law for the Natives to recover compensation in a suit against the United States.[9]

As a matter of fact, with the decision in *Tee-Hit-Ton Indians* v. *United States*, 348 U.S. 272 (1955), it was established that, absent some affirmative recognition of the Native claims by Congress, no suit for compensation against the United States would lie. Thus, with *Tee-Hit-Ton* decided before the Congress enacted the Statehood Act, unless the disclaimer preserved Congress' options to deal with selected and tentatively approved lands, the State's disclaimer would have been even more devoid of substance. Obviously, no disclaimer on the State's part is necessary to authorize Congress to sanction a suit against the United States for the recovery of compensation. Nor would a disclaimer add anything to Congress' authority to recognize Native title (i.e., to confer a record title on the Natives) to lands not yet selected by the State. The limitation on the State's selection rights under Section 6(b) to public lands "vacant, unappropriated, and unreserved at the time of their selection" alone would suffice.

In short, no disclaimer is needed to enable Congress to pay out Federal money or, for that matter, to dispose of Federal lands not yet selected or tentatively approved. The State need not disclaim any selection rights in order for Uncle Sam to "pick up the tab", either in money or in land, for the extinguishment of the Natives' claims. The only possible significance of the disclaimer is to preserve Congress' options with respect to selected and tentatively approved lands. For it is only as to such lands that the State could obtain any rights through the exercise of selections under Section 6.

Nowhere in any of the Committee reports on Alaska Statehood legislation can there be found any suggestion that Congress intended by the Statehood Act to extinguish the Native claims and to remit the Natives solely to claims against the United States. Such a construction of the Act would reduce the disclaimer to an illusion; a shimmering mirage retreating into the distance, an ever-beckoning but unrealizable promise.

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[9] At the time the Senate Committee considered S. 50 in the 83d Congress, *Tee-Hit-Ton Indians* v. *United States*, 348 U.S. 272 (1955) had not yet been decided by the Supreme Court. It was uncertain, therefore, whether the aboriginal use and occupancy rights of the Alaskan Natives were compensable as against the United States if extinguished.

Such a construction of Section 4 becomes even more absurd in the face of the fact that as the disclaimer clause evolved over the decade during which the Statehood legislation was considered by Congress, its sweep was considerably broadened.[10]

It would have been completely illogical for Congress, while it was broadening the sweep of the disclaimer, to abandon the legislative gloss its committees had put on the earlier, more narrowly drawn versions.[11]

IV

To this point we have not dealt specifically with that portion of the question which relates to the authority of Congress, without the consent of the State of Alaska, to provide for a royalty in favor of the Natives out of the proceeds received by the United States from the disposition of mineral and surface resources of lands retained by the Federal Government.

Section 28 of the Statehood Act amends the Alaska Coal Leasing Act of 1914 (48 U.S.C. § 439) to provide that the State of Alaska shall receive 90 percent of the revenues derived from the United States from coal leasing thereunder, with the other 10 percent being retained by the United States. Section 28 also amends Section 35 of the Mineral Leasing Act, as amended (30 U.S.C. § 191), to provide that the State of Alaska shall, from revenues derived from leasing under that Act by the United States of Federal lands in Alaska, receive 90 percent, instead of the 37½ percent which that Section apportions to all other states in which the Federal lands giving rise to the revenues are located.

The reason for the more liberal treatment acccorded Alaska is that the Federal Reclamation Laws (Act of June 17, 1902 (32 Stat. 388), and All Acts amendatory thereof or supplementary thereto; 43 U.S.C. § 271, *et seq.*) are not applicable in the State of Alaska. See H. Rep. No. 624, 85th Cong., 1st Sess. 23.

As noted earlier in this memorandum (p. 3, *supra*), it is the position of the Governor and Attorney General Edwards that the Statehood Act limits the sharing of revenues received from mineral leasing to two parties, and two parties only, and that for Congress to provide for a percentage of Alaska would be an alteration of the percentages set out in the Statehood Act which could not be changed without Alaska's consent because these percentages have been made a part of Alaska's Constitution by the terms of the Statehood Act itself.

Attorney General Edwards' exact statement of this proposition as he voiced it in his testimony before the Senate Interior Committee at the August 7 hearing is here set forth for convenient reference:

"As far as it pertains to the Federal Government we say that the Statehood Act did indicate that on revenue received from mineral leasing that it shall be shared with two parties and two parties only, and that is 10 percent to the Federal Government and 90 percent of the State Government of the State of Alaska. And that to say that a percentage of those Federal leasing funds would go to a third party would, in effect, alter that percentage that it set out in the Statehood Act and which is made a part of Alaska's Constitution by the terms of the Statehood Act itself, and which was voted upon by all of the people of the State of Alaska. S. Tr. 304."

To the House Interior Committee, he said, on August 5:

". . . Under the Statehood Act the revenues obtained from the mineral leasing are shared 90 percent to the state and 10 percent to the Federal Government.

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[10] See Footnote 8 *supra*.

[11] In the course of its opinion in *Organized Village of Kake* v. *Egan*, 369 U.S. 60 (1962), the Court described certain legislative history in connection with the 1955 House statehood bill (H.R. 2535, 84th Cong., 1st Sess.) as betokening an understanding among various members of the House Interior Committee that State selection would "leave unimpaired the Indians' right to sue the United States for any compensation that might later be established to be due." *Kake* v. *Egan*, *supra*, at 65–66. The court referred to this legislative history solely as additional evidence for the conclusion it had already reached, to-wit, that section 4 of the Statehood Act covered the natives' aboriginal and possessory claims and not merely, as the State of Alaska had argued, property owned or held by natives under some specific Federal law.

We discuss, *supra*, at pp. 17–18, the controlling significance of the court's holding in *Kake* which establishes that section 4 preserves Congress' options with respect to aboriginal claims. The question of a possible suit against the United States for compensation was not at issue in *Kake* and hence the court's reference to that possibility was at best *dicta*. For reasons set out in the appendix to this memorandum, the court's comment regarding such a possibility cannot be taken as a holding that section 4 of the Statehood Act limits Congress' freedom of action so as to preclude it, when fixing compensation for the natives for extinguishment of their aboriginal claims, from providing an overriding royalty for the natives in lands selected by the State and from setting aside some of those lands for the natives.

To the extent that a bill by Congress would attempt to say that a percentage would go to a different third party, you would obviously be changing that percentage, and that agreement which is embodied in the Statehood Act that a compact [sic] between the Federal Government and the State of Alaska upon statehood and I think it would contravene the provisions of the Statehood Act to that extent. H. Tr. 163."

Obviously, and but for the provisions of the Statehood Act, there could be no question of Congress' authority to modify a formula it itself had established for the distribution of Federal revenues realized from the disposition of minerals on Federally owned land. The power of Congress so to do is plenary under the property clause of the Constitution (U.S. Const., art. IV, § 3, cl. 2). And it can hardly be argued that Congress lacks authority, if it so desires, to modify the distribution of revenues from mineral leasing as to the other states that share in such revenues under Section 35 of the Leasing Act. To put it another way, the power of Congress to increase or decrease the revenue-sharing formula set out in Section 35 of the Mineral Leasing Act, for all states other than Alaska, is hardly open to question.

Attorney General Edwards offered somewhat differing reasons to the House and Senate Committees as to why a different rule should be applicable to Alaska.

To the House Committee he argued that Section 28 of the Statehood Act became a "compact" or "agreement" between the Federal Government and the State of Alaska upon statehood and, therefore, Congress lacks the power to make any changes in revenue distribution in the future.

To the Senate Committee he argued that the Alaska Statehood Act, a Federal Act, is now a part of the Alaskan Constitution, and Congress has thereby been shorn of what would otherwise be its continuing authority to legislate under the grant of power contained in the property clause of the Constitution.

Upon examination, both arguments evaporate.

First, as to the argument that Section 28 of the Statehood Act is a "compact" or "agreement" with the State of Alaska.

A "compact" is a contract, i.e., an agreement, between governmental bodies. *Green* v. *Biddle*, 21 U.S. (8. Wheat.) 1, 92 (1823). On the face of the Statehood Act itself, the only element which constitutes a "compact" between the two parties, as distinguished from a unilateral exercise by Congress of its own legislative authority, is the disclaimer provision of Section 4. Of all the provisions of the Statehood Act, Congress saw fit to describe the disclaimer, and it alone, as "a compact with the United States". And that disclaimer, it might be added, is an agreement by the *State* to limit its actions, not an agreement by the United States to restrict its legislative powers. Thus, the language of the statute itself negates any concept of "compact" or "agreement" on this point.

The simple and complete answer to Mr. Edwards' argument, therefore, is that no compact or agreement exists with respect to Section 28.

But if it be assumed that Section 28 is an agreement, in so far as it affects lands in Alaska to which the Natives assert a claim of aboriginal title, the revenue distribution like all other claims of Alaska would be controlled by the provisions of Section 4 of the Act. If it be Attorney General Edwards' contention that Section 28 vests some sort of property right to the proceeds received by the United States from the disposition of minerals in lands affected by the Natives' claim of aboriginal title, it is perfectly obvious that such a claim of property right, as all other claims of property right asserted by the State under the Statehood Act, must yield to the express mandate of Congress and the express disclaimer of the State, both of which are expressed in Section 4.

Turning now to Mr. Edwards' second argument, that Section 28 is immutable because it has become a part of the State Constitution, it should first be noted that if Section 28 of the Statehood Act is in fact a part of the Constitution of Alaska, it has that status only by virtue of the unilateral action on the State of Alaska.

The Statehood Act itself does not make Section 28 a part of the State Constitution. All that the Statehood Act provides with respect to the incorporation of its provisions into the State Constitution is that in the event the three propositions upon which the people of Alaska were to be required to vote were to be adopted at the election in which they were put to the people, the proposed Constitution of the then proposed State of Alaska was to be deemed amended accordingly. (Section 8).

What were these three propositions? They were :

First: Should Alaska immediately be admitted into the Union as a state?

Second: Should the boundaries as set out in the Statehood Act be approved and all claims of the state to any areas outside such boundaries irrevocably relinquished to the United States?

Third: Should all provisions of the Statehood Act "reserving rights or powers to the United States as well as those prescribing the terms or conditions of the grants of lands or other property therein made to the State of Alaska" be consented to fully by the State of Alaska and its people?

Only the third proposition could possibly be relevant here and it obviously amounted to a waiver by the State of Alaska of power to object to what the United States might do under certain conditions. It hardly constitutes a grant by the United States of authority to the State of Alaska to limit Congress' power over the lands the United States retained.

Turning to the State Constitution itself, again we find nothing that purports to incorporate the provisions of Section 28 into that document.

The only relevant provisions are Sections 12 and 13 of Article II. Section 12 purports to constitute the State's disclaimer which was to be required by Section 4 of the Statehood Act. Parenthetically, it shoulld be noted that the disclaimed as set out in Section 12 of Article XII does not track in all respects with the disclaimer required by Section 4 of the Statehood Act. Section 12, Article XII, of the State Constitution disclaims only as to Native rights or title "as that right or title is defined in the Act of admission." But the Statehood Act does not define Native title. Hence, by reason of the affirmative vote at the election, this provision of the State Constitution must be deemed to have been amended to accord with Section 4 of the Statehood Act. In any event, the disclaimer by the State is hardly a grant of authority from Congress to the State of Alaska giving the State a veto power over what disposition the Congress might in the future make a revenue arising from Federally owned land.

Section 13, Article XII of the State Constitution is merely the consent of the state and its people to be found by those provisions of the Statehood Act which reserve rights or powers to the United States and which prescribe the terms or conditions of the lands and other property grants made to the state. Obviously, neither subject referred to comprehends Section 28 of the Statehood Act.

But, even if we assume that somehow or other the provisions of Section 28 have found their way into the laws of Alaska or its State Constitution, that fact would avail the state nothing. Reduced to its essentials, the argument woulld be that Congress is powerless to change a law dealing with the distribution of Federal funds because the laws and/or Constitution of the State of Alaska prohibit it. But if there be one principle of constitutional law settled above all others, it is that a state cannot, by anything in its laws or its constitution, preclude the Congress from the full exercise of the powers delegated to that body by the Constitution of the United States.[12] The argument of Attorney General Edwards, in short, would turn the supremacy clause of the Federal Constitution [13] upside down.

V

In summary, the Congress has retained full power, authority and jurisdiction:

1. To provide for the reservation and transfer to the Natives of public lands in the State of Alaska, whether or not such lands have been selected by the State under Section 6 of the Statehood Act and whether or not the State's selections have been tentatively approved by the Secretary of the Interior;

2. To reserve a 2-percent overriding royalty from revenues received from the disposition of surface and mineral resources of public lands in the State of Alaska whether or not such lands have been selected by the State under Section 6 of the Statehood Act, and whether or not the State's selections have been tentatively approved by the Secretary of the Interior;

3. To reserve an overriding royalty in favor of the Natives of Alaska from revenues received from the disposition of surface and mineral resources of lands of the United States retained in Federal ownership.

As a matter of law, Congress' authority with respect to public lands in Alaska affected by Native claims extends, in our opinion, to selected lands already patented to the State under Section 6 of the Statehood Act, as well

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[12] *M'Culloch* v. *Maryland,* 4 Wheat. 316 (1819); *Cohens* v. *Virginia,* 6 Wheat. 264 (1821).

[13] U.S. Const., art. VI, cl. 2.

as to selected and tentatively approved lands. However, AFN by its settlement proposals, asks nothing with respect to the patented lands. Nor does AFN, under its settlement proposals, propose to affect existing lessees or lessees under leases that may be entered into by the State or by the United States prior to the enactment of legislation making a fair and equitable settlement of the Native claims.

Obviously, if no legislative settlement materializes, AFN must consider what steps it should take to protect its rights as against third parties holding lands to which Native claims are outstanding. But AFN is firm in the belief that the Congress will exercise the powers it reserved when passing the Statehood Act in order to bring about a fair, equitable and final resolution of its claims, a resolution which will open the way to the wise development and use of these lands and other natural resources for the lasting benefit of all, Natives as well as non-Natives.

AFN's proposals to the Congress have been framed with that objective in mind.

Appendix

In *Organized Village of Kake* v. *Egan*, 369 U.S. 60 (1962), in discussing some of the legislative history of antecedent statehood bills, the Court refers to that history as betokening an understanding among various members of the House Interior Committee that the disclaimer provision would "leave unimpaired the Indian's right to sue the United States for any compensation that might later be established to be due." *Kake, supra*, at 66.

The Court referred to on observation by Delegate Bartlett, appearing at page 135 of the House Interior Committee Hearings during the 84th Congress, 1st Session on H.R. 2535 and related bills (hereinafter referred to as "1955 House hearings"). The date of Delegate Bartlett's testimony was January 28, 1955, significantly, about 10 days before the Court handed down its decision in *Tee-Hit-Ton Indians* v. *United States*, 348 U.S. 272 (1955).

With all due respect to the late Delegate and Senator, an examination of his remarks as they appear on page 135 of the printed transcript of the 1955 House hearings reveals two serious misunderstandings of the law. Mr. Bartlett stated his agreement with Representative Shuford's understandings that under the Statehood bill, Alaska would take granted lands from the United States free of any third party liability and that only the United States would be liable for all claims of the Natives and for damages for any claims arising from the grants to the State. The first understanding, i.e., freedom from third-party liability, is, of course, contrary to the long line of Supreme Court decisions culminating in *Santa Fe* discussed in our memorandum at pages 6–11. The second understanding, i.e., government liability, was soon to be held erroneous by the Supreme Court's decision in *Tee-Hit-Ton*, which came on February 7, 1955.

Moreover, Mr. Bartlett's observation cannot be squared either with the plain words of Section 4 of the Statehood Act, as enacted, words which are in all respects identical with the provisions of the bill then under consideration, nor can they be squared with the unqualified assertions in the Committee reports cited and considered in the text of our memorandum at pages 20–27.

Nor, for that matter, can they be squared with the flat assertions of the House Committee in reporting out H.R. 2535, the bill which was under consideration at the time Mr. Bartlett spoke. At two different points in its report on H.R. 2535, the House Interior and Insular Affairs Committee stated that the matter of indigenous Native rights was being left "in status quo for either future legislative action or judicial determination." H. Rep. No. 88, 84th Cong., 1st Sess., at 28 and 47 (1955).

It is further noteworthy that at page 134 of the 1955 House hearings, Congressman Rogers of Texas, in a colloquy with Mr. Bartlett, expressed the view that unless the suggestion of Representative Edmondson were adopted[1] Alaska would *not* take granted lands unencumbered by outstanding claims. Mr. Rogers said that unless specific provision were put in the bill to "settle the situation so far as land rights are concerned", "there is no telling what could happen" and "we are liable to be faced in the future in Alaska with land problems that will be pretty serious." 1955 House hearings 134.

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[1] Congressman Edmondson's proposal, referred to *infra*, pp. 3–5, was that the Statehood bill include express provisions for an administrative and judicial determination of the validity of the Native claims thereto as a condition to Alaska's selection of any particular lands.

Representative Pillion joined the discussion at that point with the observation that, "Alaska is not in the position of being an innocent purchaser for a valuable consideration. Having knowledge of the claims of the Natives, she just cannot shrug her shoulders and say, 'That is a problem of the United States Government. I am an innocent purchaser for value.' Alaska is not in that position." 1955 House hearings 134.

It is apparent, therefore, that Delegate Bartlett's view of the laws was not necessarily shared by all of his colleagues on the Committee.

The most that can be said of Delegate Bartlett's observation is that it tends to support a conclusion that the disclaimer, whatever else it might mean, was not limited to Native claims based on specific Federal law as distinguished from claims based upon aboriginal use and occupancy. Indeed, it was only for this point that the Supreme Court in *Kake* referred to Mr. Bartlett's view.

As additional evidence that the disclaimer embraced aboriginal claims, the Court also referred to Representative Edmondson's proposed amendment, describing it as intended "to exempt Indian property from the State's selection." But the Court's description is at best an incomplete description of Mr. Edmondson's purpose. What he proposed was an amendment which would have established an administrative procedure which would be applicable to any lands selected by the State to which a Native claim was asserted. A State selection, if claimed by Natives, would not, under his amendment, have been transferred to the State until administrative proceedings had run their course and the Natives' claim established to be invalid. 1955 House hearings 130–133, 358–384. Mr. Edmondson's amendment was rejected.

In offering his amendment, Mr. Edmondson remarked that it might very well be that the adoption of Mr. Westland's amendment, which added to H.R. 2335 what is now the first proviso to Section 4 of the Statehood Act, had made his proposed amendment unnecessary. Nevertheless, he felt impelled to offer it because of a personal commitment he had made.

There then followed the discussion to which the Supreme Court adverted at page 66 of its opinion in *Kake*, which revealed a disagreement among the members of the Committee regarding whether the disclaimer applied to aboriginal claims. Mr. Westland particularly felt that the Native claims were so broad that a requirement for administrative proceedings could "permanently" delay the State's selection process. Mr. Bartlett was concerned that if the Congress placed such responsibility on the Secretary of the Interior there might be extensive delay because of the slow pace of proceedings within that Department.

This discussion, it should be noted, took place one week after the Supreme Court's decision in *Tee-Hit-Ton*.

Mr. Edmondson proceeded to inquire of Mr. Bartlett where, if his amendment was not adopted, the responsibility would rest for effectuating the disclaimer provision. Mr. Bartlett responded that as a result of the *Tee-Hit-Ton* decision, it followed as a matter of natural sequence that "the Congress must, is obligated to, morally and otherwise, enact legislation as soon as possible to set up a mechanism for adjudication for all of these claims". Shortly thereafter, Mr. Bartlett stated his understanding "as a layman" that the Supreme Court in *Tee-Hit-Ton* had held that no land in Alaska was subject to aboriginal claims and "that it will be the generosity of the Congress that gives the Indians anything from here on out." 1955 House hearings 358–383.

It is apparent that Mr. Bartlett misconceived the nature of the Court's decision in *Tee-Hit-Ton*. *Tee-Hit-Ton* decided only that the Natives lacked a compensable claim against the United States. *Tee-Hit-Ton* recognized that under the principle of *Santa Fe*, Native claims are enforceable against third-party holders of lands subject thereto.[2]

At most, the legislative history demonstrates that the Committee was unwilling to include in H.R. 2535 a specific requirement for administrative proceedings as a part of the land selection process.[3] It does not establish an intention on the part of Congress to restrict its authority under the disclaimer clause to enactment of legislation at some time in the future merely authorizing suits against the United States.

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[2] See our memorandum at p. 12.

[3] Shortly before Mr. Edmondson's amendment to this effect was rejected, Mr. Herbert J. Slaughter, Chief of the Reference Branch of the Interior Department's legislative division, a unit of the Solicitor's office, had testified, in effect, that the Secretary of the Interior would possess authority to determine, through administrative hearings, whether lands desired by the State were free of Native claims, because of the limitations on the State selection rights. 1955 House hearings 256–257.

As a matter of fact, in view of what is now the first proviso to Section 4, which Mr. Westland succeeded in having adopted by the Committee in its consideration of H.R. 2535, it is clear that the Statehood Act itself does *not* authorize the bringing of suit by the Natives for compensation against the United States.

Thus, we again are forced to the conclusion that to read the disclaimer as dealing only with suits for compensation would be to rob it of any significance whatsoever.

As was the case with is reference to Delegate Bartlett's comment, the Supreme Court in *Kake* referred to the discussion of the Edmondson amendment only as additional evidence that the disclaimer provision embraced claims of aboriginal title as well as claims founded on specific Federal statutes.

It is apparent that in *Kake* the Court did not critically examine the cited history for purposes of considering whether the Congress, as an element of a final disposition of the Native claims, retained jurisdiction to vest in the Natives rights with respect to selected and tentatively approved lands and a portion of the proceeds of the disposition of the mineral and other resources therein. That issue was not present in *Kake*. Hence, the Court's discussion cannot be regarded as a definitive construction on that point.

Further evidence that the Court could not have intended a definitive disposition of that question is the fact that Justice Frankfurter, the author of the Court's opinion in *Kake*, was also the author of the opinion in *Tee-Hit-Ton*. Had the Court in *Kake* been faced with the question the Congress is now addressing itself to in these hearings, it would certainly have had to consider the impact of *Tee-Hit-Ton*. Yet, the case is not referred to in the *Kake* opinion or in Justice Frankfurter's opinion in the companion *Metlakatla* case. It is significant further that in *Metlakatla*, Justice Frankfurter observed that "compensation was an issue Congress took pains to avoid" in enacting the Statehood legislation. He added, "We need not here explore the remoter reaches of the protection" afforded the Natives by Alaska's disclaimer. 369 U.S. at 58. It can hardly be imagined that having expressly refused to explore all of the implications of the disclaimer clause in *Metlakatla*, Justice Frankfurter would have made that exploration so casually in *Kake*. Yet, if the observation in *Kake* at 369 U.S. 65–66 is to be taken as controlling, this is exactly what Justice Frankfurter would necessarily have to have done.

A BILL To provide for the settlement of certain land claims of Alaska Natives, and for other purposes

Be is enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Alaska Native Claims Settlement Act of 1969."

DECLARATION OF POLICY

SEC. 2. (a) Congress hereby recognizes the claims of Natives and Native villages based upon aboriginal occupancy and use of lands within the State of Alaska, and finds and declares that there is an immediate need for a fair and just settlement of all land claims by such Natives and Native villages and that the purpose of this Act is to effect such settlement by providing:

(1) a grant to each Native village listed in section 10(c) of this Act of title to the village site and additional lands adjacent thereto for community use and expansion;

(2) for the organization of Native corporations and, in order to promote economic self-sufficiency as well as enhance the Natives' present and future welfare, for a transfer of lands and rights to such corporations;

(3) a payment of $500 million, and retention of an overriding royalty, as compensation for Native lands and interests in lands taken in the past or to which Native title will be extinguished by this Act;

(4) authority for individual Natives to acquire ownership of the lands which they use and occupy for homes, businesses, fishing, hunting and trapping camps, and for reindeer husbandry; and

(5) protection of Native subsistence hunting, fishing, trapping and gathering rights and, where it is within the power of the Federal Government, measures for the conservation of subsistence biotic resources.

(b) It is the intent of Congress to carry out the terms of this settlement promptly, with certainty, and in conformity to the real economic and social needs

of Alaska Natives by maximizing the participation by Natives in decisions affecting their rights and property and by vesting in them as rapidly as prudent and feasible control over the lands set aside and corporations organized pursuant to this Act, without (1) establishing any permanent racially defined institutions, rights, privileges or obligations, (2) creating a reservation system or lengthy trusteeship, or (3) ultimately adding to the categories of property and organizations enjoying special tax privileges or to the legislation establishing special relationships between the United States Government and the State of Alaska.

(c) No provision of this Act is intended to replace, diminish or otherwise modify any right, privilege, or obligation of Alaska Natives as citizens of the United States and the State of Alaska, nor to relieve, replace, or diminish any obligation of the United States or the State to protect and promote the rights and welfare of Alaska Natives. The payments and grants authorized under section 5 of this Act constitute compensation for the extinguishment of property rights, and shall not be deemed a substitute for any governmental programs otherwise available to the Natives of Alaska in accordance with the laws applicable to Indian affairs.

DEFINITIONS

SEC. 3. For the purpose of this Act, the term—

(a) "Commission" means the Alaska Native Commission established by this Act;

(b) "Corporation" means the Alaska Native Development Corporation authorized to be established pursuant to this Act under the laws of the United States;

(c) "Fund" means the Alaska Native Compensation Fund established under the terms of this Act;

(d) "Native" means a citizen of the United States who is an Alaska Indian, Eskimo, or Aleut of one-fourth degree or more Alaska Indian, Eskimo, or Aleut blood, or a combination thereof, including any Native as so defined whose adoptive parent is not a Native, and, in the absence of proof of a minimum blood quantum, also any citizen of the United States who is regraded as an Alaska Native by the Native village of which he claims to be a member and whose father or mother is (or, if deceased, was) regarded as Native by such village or any other Native village listed in section 10(c) of this Act;

(e) "Native village" means any village listed in section 10(c) of this Act, and, unless expressly provided herein to the contrary, also any other identifiable tribe, band, clan, group, village or community in the United States which is composed of twenty-five or more Natives, regardless of whether or not resident in a predominantly Native area;

(f) "public lands" means all Federal lands and interests therein situated in Alaska as of the effective date of this Act, including lands selected by, but yet patented to, the State, except the smallest practicable tract (but not less than forty acres), as determined by the Secretary, enclosing improved land actually used in connection with the administration of any Federal installation: *Provided*, That this exception shall not be applicable for purposes of section 14 of this Act;

(g) "regional corporation" means a corporation organized to hold, invest, manage and/or distribute lands, property, funds and other rights and assets for and on behalf of the Natives of a specified region of Alaska in accordance with the terms of this Act;

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

(i) "State" means the State of Alaska; and

(j) "village corporation" means a corporation organized to hold, invest, manage and/or distribute lands, property, funds and other rights and assets for and on behalf of a Native village in accordance with the terms of this Act.

DECLARATION OF SETTLEMENT

SEC. 4. The provisions of this Act shall constitute a full and final settlement and extinguishment of any and all claims against the United States, the State of Alaska and all other persons which are based upon aboriginal right, title, use, or occupancy of land in Alaska by any Native or Native village or claims arising under the Act of May 17, 1884 (23 Stat. 24), or the Act of June 6, 1900 (31 Stat. 321), incldluing all land claims (but not claims based on grounds other than loss of original Indian title land) pending before any court or the Indian Claims Commission on the effective date of this Act.

ALASKA NATIVE COMPENSATION FUND

SEC. 5. (a) There is hereby authorized to be appropriated $500,000,000 as partial compensation to the Natives of Alaska for lands and interests in lands taken in the past or to which their rights and claims are extinguished by this Act, such compensation to be paid into a special Alaska Native Compensation Fund in the Treasury of the United States in accordance with the following schedule:

(1) $100,000,000 during the fiscal year in which this Act becomes effective; and

(2) $50,000,000 per year during the next eight fiscal years, plus interest at the rate of 4 per centum annually upon the unpaid balance of such compensation.

(b) As additional compensation to the Natives of Alaska, there shall be paid into the Fund all revenues derived from the overriding royalty upon the sale, lease or other disposition of public lands in accordance with section 14 of this Act.

(c) Payments under subsections (a) and (b) hereof shall be deemed contractual obligations of the United States enforceable by the Corporation.

(d) All moneys paid into the Fund shall bear interest from the date of deposit at the rate of 4 percent per annum. Until formal organization of the Corporation pursuant to section 8 of this Act, the Secretary may temporarily withdraw moneys from the Fund for investment in short-term obligations of the United States or for deposit with financial institutions in Alaska qualified to receive and hold public funds of the United States: *Provided*, That no such investment or deposit shall be made by the Secretary unless it provides interest at a rate in excess of 4 percent per annum.

(e) Moneys paid or deposited into the Fund shall be permanently paid or distributed for the benefit of the Natives of Alaska only in accordance with the provisions of this Act, and the Secretary of the Treasury shall make such payments and distributions.

ALASKA NATIVE COMMISSION

SEC. 6. (a) The Alaska Native Commission is hereby established. The Commission shall be in existence for twenty years from the date of its first meeting, and shall be composed of five members to be appointed by the President [with the advice and consent of the Senate]. Upon assuming office, each member of the Commission shall become a full-time Federal employee. Not more than three members of the Commission shall be members of the same political party, and at least three members shall be Natives of Alaska. The Federal laws and regulations on conflicts of interest applicable to other Federal employees shall be applicable to the members of the Commission, but this provision shall not be deemed to preclude a Native from serving as a member: *Provided*, That such Native Commissioner shall not participate in any proceeding before the Commission in which his participation would be in conflict with section 208 of title 18, United States Code.

(b) The term of office of members of the Commission shall be five years: *Provided*, That the members first appointed shall serve staggered terms of one, two, three, four and five years, respectively: *And provided further*, That any member appointed to fill a vacancy on the Commission occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term. Upon the expiration of his term of office, a member of the Commission shall continue to serve until his successor has been appointed and has qualified to take office. The President shall choose a Chairman from the Commission's membership, and the Commission may elect by a majority vote of its membership other officers, such as a Vice Chairman, as it may find necessary to perform its functions. A member of the Commission may be removed by the President only for inefficiency, neglect of duty, or malfeasance in office.

(c) The Chairman shall receive compensation at a rate equal to that provided for in level V of the Executive Schedule in section 5316 of title 5, United States Code. The other four Commissioners shall receive compensation at a rate equal to that provided for grade GS–18 in section 5332 of title 5, United States Code.

(d) The principal office of the Commission shall be in Alaska. Whenever the Commission deems that the convenience of the public or the parties may be promoted, or delay or expense may be minimized, or at the request of any party, it may hold hearings or conduct other proceedings at any other place that a majority of the Commission shall direct. The Commission shall have an official seal

which shall be judicially noticed, and which shall be preserved in the custody of the secretary of the Commission.

(e) The Commission shall, without regard to the civil service laws, appoint and prescribe the duties of a secretary of the Commission and such legal counsel as it deems necessary. Subject to the civil servic laws, the Commission shall appoint such other employees as it deems necessary in exercising its powers and duties. The compensation of all employees appointed by the Commission shall be fixed in accordance with chapter 53 of title 5, United States Code.

(f) (1) For the purpose of carrying out its functions under this Act, three members of the Commission shall constitute a quorum and official action may be taken only on the affirmative vote of at least three members, but a special panel composed of one or more members upon order of the Commission may conduct any hearing or other proceeding provided for in this Act and submit the record of such hearing or proceeding to the entire Commission for its action thereon. Such record shall be made available to the parties, and they shall be afforded an opportunity to comment thereon, before any final action of the Commission.

(2) The Commission shall give reasonable notice to the interested parties and an opportunity for them to appear and be heard, and shall afford the parties an opportunity to present evidence before making a final determination upon any protest, claim or other contested matter.

(3) A party to any proceeding before the Commission may appear on his own behalf or be represented by counsel of his own choice.

(g) The Commission shall have power to establish its own rules of procedure. Each official action of the Commission shall be entered in writing, and its hearings and records thereof shall be open to the public.

(h) (1) Any member of the Commission may sign and issue subpoenas for the attendance and testimony of witnesses and production of relevant papers, books, and documents, and may administer oaths. Witnesses summoned before the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. Any person who fails to comply with a Commission subpoena shall be subject to punishment in accordance with section 104 of title 43, United States Code. The Commission may order testimony to be taken by deposition in any proceeding before it and in any stage of such proceeding after reasonable notice is first given in writting by the party or his attorney of record, which notice shall state the name of the witness and the time and place of the taking of his deposition.

(2) The Commission shall have the power to call upon any of the departments or agencies of the United States for any information it may deem necessary for carrying out its functions under this Act.

(3) In any hearing or other proceeding before the Commission, any letter, paper, document, map, transcript or record in the possession of any officer, department, agency or court of the United States or committee of Congress (or a certified copy thereof) may be used in evidence insofar as relevant and material, and every department or agency of the United States having possession thereof shall give full and free access to such letters, papers, documents, maps, transcripts and records to any interested Natives, Native villages, or Native corporations, or their representatives.

(i) Each decision made by the Commission shall show the date on which it was made, and shall bear the signatures of the members of the Commission who concur therein and, upon issuance of a decision under this Act, the Commission shall cause a true copy thereof to be sent by certified mail to all parties and their attorneys of record. When appropriate, each decision also shall include the findings of fact upon which the Commission's conclusions are based, and a statement of its reasons for such findings and conclusions. The Commission shall cause each decision to be entered on its official record together with any written opinion prepared by any members in support of, or dissenting from, any decision.

(j) Any decision issued by the Commission under this section, except decisions with respect to distributions by regional corporations pursuant to section 9(f), shall be subject to judicial review by the United States District Court for the District of Alaska upon the filing in such court within sixty days from the date of such decision of a petition by the party aggrieved by the decision praying that the action of the Commission be modified or set aside in whole or in part. A copy of the petition shall forthwith be sent by registered or certified mail to any other party to the proceeding and to the Commission, and thereupon the Commission shall certify and file in such court the record upon which the decision complained of was based. The court shall hear such appeal on the record

made before the Commission. The findings of the Commission, if supported by substantial evidence on the record considered as a whole, shall be conclusive. The court may affirm, vacate, or modify any decision or may remand the proceeding to the Commission for such further action as it directs. The judgment of the court shall be subject to review by the United States Court of Appeals for the Ninth Circuit, and by the Supreme Court of the United States upon certiorari or certification as provided in section 1254, title 28, United States Code.

(k) The duties and responsibilities of the Commission shall include during the period of its existence:

(1) the issuance of rules and regulations for preparing a final membership roll of Alaskan Natives and a roster of Native villages, which shall be in addition to those Native villages specified in section 10(c), qualified for benefits under this Act;

(2) the determination of eligibility for inclusion on such roll and roster, respectively, and of protests with respect thereto;

(3) the establishment of procedures for maintaining a membership roll for afterborn Native children as provided in section 7(c);

(4) the appointment of the incorporators of the Corporation, and the approval of its articles of incorporation and any amendments thereto before they become effective: *Provided*, That any articles or amendments not disapproved within thirty days after receipt by the Commission shall be deemed to have been approved;

(5) the approval of the articles of incorporation of all regional and village corporations in advance of filing, and of any amendments thereto for a period of ten years after the effective date of this Act: *Provided*, That any articles or amendments not disapproved within thirty days after receipt by the Commission shall be deemed to have been approved;

(6) the review of annual budgets for the Corporation and the regional and village corporations for a period of ten years after the date of organization of each such corporation;

(7) the hearing of, and decision upon, any appeal from a refusal of the Corporation to approve a village plan for the management and expenditure of funds, as provided in section 9(f);

(8) the determination of regional boundaries under section 9(a), the determination of land disputes between Native villages under section 11(c), and disputes relating to land patents arising under section 12(b)(2), and the certification of eligibility for patents under section 12(c); and

(9) the approval of land transactions under section 13.

The Commission shall have the power to issue rules and regulations in furtherance of its duties and responsibilities under this Act.

ENROLLMENT

SEC. 7. (a)(1) In order to facilitate the selection and management of lands, the use of funds and the organization of corporations in furtherance of this Act, the Secretary shall prepare within six months after the effective date of this Act, pursuant to such rules and regulations as he may prescribe, a temporary census roll of all Natives living on December 31, 1969. Such roll shall show with respect to each Native his name, date and place of birth, date and place of parents' birth, degree of Native blood and the village, if any, listed in section 10(c) of this Act of which he is a member. The decision of the Secretary regarding the eligibility of any person for inclusion on the temporary census roll shall be final: *Provided*, That any person listed on an existing membership roll of any Native village shall be presumed to be eligible for enrollment.

(2) Any person listed on the temporary census roll who is nineteen years of age or over at the time of voting shall be entitled to vote in the election of directors for the Corporation, as provided in section 8, in the elections with respect to regional corporations, as provided in section 9, and in the election for the land selection committee of the village, if any, of which he is a member, as provided in section 11. The population of each Native village listed in section 10(c) of this Act, as shown on the temporary census roll, shall be the basis for determining the number of acres of land to which such village and each regional corporation is entitled pursuant to section 11 of this Act. Except as provided in this subsection, however, the temporary census roll shall not be used as a basis for determining the right of any individual, village or corporation to receive funds and property or otherwise to share in the benefits accorded the Natives of Alaska under this Act.

(b)(1) The Commission shall prepare, in accordance with such rules and regulations as it may prescribe; (A) a membership roll of all Natives living on December 31 of the year in which this Act becomes law, within five years after the effective date of this Act; and (B) a roster of Native villages, which shall be in addition to those Native villages specified in section 10(c), eligible for benefits hereunder, within three years after the effective date of this Act. Before any such roll or roster is finally approved by the Commission, it shall be published in the Federal Register and in such other manner as the Commission shall find practicable and effective (including posting in each Native village listed in section 10(c)), and any applicant denied enrollment or omitted from the roster also shall be notified concurrently in writing of the Commission's action and of his right to protest such action.

(2) Within three months after notice of the Commission's action, any person or village denied enrollment or omitted from the roster, as the case may be, shall have the right to protest such denial or omission to the Commission, and within three months after publication in the Federal Register, the Secretary or any Native village listed in section 10(c) shall have the right to protest to the Commission the inclusion of any individual on the membership roll or any village on the roster of Native villages. Any Native village shall have the right to protest a designation of membership therein by a Native on behalf of himself or his children below the age of nineteen under subsection(d) hereof, within three months after publication of the membership roll in the Federal Register. Such protests shall be the subject of a hearing by the Commission and judicial review as provided in section 6 of this Act. The membership roll and village roster prepared by the Commission, as modified after such hearings and judicial review, shall be final and shall be promulgated by publication in the Federal Register.

(c) The Commission shall establish procedures for maintaining a membership roll containing the names of Natives, as defined in section 3(d) hereof, born during the twenty-year period after December 31 of the year in which this Act becomes law. The Commission shall publish lists of such names from time to time in accordance with subsection (b)(1) hereof, and the denial or allowance of enrollment shall be subject to protest in accordance with subsection (b)(2). A person listed on the afterborn membership roll pursuant to this paragraph shall be entitled to the benefits conferred upon the Natives of Alaska under this Act as of the date of his or her birth: *Provided*, That Natives born after December 31 of the year in which this Act becomes law shall not be entitled to membership in the Corporation.

(d) Each Native shall have the right to designate the Native village in which he and his children under the age of nineteen years are to be listed as members and, in the absence of a protest by the named village pursuant to subsection (b)(2) hereof, such designation shall be final. In the event a Native village does protest a designation of membership, the Commission shall determine the village or villages of which the Native and his children under the age of nineteen are members, and the burden of proof of membership shall be upon the individual. In making its determination, the Commission shall give priority to villages in the following order: (1) to the village where the Native resides on December 31, 1969, if such residence has continued without substantial interruption for a period of more than two years; (2) to the village where the Native previously resided for a period or periods which aggregate ten years or more; (3) to the village where the Native was born; (4) to the village where either parent of such Native was born; (5) to the village where the Native resides on Decembr 31, 1969; and (6) to a village from which an ancestor of the Native came: *Provided*, That the Commission, upon the request of any Native, shall have discretion to deviate from the foregoing priorities and declare such person and/or his child under the age of nineteen to be a member of a Native village from which he otherwise would be excluded in order to avoid hardship (such as the division of a family) or any other unreasonable classification.

(e) Any person who gives false information to qualify himself or any other person for inclusion on the temporary census roll or upon a Native membership roll, willfully and with knowledge that such information is false, shall be guilty of perjury and, upon conviction, shall be fined not more than $1,000 or imprisoned not more than a year, or both.

ALASKA NATIVE DEVELOPMENT CORPORATION

SEC. 8. (a)(1) There is hereby created the Alaska Native Development Corporation as a nonprofit membership corporation, which shall have the powers here-

inafter granted. The Corporation shall not be an agency or establishment of the United States Government.

(2) The Commission established pursuant to section 6 of this Act shall appoint five incorporators, one of whom shall be the Chairman of the Commission, who shall prepare the original articles of incorporation for the Corporation in a form consistent with the provisions of this section, and who shall serve as the initial board of directors until the Native members of the board are elected. The incorporators shall file the articles of incorporation, as approved by the Commission, with the Secretary within six months after the effective date of this Act, and the Corporation shall be deemed to be formally organized as of the date of such filing. The incorporators also shall transmit a copy of the articles of incorporation to the Commissioner of Commerce of the State.

(b)(1) The management of the Corporation shall be vested in a board of directors, which with the exception of the initial board, shall consist of twelve members of the Corporation elected by the entire voting membership. Members of the board so elected shall serve for terms of four years or until their successors have been elected and qualified: *Provided*, That among the directors first elected, three shall serve for terms of one year, three shall serve for terms of two years, three shall serve for terms of three years, and three shall serve for terms of four years: *And provided further*, That the directors who serve the short terms shall be determined by a drawing of lots conducted by the initial board. Any director elected to fill a vacancy shall serve only for the period of the unexpired term of the director whom he succeeds. Elections for membership on the board of directors shall be conducted in accordance with procedures (giving due regard, among other matters, to regional and ethnic representation) set forth in the articles of incorporation or by-laws of the Corporation: *Provided*, That the first such election shall be held not less than six months nor more than nine months after the effective date of this Act.

(2) The board of directors shall elect a chairman annually from among its own membership. The board also may appoint a member of the Corporation to fill a vacancy within its membership, but such appointed director shall serve only until the next regular election of directors.

(3) Notwithstanding any other provision of this Act or the articles of incorporation to the contrary, the initial board of directors of the Corporation shall exercise only the following corporate powers: (A) completion of the organization of the Corporation and qualifying it to do business, including but not limited to, the adoption of a corporate seal, the opening of bank accounts, the establishment of a place of business and the rental or acquistion of all necessary offices, furnishings, equipment and supplies related thereto, subject to the condition that no lease shall be for a period in excess of one year; (B) approval of amendment to the articles of incorporation; (C) the appointment of offices of the Corporation, the hiring of other employees and the employment of consultants, accountants and other professional or financial advisers, subject to the condition that no contract of employment shall be for a period in excess of one year; (D) the receipt, investment and distribution of moneys from the Fund in accordance with subsections (e) and (f) hereof; (E) the expenditure of corporate funds to pay for or carry out the activities authorized under this paragraph; and (F) the conduct of the first election for membership on the board of directors.

(c) The Corporation shall have a president, and such other officers as may be named and appointed by the board, at rates of compensation fixed by the board and serving at the pleasure of the board. The president and other officers of the Corporation may, but need not, be members of the board. No officer of the Corporation shall receive any salary from any source other than the corporation during the period of his employment by the Corporation: *Provided*, That an officer of the Corporation who is also a member or employee of the Commission shall be paid only by the Commission. The president shall be responsible for conducting the business and affairs of the Corporation in a manner consistent with the provisions of this Act, the articles of incorporation, and the policies of the board of directors, and shall appoint such other employees as the board deems appropriate.

(d)(1) Until publication of the membership roll in accordance with subsection 7(b)(1) of this Act, the members of the Corporation shall consist of all Natives shown on the temporary census roll prepared pursuant to section 7(a). After publication of the membership roll in accordance with subsection 7(b)(1) and before such roll becomes final in accordance with subsection 7(b)(2), the members of the Corporation shall consist of all Natives shown on the temporary

census roll, and any other Native whose name is listed on the membership roll except an individual whose inclusion thereon is the subject of a pending protest. After promulgation of the final membership roll in accordance with subsection 7(b)(2), the members of the Corporation shall consist of all Natives listed upon such roll, as amended to reflect the death of any individuals so listed, and such other persons as the articles of incorporation may authorize.

(2) The right to vote for directors and on such other matters as properly may be placed before the membership for decision shall be limited to members of the Corporation nineteen years of age or over at the time of voting, and only members eligible to vote shall be counted in determining a quorum.

(e) As soon as the Corporation is formally organized in accordance with subsection (a) hereof, the Secretary of the Treasury shall pay to the Corporation all moneys deposited in the Fund established under section 5 of this Act up to the date of such formal organization, together with accrued interest. Thereafter, on January 1, April 1, July 1 and October 1 of each calendar year, the Secretary of the Treasury shall pay to the Corporation all additional moneys deposited in the Fund up to the date of payment, together with accrued interest. The Secretary of the Treasury also shall furnish to the Corporation each month a statement showing the amount and source of moneys on deposit in the Fund.

(f)(1) Except as otherwise provided in this subsection, the Corporation shall distribute ninety-five percent of all moneys paid to it out of the Fund promptly after the receipt thereof to the regional corporations established pursuant to section 9 of this Act. The amount of money distributed to each regional corporation shall be apportioned in direct relation to the Native population of the region, as shown on the final membership roll promulgated in accordance with subsection 7(b)(2). Moneys received from the Fund which the Corporation must distribute to regional corporations in accordance with this subsection shall not constitute income to the Corporation for any purpose.

(2) Until the membership roll becomes final in accordance with subsection 7(b)(2) of this Act, the Corporation shall distribute only eighty per cent of all moneys paid to it out of the Fund to the regional corporations established pursuant to section 9. The amount of money distributed to each regional corporation shall be apportioned in direct relation to the Native population of the region, before publication of the membership roll in accordance with subsection 7(b)(1) as shown on the temporary census roll prepared in accordance with section 7(a), and after publication of the membership roll in accordance with subsection 7(b)(1) as shown thereon, and appropriate adjustments shall be made in actual distributions to reflect any prior advances, and the relative rights of the regional corporations, under this paragraph: *Provided*, that all distributions made pursuant to this paragraph shall be deemed advances of moneys to which the regional corporations will become entitled upon promulgation of the final membership roll in accordance with section 7(b) and shall not constitute a determination of their relative rights to receive funds or property under this Act. The remaining fifteen per cent of the moneys paid to the Corporation out of the Fund, which are withheld by it pursuant to this paragraph, shall be invested by the Corporation for the benefit of the regional corporations as their interests therein ultimately are determined.

(3) After promulgation of the final membership roll in accordance with subsection 7(b)(2), the Corporation shall distribute all moneys withheld under paragraph (2) hereof (adjusted to reflect earnings or losses from investment), after appropriate adjustments in the amount of actual distributions also to reflect prior distributions and their respective rights in moneys derived from the Fund, to the regional corporations as provided in paragraph (1).

(4) The Corporation shall withhold and invest any moneys due a regional corporation under this subsection until such regional corporation is organized and qualified to do business. For a period of ten years after the date of incorporation, of a regional corporation, the Corporation, with the approval of the Commission, may withhold and invest in trust therefor any moneys due such regional corporation under this subsection if the General Accounting Office audit, provided under section 9(h) of this Act, shows that the regional corporation is violating any provision of this Act or of its articles of incorporation. The trust shall terminate and all moneys so withheld (adjusted to reflect earnings or losses from investment) shall be paid over to the regional corporation upon a determination by the General Accounting Office that the violation has been corrected.

(g) The Corporation shall retain five per cent of all moneys paid to it out of the Fund for carrying on the business and affairs of the Corporation. Notwithstanding any other provision of law or of its articles of incorporation to the contrary, but subject to the provisions of section 15 of this Act, the Corporation during the period after promulgation of a final membership roll in accordance with section 7(b)(2) and before December 31, 1989, may distribute to its then members per capita up to twenty percentum of its share of the moneys paid to it out of the Fund: *Provided*, that the Board shall have discretion with respect to any distribution to members under the age of nineteen either to make such distribution to the parent or guardian of such member, or to withhold distribution until such member attains the age of nineteen.

(h) The Corporation shall be considered a public instrumentality eligible for grants and contracts for planning and development programs which will assist Natives, Native villages and Native corporations under any Federal law. For a period of ten years after the date of its formal organization, the Corporation shall be subject to audit by the General Accounting Office, all amendments to its articles of incorporation must be approved by the Commission as provided in subsection 6(k)(4), and its annual budget shall be subject to review by the Commission.

(i) The Corporation shall have and may exercise all rights and powers vested in a nonprofit membership corporation under the laws of the State of Alaska. In addition, and without limitation upon any of the powers so conferred, the Corporation may—

(1) provide professional, technical, engineering or financial assistance to Natives, Native villages and Native corporations in the selection, use, management, leasing and disposition of lands or interests therein, in the use, investment and expenditure of funds, or in the acquisition, use and disposition of other property;

(2) assist Native villages and Native corporations in the planning and execution of programs for community development, including, but not limited to, housing, the establishment of local industry and thte construction of public works;

(3) enter into contracts with Natives, Native villages and Native corporations for the use, management, investment, economic development or disposition of lands, interests in lands, funds and other property for the benefit of such Natives and Native organizations;

(4) provide loans and grants for the education and relief of distress of individual Natives, or their descendants, and, subject to the provisions of subsection (g) hereof, make distributions per capita to its members;

(5) exercise authority to conduct the business and affairs of any regional corporation shown by the General Accounting Office audit, provided under section 9(h) of this Act, to be violating any provision of this Act or of its articles of incorporation; and

(6) carry out any and all activities directed towards promoting the health, welfare, education and social and economic development of Alaskan Natives and their descendants.

(j) The internal affairs of the Corporation shall be governed in accordance with the laws of the State of Alaska relating to nonprofit membership corporations, except to the extent inconsistent with the provisions of this Act, and except that—

(1) amendments to the articles of incorporation, articles of merger or consolidation, articles of dissolution and annual reports shall be filed with the Secretary and, for a period of ten years after formal organization of the Corporation, also with the Commission, and certified copies thereof shall be transmitted to the State Commissioner of Commerce;

(2) the Corporation shall not be subject to any State licensing requirements, incorporation fees or other corporate charges, except the designation of a registered office and registered agent, and nominal fees for the filing of corporate papers, or to the imposition of States taxes as provided in section 18 of this Act; and

(3) the Corporation shall not be subject to any State law which places a burden or duty upon it greater than is placed upon any other nonprofit membership corporation, or, unless the Corporation so consents, to any State corporate law which is in effect applicable only to the Corporation.

OTHER NATIVE CORPORATIONS

SEC. 9. (a) For purposes of this Act, the State of Alaska shall be divided by the Commission within one year after the effective date of this Act into twelve geographic regions, with each region composed as far as practicable of Natives having a common heritage and sharing common interests. In the absence of good cause shown to the contrary, such regions shall approximate the areas covered by the operations of the following existing Native associations:

(1) Arctic Slope Native Association (Barrow, Pt. Hope);

(2) Bering Straits Association (Seward Peninsula, Unalakleet, St. Lawrence Island);

(3) Northwest Alaska Native Association (Kotzebue);

(4) Association of Village Council Presidents (Southwest Coast, all villages in the Bethel area, including all villages on the Lower Yukon River and the Lower Kuskokwin River);

(5) Tanana Chief's Conference (Koyukuk, Middle and Upper Yukon Rivers, Upper Kuskokwin, Tanana River);

(6) Cook Inlet Asscociation (Kenai, Tyonek, Eklutna, Iliamna);

(7) Bristol Bay Native Association (Dillingham, Upper Alaska Peninsula);

(8) Aleut League (Aleutian Islands, Pribilof Islands, and that part of the Alaska Peninsula which is in the Aleut League);

(9) Chugach Native Association (Cordova, Tatitlek, Port Graham, English Bay, Valdez and Seward);

(10) Tlingit-Haida Central Council (Southeastern Alaska), including Metlakatla;

(11) Kodiak Area Native Association (All villiages on and around Kodiak Island); and

(12) Copper River Native Association (Copper Center, Glennallen, Chitina, Mentasta).

Any dispute over the boundaries of a region or regions shall be determined by the Commission.

(b)(1) There is hereby created a regional corporatiton for each of the regions defined under subsection (a) hereof, which regional corporations shall have the powers hereinafter granted.

(2) The regional corporations established under this subsection shall not be agencies or establishments of the United States Government. The regional corporations shall be considered political subdivisions of the State solely for the purpose of being eligible for grants, loans and contracts for planning, housing assistance, economic development, public works, construction and other programs which will assist Natives, Native villages and Native corporations under any Federal law.

(c)(1) Each regional corporation established pursuant to subsection (b) hereof shall have five incorporators. The incorporators of the regional corporation for each of the twelve regions specifically named in subsection (a) shall be appointed by each named Native association, respectively.

(2) The incorporators shall prepare the original articles of incorporation for the regional corporations in a form consistent with the provisions of this section, subject to the approval of the Commission as provided in subsection 6(k)(4), and shall serve as the initial boards of directors until the members of such boards are elected. The incorporators shall file the articles of incorporation for their respective regional corporations with the Secretary within eighteen months after the effective date of this Act, and the various regional corporations shall be deemed to be formally organized as of the date of such filings; certified copies of such articles of incorporation also shall be transmitted by the incorporators to the State Commissioner of Commerce.

(3) Notwithstanding any other provisions of this Act or the articles of incorporation to the contrary, the initial boards of directors of the regional corporations shall exercise only the corporate powers enumerated in subsection 8(b)(3) and the power to receive, invest and distribute moneys received from the Corporation in accordance with subsection (f) hereof.

(d) The management of each regional corporation shall be vested in a board of directors, all of whom, with the exception of the initial board, shall be stockholders in the corporation over the age of nineteen. The number, terms and method of election of members of the board of directors shall be fixed in the articles of incorporation or by-laws of the regional corporation.

(e)(1) Each regional corporation shall be authorized to have 500,000 shares of common stock, having a par value of ten cents per share, divided into such classes of shares as may be specified in the articles of incorporation to reflect the provisions of section 15 of this Act. Each regional corporation shall issue and have outstanding ten shares of stock for each Native enrolled in the region represented by such corporation as hereinafter provided.

(2) Until publication of the membership roll in accordance with subsection 7(b)(1) of this Act, the stockholders of each regional corporation shall consist of all Natives enrolled in the region represented by such corporation, as shown on the temporary census roll prepared pursuant to section 7(a). After publication of the membership roll in accordance with subsection 7(b)(1) and before such roll becomes final in accordance with subsection 7(b)(2), the stockholders of each regional corporation shall consist of all Natives enrolled in the region represented by such corporation as shown on the temporary census roll, and any other Native whose name is listed under such region on the membership roll except an individual whose inclusion thereon is the subject of a pending protest. Stock held pursuant to this paragraph shall carry a right to vote in elections for the board of directors and on such other questions as properly may be presented to stockholders, and the right to file a stockholder's derivative suit, but shall not vest in the holder any right to dividends or other distributions from the corporation. The parent or guardian of any Native under the age of nineteen on the date of voting shall have the right to vote the stock of such child held under this paragraph or under paragraphs (3) and (4) hereof.

(3)(A) Upon promulgation of the final membership roll in accordance with subsection 7(b)(2), all stock issued pursuant to paragraph (2) hereof shall be deemed cancelled, and thereafter the stockholders of each regional corporation shall consist of all Natives enrolled in the region represented by such corporation, as shown on the final membership roll, supplemented to reflect the addition of Natives listed under such region who are born during the twenty-year period after December 31 of the year in which this Act becomes law, as provided in section 7(c). Except as otherwise provided in subparagraph (B) hereof, stock held pursuant to this paragraph shall carry a right to vote in elections for the board of directors and on such other questions as properly may be presented to stockholders, shall permit the holder to receive dividends or other distributions from the corporation, and shall vest in the holder all rights of a stockholder in a business corporation organized under the laws of the State of Alaska: *Provided*, that the stock and any dividends paid or distributions made with respect thereto may not be sold, pledged, subjected to a lien or judgment execution, assigned in present or future, or otherwise alienated.

(B) Upon the death of any stockholder holding stock in a regional corporation pursuant to paragraphs (2) and (3)(A) hereof, ownership of such stock shall be transferred in accordance with his last will and testament or under the laws of intestacy: *Provided*, That, during the twenty-year period after December 31 of the year in which this Act becomes law, such stock shall carry voting rights only if the holder thereof through inheritance also is a Native. *And provided further*, That in the event the deceased stockholder fails to dispose of his stock in a regional corporation by will and has no heirs under the laws of intestacy, such stock shall escheat to the regional corporation.

(4) On January 1 of the twentieth year after the year in which this Act becomes law, all stock issued pursuant to paragraph (3) hereof shall be deemed cancelled, and shares of stock of the appropriate class shall be issued without restrictions to each stockholder share for share: *Provided*, That the stock of every Native under the age of nineteen, and any dividends paid or distributions made with respect thereto before he reaches the age of nineteen, may not be sold, pledged, subjected to a lien or judgment execution, assigned in present or future, or otherwise alienated (except through inheritance).

(f)(1) Each regional corporation shall set aside, and thereafter report on its financial records and accounts, the first $50,000 it receives from the Corporation as paid-in capital.

(2)(A) Each regional corporation shall be required to organize an affiliated non-profit membership corporation, which shall be devoted to promoting the health, welfare, education and economic and social well-being of the Natives of the region and their descendants, and which shall be authorized, among other purposes, to construct, operate and maintain public works and community facilities, to engage in medical, educational, housing and charitable programs, to make loans and grants consistent with its corporate purposes, to foster industrial

and economic development, and to distrbute funds to individual Natives and their descendants in furtherance of family plans. The members of each such affiliated non-profit corporation shall be the shareholders of the regional corporation which organizes it.

(B) Each regional corporation shall distribute to its affiliated non-profit corporation not more than fifty percent nor less than ten percent of (i) all moneys received by it which are derived from payments under section 5 and (ii) all its other net income.

(C) Notwithstanding any other provision of law or of its articles of incorporation to the contrary, but subject to the provisions of section 15 of this Act, a non-profit corporation organized under this paragraph may distribute to eligible Natives and their descendants in furtherance of family plans not more than twenty per cent of the moneys paid to it by a regional corporation established under subsection (b)(1) hereof.

(D) The provisions of this paragraph (2) shall be enforceable by the Commission or the Corporation.

(3) Except as otherwise provided in this subsection (f), each regional corporation shall distribute eighty per cent of all moneys paid to it by the Corporation, after deduction of any distributions pursuant to paragraph (2) hereof, promptly after the receipt thereof to the village corporations authorized to be established pursuant to this Act. The amount of money distributed to each village corporation shall be apportioned in direct relation to the Native population of the village, as shown on the final membership roll promulgated in accordance with subsection 7(b)(2).

(4) Until the membership roll becomes final in accordance with subsection 7(b)(2) of this Act, each regional corporation shall distribute only seventy percent of all moneys paid to it by the Corporation, after deduction of any distributions pursuant to paragraph (2) hereof, to the village corporations. The amount of money distributed to each village corporation shall be apportioned in direct relation to the Native population of the village, before publication of the membership roll in accordance with subsection 7(b)(1), as shown on the temporary census roll prepared in accordance with section 7(a), and after publication of the membership roll in accordance with subsection 7(b)(1) as shown thereon, and appropriate adjustments shall be made in actual distributions to reflect any prior advances, and the relative rights of the village corporations, under this paragraph: *Provided*, That all distributions made on such basis shall be deemed advances of moneys to which the village corporations ultimately will become entitled and shall not constitute a determination of their relative rights to receive funds or property under this Act. The remaining ten per cent of the moneys paid to each regional corporation by the Corporation, which are withheld by such regional corporation pursuant to this paragraph, shall be invested for the benefit of the village corporations as their interests therein ultimately are determined.

(5) After promulgation of the final membership roll in accordance with subsection 7(b)(2), each regional corporation shall distribute all moneys withheld under paragraph (4) hereof (adjusted to reflect earnings or losses from investment), after appropriate adjustments in the amount of actual distributions also to reflect prior distributions and their respective rights in such moneys, to the village corporations as provided in paragraph (3). A regional corporation shall withhold and invest in trust any moneys due a village corporation under this subsection until such village corporation is organized and qualified to do business.

(6) Notwithstanding the provisions of paragraphs (3)–(5) hereof, a regional corporation shall not distribute any money, except reasonable sums required for planning purposes, to a village corporation until the village corporation has developed an initial five-year program for the management, investment and expenditure of such funds, and such program has been approved by the Corporation: *Provided*, That a failure or refusal of the Corporation to approve a village program within ninety days after its receipt may be appealed to the Commission, and the Commission's decision thereon shall be final. After approval of its initial five-year program, each village corporation shall be entitled to distributions from the regional corporation in accordance with this subsection (f), subject to Commission review of its budget pursuant to subsection (j). Each regional corporation shall invest in trust all moneys withheld from a village corporation under this paragraph until the village five-year program is approved.

(7) Moneys received from the Corporation which a regional corporation distributes to or withholds for the benefit of a village corporation, or distributes to

its affiliated non-profit corporation, in accordance with this subsection shall not constitute income to such regional corporation for any purpose.

(g)(1) subject to the provisions of subsection (f), each regional corporation shall retain the moneys paid to it by the Corporation for carrying on the business and affairs of such regional corporation.

(2) Each regional corporation shall be entitled to fifty per cent of the net proceeds derived from the sale, lease, permit, development, use or other disposition of lands, interests in lands, and minerals to which it acquires a patent under subsection 12(b)(3) and (4) of this Act. The remaining fifty per cent of such net proceeds shall be distributed among all the other regional corporations in direct proportion to the Native population of such other regions, as shown on the final membership roll promulgated in accordance with subsection 7(b)(2).

(3) Moneys distributed pursuant to paragraph (2) hereof shall not constitute income of the regional corporation making such distribution, but shall constitute income of the receiving regional corporation subject to taxation on the same basis as like income is taxed when received by any other business corporation.

(h) For a period of ten years after the date of its formal organization, each regional corporation shall be subject to audit by the General Accounting Office, all amendments to its articles of incorporation must be approved by the Commission, and its annual budget shall be subject to review by the Commission.

(i) Each regional corporation shall have and may exercise all rights and powers vested in a business corporation under the laws of the State of Alaska. The internal affairs of such corporations shall be governed in accordance with the laws of the State of Alaska relating to business corporations, except to the extent inconsistent with the provisions of this Act, and except that—

(1) amendments to the articles of incorporation, articles of merger or consolidation, and articles of dissolution shall be filed with the Secretary and certified copies thereof shall be transmitted to the State Commissioner of Commerce;

(2) annual reports shall be filed with the Secretary and, for a period of ten years after formal organization of the regional corporation, also with the Commission, and certified copies thereof shall be transmitted to the State Commissioner of Commerce;

(3) the regional corporation shall not be subject to any State licensing requirements, incorporation fees or other corporate charges, except the designation of a registered office and registered agent, and nominal fees for the filing of corporate papers, or to the imposition of State taxes as provided in this section and section 18 of this Act; and

(4) the regional corporation shall not be subject to any State law which places a burden or duty upon it greater than is placed upon any other business corporation, or, unless the regional corporation so consents, to any State corporate law which is in effect applicable only to one or more regional corporations.

(j) Subject to the provisions of subsection (k) hereof, each Native village may organize as a corporation under the laws of the State of Alaska, or of any other State or the District of Columbia, or in accordance with any applicable Federal law. The articles of incorporotion for any Native village so organized shall be subject to the approval of the Commission, and for a period of ten years after the date of its organization, all amendments to the articles of incorporation must be approved by the Commission and its annual budget shall be subject to review by the Commission.

(k) The articles of incorporation for each Native village shall include the following provisions—

(1) all persons shown as members of the Native village on the final membership roll prepared in accordance with section 7(b) of this Act shall be entitled to membership or to ownership of stock, as the case may be, in the village corporation: *Provided*, That the articles of incorporation also may, but need not, authorize the cancellation of memberships or stock and the issuance of new memberships or stock to reflect deaths and births, respectively, during the twenty-year period after December 31 of the year during which this Act becomes law;

(2) for a period of at least twenty years after the effective date of this Act, membership in a village corporation shall be limited to Natives and their descendants, and stock in a village corporation and any dividends paid or distributions made with respect thereto shall not be sold, pledged, subjected to a lien or judgment execution, assigned in present or future, or otherwise alienated (except through inheritance); and

(3) the village corporation may distribute to eligible Natives and their descendants per capita or in furtherance of family plans not more than twenty per cent of the moneys paid to it pursuant to subsection (f) hereof by a regional corporation.

WITHDRAWAL OF PUBLIC LANDS

SEC. 10. (a) Public Land Order Numbered 4582, 34 Federal Register 1025, is hereby revoked.

(b) (1) There are hereby withdrawn, subject to valid existing rights, from selection by the State and from all forms of appropriation under the public land laws, including the mining and mineral leasing laws, all public lands in each township as shown on current plats of survey or protraction diagrams of the Bureau of Land Management, or protraction diagrams of the State where protraction diagrams of the Bureau of Land Management are not available, which encloses all or part of any Native village listed in subsection (c) hereof, plus all public lands in each township which is contiguous to or corners upon the township or townships in which such Native village is located.

(2) In the event fewer than nine townships are withdrawn around a Native village pursuant to paragraph (1) because of the location of such village on an island, along the coast or near an international boundary, there shall be and hereby are withdrawn, in order of proximity to the center of such Native village, and on the same terms and conditions specified in paragraph (1), one or more additional townships, contiguous (except as separated by bodies of water or by lands unavailable for withdrawal) to the withdrawn townships until a total of nine townships has been withdrawn.

(c) The following Native villages are qualified for land withdrawals under the provisions of subsection (b) :

NAME AND PLACE OF REGION
Akhiok, Kodiak.
Akiachak, Southwest Coastal Lowland.
Akiak, Southwest Coastal Lowland.
Akutan, Aleutian.
Alaganik, Gulf of Alaska.
Alakanuk, Southwest Coastal Lowland.
Aleknagik, Bristol Bay.
Alatna, Koyukuk-Lower Yukon.
Allakaket, Koyukuk-Lower Yukon.
Ambler, Bering Strait.
Anaktuvuk Pass, Arctic Slope.
Andreafsey, Southwest Coastal Lowland.
Angoon, Southeast.
Aniak, Southwest Coastal Lowland.
Anvik, Koyukuk-Lower Yukon.
Arctic Village, Upper Yukon-Porcupine.
Atka, Aleutian.
Attu, Aleutian.
Atkasook, Arctic Slope.
Barrow, Arctic Slope.
Beaver, Upper Yukon-Porcupine.
Belkofsky, Aleutian.
Bethel, Southwest Coastal Lowland.
Bill Moore's, Southwest Coastal Lowland.
Biorka, Aleutian.
Birch Creek, Upper Yukon-Porcupine.
Brevig Mission, Bering Strait.
Buckland, Bering Strait.
Candle, Bering Strait.
Cantwell, Cook Inlet.
Canyon Village, Upper Yukon-Porcupine.
Chalkyitsik, Upper Yukon-Porcupine.
Chanilut, Southwest Coastal Lowland.
Chefornak, Southwest Coastal Lowland.
Chenenga, Gulf of Alaska.
Chevak, Southwest Coastal Lowland.

Chignik, Kodiak.
Chignik Lagoon, Kodiak.
Chignik Lake, Kodiak.
Chilcat, Gulf of Alaska.
Chistochina, Copper River.
Chukwuktoligamute, Southwest Coastal Lowland
Circle, Upper Yukon-Porcupine.
Clark's Point, Bristol Bay.
Copper Center, Copper River.
Cordova, Gulf of Alaska.
Craig, Southeast.
Crooked Creek, Upper Kuskokwim.
Deering, Bering Strait.
Dillingham, Bristol Bay.
Dot Lake, Tanana.
Eagle, Upper Yukon-Porcupine.
Eek, Southwest Coastal Lowland.
Egegik, Bristol Bay.
Eklunta, Cook Inlet.
Ekwok, Bristol Bay.
Ekwok, Bristol Bay.
Elim, Bering Strait.
Ellanar, Gulf of Alaska.
Emmonak, Southwest Coastal Lowland.
English Bay, Cook Inlet.
Eyak Village, Gulf of Alaska.
False Pass, Aleutian.
Fort Yukon, Upper Yukon-Porcupine.
Gakona, Copper River.
Galena, Koyukuk-Lower Yukon.
Gambell, Bering Sea.
Georgetown, Upper Kuskokwim.
Golovin, Bering Strait.
Goodnews Bay, Southwest Coastal Lowland.
Grayling, Koyukuk-Lower Yukon.
Gulkana, Copper River.
Haines-Port Chilkoot, Southeast.
Hamilton, Southwest Coastal Lowland.
Haycock, Gulf of Alaska.
Holichuk, Koyukuk-Lower Yukon.
Holy Cross, Koyukuk-Lower Yukon.
Hoonah, Southeast.
Hooper Bay, Southwest Coastal Lowland.
Hughes, Koyukuk-Lower Yukon.
Huslia, Koyukuk-Lower Yukon.
Hydaburg, Southeast.
Igiugig, Bristol Bay.
Iliamna, Cook Inlet.
Inalik, Bering Strait.
Ivanof Bay, Aleutian.
Juneau, Southeast.
Kake, Southeast.
Kaktovik, Arctic Slope.
Kalskag, Southwest Coastal Lowland.
Kaltag, Koyukuk-Lower Yukon.
Karluk, Kodiak.
Kasaan, Southeast.
Kashiga, Aleutian.
Kasigluk, Southwest Coastal Lowland.
Katalla, Gulf of Alaska.
Kenai, Cook Inlet.
Ketchikan, Southeast.
Kiana, Bering Strait.
King Cove, Aleutian.
Kipnuk, Southwest Coastal Lowland.
Kivalina, Bering Strait.
Klawock, Southeast.
Klukwan, Southeast.

Kobuk, Bering Strait.
Koliganek, Bristol Bay.
Kokhanok, Bristol Bay.
Kongigonak, Southwest Coastal Lowland.
Kotlik, Southwest Coastal Lowland.
Kotzebue, Bering Strait.
Koyuk, Bering Strait.
Koyukuk, Koyukuk-Lower Yukon.
Kwethluk, Southwest Coastal Lowland.
Kwigillingok, Southwest Coastal Lowland.
Lake Manchumina, Koyukuk-Lower Yukon.
Larsen Bay, Kodiak.
Latauche, Gulf of Alaska.
Levelock, Bristol Bay.
Lime Village, Upper Kuskokwim.
Livengood, Koyukuk-Lower Yukon.
Lower Kalskag, Southwest Coastal Lowland.
McGrath, Upper Kuskokwim.
Makok, Koyukuk-Lower Yukon.
Makushin, Aleutian.
Manley Hot Springs, Tanana.
Manokotak, Bristol Bay.
Mansfield Village, Koyukuk-Lower Yukon.
Marshall, Southwest Coastal Lowland.
Mary's Igloo, Bering Strait.
Medfra, Upper Kuskokwim.
Mekoryuk, Southwest Coastal Lowland.
Mentasta Lake, Copper River.
Metlakatla, Southeast.
Minchimina Lake, Upper Kuskokwim.
Minto,Tanana.
Moses Point, Gulf of Alaska.
Mountain Village, Southwest Coastal Lowland.
Mummy Island, Gulf of Alaska.
Nabesna Village, Tanana.
Naknek, Bristol Bay.
Napaimute, Upper Kuskokwim.
Napakiak, Southwest Coastal Lowland.
Napaskiak, Southwest Coastal Lowland.
Nelson Lagoon, Aleutian.
Newhalen, Cook Inlet.
Nenana, Tanana.
New Stuyahok, Bristol Bay.
Newtok, Southwest Coastal Lowland.
Mightmute, Southwest Coastal Lowland.
Nikolai, Upper Kuskokwim.
Nikolski, Aleutian.
Ninilchik, Cook Inlet.
Noatak, Bering Strait.
Nome, Bering Strait.
Nondalton, Cook Inlet.
Nooiksuit, Arctic Slope.
Noorvik, Bering Strait.
Northeast Cape, Bering Sea.
Northway, Tanana.
Nulato, Koyukuk-Lower Yukon.
Nunapitchuk, Southwest Coastal Lowland.
Ohogamiut, Southwest Coastal Lowland.
Old Harbor, Kodiak.
Oscarville, Southwest Coastal Lowland.
Ouzinkie, Kodiak.
Paradise, Koyukuk-Lower Yukon.
Paulof Harbon, Aleutian.
Pedro Bay, Cook Inlet.
Perryville, Kodiak.
Petersburg, Southeast.
Pilot Point, Bristol Bay.

Pilot Station, Southwest Coastal Lowland.
Pitkas Point, Southwest Coastal Lowland.
Platinum, Southwest Coastal Lowland.
Point Hope, Arctic Slope.
Point Lay, Arctic Slope.
Portage Creek (Ohgsenakale), Bristol Bay.
Port Ashton, Gulf of Alaska.
Port Graham, Cook Inlet.
Port Lions, Kodiak.
Port Heiden (Meshik), Aleutian.
Port Nellie Wayn, Gulf of Alaska.
Quinhagak, Southwest Coastal Lowland.
Rampart, Upper Yukon-Porcupine.
Red Devil, Upper Koskokwim.
Ruby, Koyukuk-Lower Yukon.
Russian Mission (Kuskokwim) (or Chauthaluc), Upper Kuskokwim.
Russian Mission (Yukon), Southwest Coastal Lowland.
St. George, Aleutian.
St. Mary's, Southwest Coastal Lowland.
St. Michael, Bering Strait.
St. Paul, Aleutian.
Salamatof, Cook Inlet.
Sand Point, Aleutian.
Savonoski, Bristol Bay.
Savoonga, Bering Sea.
Saxman, Southeast.
Scammon Bay, Southwest Coastal Lowland.
Selawik, Bering Strait.
Seldovia, Gulf of Alaska.
Seward, Gulf of Alaska.
Shageluk, Koyukuk-Lower Yukon.
Shaktoolik, Bering Strait.
Sheldon's Point, Southwest Coastal Lowland.
Shishmaref, Bering Strait.
Shungnak, Bering Strait.
Sitka, Southeast.
Skituk, Cook Inlet.
Slana, Copper River.
Sleetmute, Upper Kuskokwim.
Solomon Council, Gulf of Alaska.
South Naknet, Bristol Bay.
Squaw Harbor, Aleutians.
Stebbins, Bering Strait.
Stevens Village, Upper Yukon-Porcupine.
Stony River, Upper Kuskokwim.
Tanacross, Tanana.
Tanana, Koyukuk-Lower Yukon.
Tatitlet, Gulf of Alaska.
Telida, Upper Kuskokwim.
Teller, Bering Strait.
Tetlin, Tanana.
Togiak, Bristol Bay.
Toksook Bay, Southwest Coastal Lowland.
Tuluksak, Southwest Coastal Lowland.
Tuntutuliak, Southwest Coastal Lowland.
Tununak, Southwest Coastal Lowland.
Twin Hills, Bristol Bay.
Tyonek, Cook Inlet.
Ugashik, Bristol Bay.
Unalakleet, Bering Strait.
Unalaska, Aleutian.
Unga, Aleutian.
Uyak, Kodiak.
Valdezan, Gulf of Alaska.
Venetie, Upper Yukon-Porcupine.
Wainwright, Arctic Slope.

Wales, Bering Strait.
White Mountain, Bering Strait.
Wiseman, Koyukuk-Lower Yukon.
Wrangell, Southeast..
Yakutat, Southeast.

(d) There are also hereby withdrawn, subject to avoid existing rights, from selection by the State and from all forms of appropriation under the public land laws, including the mining and mineral leasing laws, all public lands within sections 5–8, inclusive, of every township in the State of Alaska not otherwise withdrawn pursuant to this section.

SELECTION OF PUBLIC LANDS

SEC. 11. (a) (1) Each Native village listed in section 10(c) is hereby granted and shall be entitled to select, within eighteen months after the effective date of this Act, a total of 92,160 acres or 500 acres per member, as shown on the temporary census roll prepared pursuant to section 7(a), whichever amount is greater, from the lands withdrawn in accordance with section 10: *Provided*, That a Native village having a reserve set aside for its use or benefit prior to the effective date of this Act shall have a right to select such reserve in accordance with section 15 (b) and (c).

(2) Where the Native villages within any region of Alaska, as defined in section 9(a) of this Act, are entitled to select in the aggregate less than five per cent of the total land area of such region, such villages are hereby granted and shall be entitled to select, within eighteen months after the effective date of this Act, such additional amount of land as is necessary to increase their aggregate entitlement to five per cent of the total land area of such region. Selection rights under this subsection shall be apportioned among the various Native villages of a region in direct relation to the population thereof, as shown on the temporary census roll prepared in accordance with section 7(a).

(3) In exercising its selection rights pursuant to paragraphs (1) and (2), a village shall first select from among the public lands withdrawn pursuant to section 10(b), and all such selections shall be contiguous and in reasonably compact tracts, except as separated by bodies of water or by lands which are unavailable for selection, and, wherever feasible, shall be in units of not less than 1,280 acres. In the event the public lands withdrawn pursuant to section 10(b) are not sufficient in amount to satisfy the entitlement of any Native village under paragraphs (1) and (2) hereof, such village may select non-contiguous tracts from among the public lands withdrawn pursuant to section 10(d), in order of their proximity to the center of the village, until its selection rights are exhausted.

(b) If a Native village possesses a council, board of directors or other governing body recognized by the Secretary as having authority to act for such village, and which is both composed of and elected exclusively by Natives, such council, board or governing body is hereby authorized to exercise the land selection rights of its village. In the absence of a recognized council, board of directors or other governing body of a Native village listed in section 10(c), the Secretary shall hold an election for such village, under such rules and regulations as he may prescribe, at which a five-man village land selection committee shall be chosen, and the committee so elected is hereby authorized to exercise the land selection rights of its village. The Secretary shall hold all village elections hereunder within one year after the effective date of this Act, and the persons entitled to vote therein or serve on the land selection committee shall be the members of each Native village nineteen years of ago or over, as shown on the temporary census roll prepared pursuant to section 7(a).

(c)(1) Where two or more Native villages, because of proximity in location, are entitled to select lands in the same townships and actually select the same lands, their respective village councils, boards, governing bodies or land selection committees, as the case may be, shall be authorized to settle the overlap by negotiation and, in furtherance of any such settlement, to release selected lands to each other. A Native village at any time may, and, if the villages which are parties to the overlap do not reach agreement within six months after the date such overlap arises, the Secretary shall, refer the overlap to the Commission for decision in accordance with section 6 of this Act. The Commission shall award the land, or portions thereof, to the village or villages shown historically to have made greater use and occupancy thereof by a preponderance of the evidence, or in such manner as will do substantial justice.

(2) A Native village which releases selected lands in order to settle an overlap, or which loses selected lands under a Commission award in accordance with paragraph (1), shall be entitled to select additional public lands pursuant to subsection (a)(3) until its selection rights are exhausted, and, notwithstanding the provisions of subsection (e) hereof, all townships withdrawn under section 10(b) around a Native village which is a party to a selection overlap shall remain in withdrawn status until three months after final settlement of the overlap or a final decision of the Commission concerning such overlap, including any appeal.

(d) The regional corporations created pursuant to section 9(b) of this Act are hereby granted and shall be entitled to select, during the period beginning eighteen months and ending ten years after the effective date of this Act, from the public lands withdrawn in accordance with section 10(d), such amount of land as represents the difference, if any, between 40,000,000 acres and the total acreage by Native villages under this section and section 15 hereof. Selection rights under this subsection shall be apportioned among the various regional corporations in direct relation to the population of the Native villages within each region, as shown on the temporary census roll prepared in accordance with section 7(a): *Provided*, That, in exercising selection rights under this subsection, each regional corporation may give consideration to the needs of Native villages which are entitled to select an area of land substantially smaller than the acreage actually used by such villages for subsistence hunting, fishing and gathering on the effective date of this Act.

(e) Except as otherwise provided in subsection (c)(2) hereof, all public lands withdrawn pursuant to section 10(b), which have not been selected by a Native village under this section, shall be restored eighteen months after the effective date of this Act, or six months after the election required under subsection (b) hereof, whichever later occurs, to the status in which such lands had been placed prior to the effective date of this Act: *Provided*, That any such lands previously included within a reserve revoked pursuant to section 15(a) hereof shall be restored to the public domain. All public lands withdrawn pursuant to section 10(d), which have not been selected by a Native village or regional corporation under this section, shall be restored ten years after the effective date of this Act to the status in which such lands had been placed prior to the effective date of this Act.

CONVEYANCE OF LANDS

SEC. 12. (a) The Secretary shall promptly survey the townships withdrawn under section 10(b) and the areas selected for conveyance to Native villages and regional corporations pursuant to the provisions of sections 11 and 15 of this Act, but need monument only the exterior boundaries of these townships or areas. He also shall promptly survey (1) within the townships withdrawn or areas selected all lands occupied as a primary place of residence, a primary place of business, subsistence campsites, reindeer grazing grounds, and for other purposes as required under subsection (b)(2) hereof, and (2) any other land to be patented under this Act.

(b)(1) Upon completion of the survey of lands selected by a Native village, as provided in subsection (a) hereof, the Secretary promptly shall issue a patent or patents to such village to the land and all interests therein, except minerals covered by the mining and mineral leasing laws, subject to valid existing rights, and subject to the provisions of paragraph (2) hereof: *Provided*, That the Secretary shall hold the lands and interests in lands to which the village may be entitled in trust until such village organizes as a corporation or otherwise qualifies to own real property. At the time of conveyance, the village corporation shall succeed and become entitled to any and all interests of the United States or the State, as lessor or landowner, in any leases, permits, contracts of rights-of-way covering the lands.

(2) Upon receipt of a patent or patents to selected lands, a Native village—

(A) shall issue deeds to the occupants, without payment of any consideration, to the surface of tracts occupied by Natives on Sepember 1, 1969, as a primary place of residence, as a primary place of business, for subsistance campsites (up to five acres per individual or forty acres per group), or for reindeer husbandry (up to 2500 acres per individual and a maximum of five tracts per village), subject to valid existing rights;

(B) shall issue deeds to the occupants, upon payment of the fair market value for such property, to the surface of tracts occupied by non-Natives on September 1, 1969, as a primary place of residence or a primary place of business, subject to valid existing rights;

(C) may issue deeds to the occupants, either in the discretion of the village without consideration or upon payment of an amount not in excess of fair market value for such property, to the surface of tracts occupied on September 1, 1969, by non-profit organizations for the purposes for which organizations were established, subject to valid existing rights: *Provided*, That all non-profit organizations of the same general character shall be accorded similar treatment with respect to payment for land; and

(D) may issue deeds to the occupants upon payment of the fair market value for such property, to the surface of tracts occupied on September 1, 1969, subject to valid existing rights.

Any dispute over the boundaries, use, occupancy or value of any tract which is covered by this paragraph may be submitted by any party to such dispute to the Commission for decision.

(3) Upon completion of the survey of lands selected by a Native village, as provided in subsection (a) hereof, the Secretary promptly shall issue a patent or patents to all minerals covered by the minning and mineral leasing laws, subject to valid existing rights, to the regional corporation for the region in which such village is located. At the time of such conveyance, the regional corporation shall succeed and become entitled to any and all interests of the United States or the State, as lessor, in any mineral leases covering such lands.

(4) Upon completion of the survey of lands selected by a regional corporation, as provided in subsection (a) hereof, the Secretary promptly shall issue a patent or patents to such corporation to the land and all interests therein, including minerals covered by the mining and mineral leasing laws, subject to valid existing rights. At the time of such conveyance, the regional corporation shall succeed and become entitled to any and all interests of the United States or the State, as lessor or landowner, in any leases, permits, contracts or rights-of-way covering such lands.

(c) Nothing in this Act, except the withdrawal of public lands pursuant to section 10, shall repeal, modify or otherwise affect the right of any Native to acquire public lands of the United States under the Native Allotment Act of May 17, 1906 (34 Stat. 197), as amended. In addition (upon application to the Commission within ten years after the effective date of this Act, and upon certification by the Commission that such application is valid and proper, the Secretary shall issue a patent to the Native applicant, subject to valid existing rights, without payment therefor, to the surface of public lands outside the areas withdrawn pursuant to section 10(b) and patented pursuant to section 12(b)—

(3) which have been used by a Native nineteen years of age or over as a primary place of residence or business for one year prior to the date of application to the Commission: *Provided*, That such patent shall be up to, but shall not exceed, 160 acres: *And provided further*, That such patent shall include title to minerals subject to the mining laws, but not to the mineral leasing laws.

Pending the issuance of a patent under this paragraph, the Secretary may permit continued use of the lands for the purposes upon which the application for patent is based. The Secretary shall apply the rule of approximation with respect to acreage limitations set forth in this paragraph.

(d) (1) Where, prior to patent of any land under subsection (c), a lease, contract, or permit has been issued for the utilization of surface or mineral resources covered under such patent (including a lease issued under section 6(g) of the Statehood Act), the patent shall contain provisions making it subject to the lease, contract, or permit and the right of the lessee, contractee, or permittee to the complete enjoyment of all rights, privileges, and benefits granted him by such lease, contract, or permit. Upon issuance of the patent, the patentee shall succeed and become entitled to any and all interests of the United States or the State, as lessor, contractor, or permitter, in any such leases, contracts, or permits covering the surface or minerals patented.

(1) which have been used by a Native or group of Natives for a period of more than three years immediately prior to the effective date of this Act as a campsite for the harvesting of fish, wildlife, berries, fuel, or other products of the land: *Provided*, That such patents shall be issued (A) for five-acre tracts for each subsistence use campsite separate from the campsite of any other applicant, (B) for forty-acre tracts where the campsites of several applicants are in such proximity to each other as to make it not feasible to patent individual five-acre campsites, or (C) for larger tracts, not to exceed sixty acres, where individuals can establish, under such

rules and regulations as the Commission may prescribe, historic occupancy and use of the larger tracts; or

(2) which have been used by a bona fide reindeer husbandryman, family, or village community reindeer association or group, which was practicing reindeer management on the effective date of this Act: *Provided*, That such patents shall be up to, but shall not exceed, 2560 acres, may include more than one tract, and shall cover only lands that have been leased, permitted, or used for reindeer management purposes, including summer and winter range facilities and intervening line camps, for at least three years prior to the date of application to the Commission; or

(2) The Secretary shall provide as a condition to the granting of each permit to prospect, or to the granting of each lease to mine or drill for minerals covered by the mineral leasing laws, which minerals are situated in lands patented pursuant to subsection (c), and are not covered by such patent, that the permittee or lessee shall provide a bond, satisfactory to the Secretary, to indemnify the surface patentee for any damages which such permittee or lessee may cause in connection with the development of such permit or lease, and further the Secretary shall include provisions in such lease or permit which will protect the surface patentee against unreasonable interference in the enjoyment of his land.

ADMINISTRATION OF LANDS

SEC. 13. (a) Village and regional corporations may exchange lands, interests in lands and water rights with each other, or with the State or the United States, and the Secretary, the Secretary of Agriculture and the Secretary of Defense, under such rules and regulations as they respectively may prescribe may exchange land, interests in lands and water rights under their jurisdiction with village and regional corporations, for the purpose of effecting land consolidations or for facilitating the management or development of land. Exchanges of lands, interests in lands and water rights hereunder shall be made on the basis of equal value, and the value of improvements on lands shall be given due consideration and allowance made therefor in any valuation: *Provided*, That either party to an exchange under this subsection may pay or accept cash in order to equalize the values of the properties exchanged.

(b) Pending the selection by a Native village or regional corporation pursuant to sections 11 or 15 of public lands withdrawn in accordance with section 10, or the restoration of such lands to the status in which they had been placed prior to the effective date of this Act, the Secretary may take such actions as shall be necessary to administer, manage and protect such withdrawn public lands: *Provided*, That the Secretary shall not sell or otherwise permanently dispose of lands or interests therein, except as provided in this subsection: *And provided further*, That the Secretary shall not, without the consent of the village or regional corporation for the benefit of which the land was withdrawn, issue, enter into or renew any lease, contract or permit covering withdrawn lands which will be in effect more than eighteen months after the effective date of this Act. The Secretary, with the approval of the Commission, and in accordance with such rules and regulations as he shall prescribe, may grant an easement or right-of-way for a public purpose over, across, under or through withdrawn public lands on condition that the grantee of such easement or right-of-way: (1) shall provide a bond, satisfactory to the Secretary, in an amount sufficient to pay the fair market value of any interest it acquires in lands subsequently selected by a Native village or regional corporation; and (2) shall agree to conserve the natural resources of the land, including fish and wildlife, and to protect the surface owner from unreasonable interference in the enjoyment of his land. All payments or revenues attributable to the use or other disposition of withdrawn lands selected by a Native village or regional corporation, after deducting the cost of administration thereof, shall be paid by the Secretary to such village or corporation.

(c) After the selection by a Native village or regional corporation pursuant to sections 11 or 15 of public lands withdrawn in accordance with Section 10, but before the issuance of a patent thereto under section 12, such village or corporation shall have a right to lease or dispose of the lands and interests in lands so selected, including minerals, on the same terms and conditions (except that approval shall be by the Commission rather than by the Secretary) as an Indian tribe organized under section 16 of the Act of June 18, 1934 (25 U.S.C. sec. 476; 48 Stat. 987), may dispose of unallotted lands and interests therein,

including minerals, to which its title has been recognized by treaty or statute: *Provided*, That easements or rights-of-way for public purposes may be acquired within such lands by condemnation in accordance with the laws of the State. For purposes of this subsection, the board of directors of the regional corporation, and the council, board of directors or other governing body recognized by the Secretary as having authority to act for a Native village, shall have the same rights, powers, duties and authority as a tribal council possesses in acting for an organized tribe; the village land selection committee, elected pursuant to section 11(b) of this Act, shall be authorized to exercise the same rights, powers and authority, and assume the same duties, if the Secretary and the Corporation both approve. Notwithstanding any other provision of law, all payments or revenues attributable to the leasing or other disposition of selected lands in accordance with this subsection shall be paid directly to the Native village or regional corporation, as the case may be.

(d) After the patenting of selected lands pursuant to section 12 of this Act, the village and regional corporations may hold, manage, lease or dispose of such lands and interests therein, including minerals, in accordance with the laws of the State: *Provided, however*, That for a period of ten years after the effective date of this Act, any sale (other than a sale pursuant to section 12(b)(2), mortgage, surface lease for a term (including renewals) of more than fifty years, grant of a permanent easement or right-of-way, or gift of such lands, or interests in lands, shall require the approval of the Commission in order to be valid. Land deeded to a non-Native individual or organization by a Native village pursuant to section 12(b)(2), and land sold by a village or regional corporation to any person or entity other than a Native, the Corporation, or another village or regional corporation shall not be exempt from taxation pursuant to section 18(c) of this Act as of the date of such deed or sale.

ROYALTY ON DISPOSITION OF PUBLIC LANDS

SEC. 14. (a)(1) Except as provided in subsection (b) hereof, disposition of all deposits of coal, phosphate, sodium, potassium, oil, oil shale, gas, or sulphur located in public lands in Alaska and of all deposits of any other minerals located in such lands, which the Congress may hereafter authorize to be disposed of by sale or lease, after the effective date of this Act shall be only under such competitive bidding procedures, using oral or sealed bidding or a combination thereof, as the Secretary may prescribe by regulation. The provisions of the Mineral Leasing Act of February 25, 1920, as amended and supplemented (41 Stat. 437, 30 U.S.C. sec. 181 and following), and the Mineral Leasing Act for Acquired Lands (30 U.S.C. sec. 351 and following) shall apply to the extent that such provisions are not inconsistent with this Act.

(2) All revenues derived from rentals and bonuses upon disposition of such minerals during the period beginning January 1, 1969, and ending on the effective date of this Act, shall be distributed as provided in the Statehood Act of July 7, 1958 (72 Stat. 339), except that, prior to calculating the shares of the State and the United States as set forth in such Act, two per cent of such proceeds shall be deducted and paid into the Fund. From the royalty received by the State or the United States, as the case may be, under each lease for the disposition of such minerals entered into during the same period, an amount equal to two per cent of the gross value of the minerals (as the gross value thereof is determined for royalty purposes under the lease involved) also shall be deducted and paid into the Fund, and the respective shares of the State and the United States in such royalty shall be calculated on the remaining balance. The provisions of this paragraph shall be enforceable by the United States for the benefit of the Natives.

(3) All leases or other dispositions of such minerals made after the effective date of this Act shall provide: (A) that a royalty of two per cent upon the gross value of any minerals produced (as that gross value is determined for royalty purposes under such lease or other disposition) shall be paid into the Fund; and (B) that two per cent of all revenues derived from rentals and bonuses upon disposition of such minerals shall be deducted and paid into the Fund prior to calculating the respective shares of the State and the United States in such proceeds under the Statehood Act.

(b) The Secretary, with the concurrence of the Secretary of Defense, may dispose of deposits of coal, phosphate, sodium, potassium, oil, oil shale, gas, or sulfur located within naval petroleum reserve numbered 4 either upon application therefor or upon his own motion only under such competitive bidding

procedures, using oral or sealed bidding or a combination thereof, as the Secretary may prescribe by regulation. The provisions of the Mineral Leasing Act of February 25, 1920, as amended and supplemented, shall apply to the extent that such provisions are not inconsistent with this Act. All leases or other dispositions of such minerals made in accordance with this subsection shall provide: (1) that a royalty of two per cent upon the gross value of any minerals produced (as that gross value is determined for royalty purposes under such lease or other disposition) shall be paid into the Fund; (2) that two per cent of all revenues derived from rentals and bonusues upon disposition of such minerals shall be deposited in the Fund; and (3) that the remaining proceeds from the disposition of such minerals be returned as miscellaneous receipts to the Treasury of the United States.

(c) There shall be paid into the Fund two per cent of all revenues derived by the United States from the sale or lease of surface resources located on public lands in Alaska, except lands withdrawn under section 10 of this Act, from the disposition by the Secretary or the Secretary of Agriculture of mineral or vegetative materials pursuant to the Act of July 31, 1947 (61 Stat. 681), as amended, or from the disposition of timber or other resources within any National Forest by the Secretary of Agriculture.

(d) The royalties provided under this section shall not operate to exclude lands subject thereto from selection by the State under the Statehood Act of July 7, 1958 (72 Stat. 339), if such lands otherwise are available for selection. Every patent of public lands issued to the State of Alaska under the Statehood Act after the effective date of this Act, however, shall expressly reserve for the benefit of the Natives: (1) a royalty of two percent upon the gross value (as such gross value is determined for royalty purposes under any lease or other disposition by the State) of the minerals defined in subsection (a) hereof produced or removed from such lands; (2) a right to receive two percent of all revenues derived by the State from rentals and bonuses upon disposition of such minerals; and (3) a right to receive two percent of all other revenues derived by the State from the sale, lease, permit or other disposition of such lands or the mineral and vegetative resources therein. Such royalty and other revenues shall be paid into the Fund and shall be distributed or withdrawn therefrom only in accordance with this Act. In the event of default by the State of Alaska in making such payments, and in addition to any other remedies provided by law, there shall be deducted annually and deposited in the Fund the amount of any underpayment, to be taken first from the share of mineral revenues from public lands in Alaska paid as Federal grants-in-aid to the State and, if such share is insufficient, from any other funds paid to the State of Alaska by the United States.

REVOCATIONS OF RESERVATIONS; EXCEPTIONS

SEC. 15. (a) Notwithstanding any other provisions of law, and except where inconsistent with the provisions of this Act, the various reserves set aside by legislation or by Executive or Secretarial Order for Native use or for the administration of Native affairs, including reserves created under the Act of May 31, 1938 (52 Stat. 593), are hereby revoked, subject to any valid existing rights: *Provided*, That lands within any reserve which is revoked pursuant to this subsection shall be deemed to be public lands as of the effective date of this Act and subject to withdrawal in accordance with section 10 hereof.

(b) (1) Notwithstanding any other provisions of law or of this Act, in lieu of any right to the withdrawal, selection and conveyance of lands pursuant to sections 10–12, inclusive, each Native village may vote, in accordance with the procedures established under section 11(b), to acquire title to the reserve or reserves set aside for its use or benefit prior to the effective date of this Act.

(2) Lands within the various reserves described in subsection (a) shall remain withdrawn from selection by the State and all other forms of appropriation under the public land laws, including the mining and mineral leasing laws, until the Native village for which it was set aside decides whether to acquire title thereto pursuant to this subsection or section 10–12, inclusive, and, in the event of an affirmative decision to revoke this subsection, until the Secretary issues a patent in accordance with such decision: *Provided*, That the Secretary shall hold the lands and interests in lands to which each village may be entitled in trust until such village organizes as a corporation or otherwise qualifies to own real property. A village shall acquire the same rights, title and interest in

lands under this subsection as other Native villages acquire pursuant to sections 10–12, inclusive.

(c) Nothwithstanding any other provisions of law or of this Act, and in lieu of any right to the withdrawal, selection and conveyance of lands pursuant to sections 10–12, inclusive, the Native village of Tyonek may vote, in accordance with the procedures established under section 11(b), to acquire title to the Moquawkie Reserve set aside by Executive Order of February 27, 1915. In the event Tyonek decides to acquire title to the Moquawkie Reserve in accordance with this subsection: (1) the Secretary shall issue a patent to such Native village to all lands and interests in lands (including oil, gas and other minerals) within such Reserve, subject to valid existing rights; and (2) the Native village of Tyonek and its members shall be entitled to share in the compensation paid pursuant to section 5 hereof, but shall not be entitled to any other benefits accorded the Natives of Alaska under this Act.

(d) In the event the tract to which a Native village acquires title pursuant to subsections (b) or (c) hereof is smaller than the area of land to which the village otherwise would be entitled under sections 10–12 of this Act, such village may select and obtain a conveyance of additional lands pursuant to such sections in an amount sufficient, with lands acquired under this section, to equal its entitlement.

(e) The Annette Islands Reserve established by the Act of March 3, 1891 (26 Stat. 1101), is hereby granted to the Native village of Metlakatla, and such village shall have no right to the withdrawal, selection or conveyance of lands pursuant to sections 10–12, inclusive. The Native village of Metlakatla and any persons who qualify for enrollment as Alaska Natives solely because of their Tsimshian Indian blood shall not be entitled to share in the compensation paid pursuant to section 5(a) hereof, but shall be entitled to all other benefits accorded the Natives of Alaska under this Act. In addition to the rights conferred under section 16, Metlakatla and its members shall have the right for a period of fifty years to fish for commercial purposes within the Annette Islands Reserve in accordance with such rules and regulations as the Secretary may prescribe.

(f) Nothing in this Act shall repeal, modify or otherwise affect the right of the Secretary to establish a townsite on St. Paul Island or the right of Natives of the Pribilof Islands to acquire title to tracts therein pursuant to the Act of November 2, 1966 (80 Stat. 1094).

PROTECTION OF SUBSISTENCE RESOURCES

SEC. 16. (a) Notwithstanding any provision of Federal or State law to the contrary, the Natives of Alaska shall have a right to hunt, fish, trap, gather fuel and pick berries or other natural food products for subsistence purposes on lands withdrawn for their benefit or to which any Native village or regional corporation acquires title pursuant to sections 10–12, inclusive, or section 15 hereof, and also on public lands of the United States, including lands selected by the State under the Statehood Act of July 7, 1958 (72 Stat. 339), for a period of one hundred years after the effective date of this Act, subject to the case of public lands to such reasonable restrictions as the Secretary or the head of the State or Federal agency having jurisdiction over such lands may impose: *Provided*, That such subsistence right shall terminate with respect to land patented to third parties on the date of the patent or twenty-five years after the effective date of this Act, whichever later occurs.

(b) For a period of twenty-five years after the effective date of this Act, the Secretary, upon petition by any individual residing in Alaska or by the Department of Fish and Game of the State of Alaska, shall, after a public hearing, and under such rules and regulations as he may prescribe, determine whether or not an emergency exists with respect to the depletion of subsistence biotic resources in any given area of the State and may thereupon delimit and declare that such area will be closed to entry for hunting, fishing, or trapping, except by residents of such area, subject to the provisions of any treaty concerning such resources. The closing authorized by this section shall not be for a period of more than five years, but may be extended by the Secretary after hearing, and a published finding that the emergency continues to exist. Any person knowingly hunting, fishing, or trapping in such area, except a resident thereof, may, upon conviction, be required to forfeit any gear, vehicle, boat, or aircraft used in connection with such violation, and shall, upon conviction, be subject to a fine of not more than $1,000, or to imprisonment for not more than a year, or both.

ATTORNEYS' FEES AND EXPENSES

SEC. 17. There are authorized to be appropriated to the Secretary such sums as may be necessary to pay—

(a) all reasonable attorneys' fees and out-of-pocket expenses incurred by or on behalf of any Native, Native village or other Native tribe, band or group under a contract approved by the Secretary in the actual prosecution of a claim pending before any court or the Indian Claims Commission which is dismissed pursuant to this Act: *Provided*, that the amount of such fees and reimbursable expenses shall be determined in accordance with such contract or, if the contract does not provide for compensation in the event of a dismissal, by the Secretary on a quantum meruit basis; and

(b) all reasonable attorneys' fees and out-of-pocket expenses incurred by or on behalf of any Native village, tribe, band, group or association, including the Alaska Federation of Natives, for legal representation with respect to the scope and preparation of this Act and previously proposed legislation to settle claims against the United States or the State based upon aboriginal right, title, use or occupancy of lands by the Natives in Alaska, or with respect to litigation (excepting the cases covered under subsection (a) hereof) involving the validity of or otherwise affecting such claims: *Provided*, That the amount of such fees and reimbursable expenses shall be subject to approval of the Secretary in accordance with the terms of the attorneys' contracts: *And provided further*, That services by the attorneys for which compensation previously has been paid shall be eliminated from consideration in determining the fees payable hereunder.

TAXATION

SEC. 18. (a) The compensation paid to the Natives of Alaska pursuant to section 5(a) of this Act, and any interest earned with respect thereto while such funds are deposited in the Fund or are invested by the Secretary pursuant to section 5(d), shall not be subject to any form of Federal or State taxation either (1) at the time of receipt, or (2) upon distribution to any Native corporation or individual Native, whether directly by a per capita payment or indirectly through such corporations. For purposes of this subsection, the first dividend payments or other cash distributions made by any Native corporation shall be deemed to be distributions out of its share of funds derived from section 5(a), including interest, until such share has been fully distributed.

(b) The compensation paid to the Natives pursuant to section 5(b) of this Act, and any interest earned with respect thereto while such funds are deposited in the Fund, shall not be subject to any form of Federal or State taxation either (1) at the time of receipt, or (2) upon distribution to any Native corporation or individual Native, whether directly by a per capital payment or indirectly through such corporation or corporations, for a period of twenty years after the effective date of this Act. For purposes of this subsection, the first dividend payments or other cash distributions made by any Native corporation, after the distribution of compensation paid pursuant to section 5(a) in accordance with subsection (a) hereof, shall be deemed to be distributions out of its share of funds derived from section 5(b), including interest, until such share has been fully distributed. After the expiration of the foregoing twenty-year period, the compensation paid to the Natives pursuant to section 5(b), and any interest with respect thereto while such funds are deposited in the Fund, shall not be subject to Federal or State income taxation at the time of receipt, but shall be subject to such taxation upon distribution to any Native or Native corporation on the same basis as like income is taxed when received by a non-Native individual or corporation.

(c) Lands withdrawn for the benefit of a Native village or to which it acquires title pursuant to sections 10–12, inclusive, or section 15 hereof, lands to which a regional corporation acquires title pursuant to section 12, and mineral rights to which any Native corporation acquires title pursuant to sections 12 or 15 hereof, shall be exempt from State and local real property taxes for a period of fifty years after the effective date of this Act: *Provided*, That municipal taxes or assessments may be imposed upon individually-owned real property within its jurisdiction by any Native village incorporated as a governmental unit under the laws of the State of Alaska: *And provided further*, That easements, rights-of-way, leaseholds and similar interests in such real property may be taxed in accordance with State or local law. All rents, royalties, profits,

and other revenues or proceeds derived from such lands and mineral rights shall be taxable to the same extent as such revenues or proceeds are taxable when received by a non-Native individual or corporation.

(d) Lands withdrawn for the benefit of a Native village or to which it acquires title pursuant to sections 10–12, inclusive, or section 15 of this Act, and lands to which a regional corporation acquires title pursuant to section 12, shall, so long as the fee therein remains not subject to State or local taxes on real estate, continue to be regarded as public lands for the purpose of computing the Federal share of any highway project pursuant to title 23 of the United States Code, as amended and supplemented, and so long as there are also no substantial revenues from such lands, continue to receive forest fire protection services from the United States at no cost.

REVIEW BY CONGRESS

SEC. 19. On or before March 1 of each year during the twenty years following the effective date of this Act, the Commission and the Secretary, respectively, shall submit reports to Congress concerning the operation and implementation of this Act during the previous calendar year. Within ninety days after the end of each five-year period following enactment of this Act, the Commission and the Secretary also shall submit to Congress, through the President, a joint report on the status of the Natives and their organizations, a summary of actions taken under this Act, and their respective recommendations as may be appropriate for extension, amendment or clarification of any provisions of this Act. This joint report and the Commission's annual report shall include as an appendix all statements, memoranda, reports and other written comments presented to the Commission for forwarding to Congress by any Native village, corporation or association.

APPROPRIATIONS

SEC. 20. There is authorized to be appropriated to the Commission and the Secretary, respectively, such sums as may be necessary to carry out the functions and responsibilities that they are required to perform under the provisions of this Act. Such sums shall remain available until expended.

PUBLICATION

SEC. 21. The Commission and the Secretary are authorized to issue and publish in the Federal Register, pursuant to the Administrative Procedures Act (5 U.S.C. sec. 500 and following), such rules and regulations as may be necessary to carry out the purposes of this Act.

SAVINGS CLAUSE

SEC. 22. Except at specifically provided for in this Act, nothing in this Act shall be construed as repealing any other provision of Federal law applicable to Alaska. To the extent that a conflict may exist between any provision of this Act and any other Federal laws applicable to Alaska, the provisions of this Act shall govern.

(Subsequent to the hearings, the following brief was supplied by Mr. G. Kent Edwards, attorney general, State of Alaska, in answer to the assertions by the Alaska Federation of Natives:)

STATE OF ALASKA,
DEPARTMENT OF LAW,
OFFICE OF THE ATTORNEY GENERAL,
Juneau, October 6, 1969.

HON. HENRY M. JACKSON,
Chairman, Committee on Interior and Insular Affairs,
U.S. Senate, Washington, D.C.

DEAR SENATOR JACKSON: Certain assertions made by counsel for the Alaska Federation of Natives in their memorandum of September 10, 1969, regarding the legality of an overriding royalty for Alaska natives, appear to require further comment by the State of Alaska in order to place the issues in their proper perspective. In furtherance of this end, I am forwarding herewith a copy of the State's brief on file in the case of *State of Alaska* v. *Stewart L. Udall*, now pending in the United States Court of Appeals for the 9th Circuit. The matter con-

tained on pages 15–21 and 54–58 of the brief will shed light on certain questions revelant to A.F.N.'s contentions.

The controversy does not center upon whether Alaskan natives may be compensated for taking of their claimed ancestral lands, but whether the United States may compensate them by taking a royalty out of lands already granted in fee to the State of Alaska by enactment of Section 6 of the Statehood Act and, as to federal lands, by reducing the portion of royalty granted to the State in such lands by the Statehood Act.

The A.F.N. asserts that such royalty may be taken from the State in order to compensate Alaskan natives. The basis of this position is not clear, however. At pages 16–17 of its memorandum A.F.N. appears to conclude that the disclaimer provision of Section 4, Statehood Act, prevents the State from selecting land claimed by natives until Congress extinguishes aboriginal title. Of course, this is plainly untenable. Committee hearings leading to passage of the Statehood Act, as well as the interpretation of that Act by the U.S. Supreme Court in *Organized Village of Kake* v. *Egan*, 369 U.S. 60 (1962), make it clear that lands claimed by natives were included in the grant of lands to the State in the Act. This is discussed at pages 15–21 of the attached brief.

Elsewhere, at pages 19 and 22 of its memorandum, A.F.N. seeks to reach this same result by interpreting the disclaimer as a retention by the United States of the absolute power to take back from the State a royalty in native-claimed lands granted to the State and selected under the Act, or even to take back the whole fee title in order to satisfy native claims. A.F.N. contends (at page 39 of its memorandum) that this power exists as to lands already patented to the State as well as the tentatively approved or unapproved but selected lands. This conclusion is fundamentally misconceived. It would virtually destroy the right of the State to select native-claimed land (which includes nearly all the land in Alaska), a result not intended by Congress, as already noted.

The ambiguity of A.F.N.'s position springs from its misunderstanding of Section 4 of the Statehood Act which is quoted in pertinent part at pages 15–16 of the attached brief. Under that section the State and its people "forever disclaim all right and title" to native-claimed lands. This was very definitely not intended to prevent the State from selecting land claimed by natives, nor was it intended to reach that result by vesting in Congress the prerogative to act in total or partial derogation of its own grant of such lands to the State. Lands cannot be granted to and selected by the State and at the same time be *totally* and *perpetually* disclaimed by the State. Disclaimer of native-claimed land operates only as to such land if it is "not granted or confirmed to the State" by the Act. It logically follows, as Section 4 provides, that as to both federal lands and native-claimed lands not granted to the State, the federal government retains "absolute jurisdiction and control." This preserves the power of Congress to dispose of the lands it has not previously disposed of by grants to the State. It does not empower the federal government to dispose of the same land twice and in inconsistent ways. The power of Congress to determine the manner and extent of compensation for the taking of native-claimed land is likewise preserved in the first proviso of Section 4, that nothing in the Act should affect such claims.

At what point did Congress make such a grant of Alaksan lands that it cannot thereafter convey a royalty or other interest therein to natives? Such a grant was made to Alaska by the Statehood Act as of its effective date. The State of Alaska maintains that this grant also effects an extinguishment of aboriginal *title* if such title is found to exist in lands passed by the grant, and that cases relied on by A. F. N. for a contrary conclusion rest on factual elements distinguishable from the present situation (see pages 55–58 of attached brief). There is sound authority, however, for the conclusion that aboriginal title in Alaska was extinguished in 1867 by the treaty which transferred Alaska from Russia to the United States. *Miller* v. *U. S.*, 159 F. 2d 997, 1001–1002 (9th Cir. 1947). Native *claims* for taking of their lands, however, are specifically left in exact status quo by Section 4 of the Act. *Organized Viulage of Kake* v. *Egan*, *supra*, states that while aboriginal lands may be subjected to the grant of land to the State, the effect of the Act is to leave unimpaired the natives' right to seek compensation therefor if any were found to be due (see pages 19–20 of attached brief).

But whether or not aboriginal title exists or is extinguished by the grant, the plenary power of Congress to determine the time, manner and terms of such extinguishment does not encompass the power to act in derogation of its own previous grant of the land. *Beecher* v. *Wetherby*, 95 U. S. (5 Otto) 517, 24 L. Ed. 441 (1877), wherein Indian title was not extinguished at the time of the grant, holds this very clearly:

"* * * [T]he lands which might be embraced within those sections [granted by the federal government to Wisconsin in its statehood act] were appropriated to the State. They were withdrawn from any other disposition, and set apart from the public domain, so that no subsequent law authorizing a sale of lands in Wisconsin could be construed to embrace them, although they were not specially excepted. All that afterwards remained for the United States to do with respect to them, and all that could be legally done under the compact, was to identify the sections by appropriate surveys; * * * With this identification of the section, the title of the State, upon the authority cited, became complete, unless there had been a sale or other disposition of the property by the United States previous to the compact with the State. No subsequent sale or other disposition, as already stated, could defeat the appropriation."

The grant of lands to Alaska under the Statehood Act, Section (6(b), operates *in praesenti*. Use of the words "is hereby granted" signifies a present grant of lands to be thereafter identified by selection. By virtue of that grant the State became at once vested with the right of property in selected lands. It cannot be thereafter divested of such right. The U. S. Supreme Court has so held. (See page 25 of attached brief, and *Noble* v. *Union River Logging R. R.*, 147 U. S. 176 [1892].) Thus, it is immaterial whether the land has been tentatively approved or patented. Selection identifies the land as to which a binding grant was already made by enactment of the Statehood Act.

Honor and fairness would impel Congress to impart full effectiveness and validity to its own land grants to the State even if the law did not require it. Thus, Senate Committee hearings leading to passage of the Statehood Act showed the concern of Congress that it should be able to exercise its customary right to extinguish aboriginal title in order "to assure a clear title to the State on all land grants. * * * Without some such guaranty of a clear title, the committee feels that the grants of land might be of little value" (S. Rep. No. 1028, 83rd Cong., 2d Sess. 4).

It is this same consideration which underlies the question of reducing the State's royalty on *federal* lands in order to compensate Alaskan natives. And here, also, the law likewise prevents such a solution. Section 8 of the Statehood Act, by its own terms, provides that the Alaska Constitution is amended by the vote of the people of the State, consenting to all provisions of the Act "prescribing the terms or conditions of the grants or other property therein made to the State of Alaska. * * *"

Those terms and conditions include the oil royalty granted to Alaska in federal lands (Section 28). Such vote of consent cannot be considered a "veto power" by the State over congressional action, as contended by A.F.N. (p. 37 of A.F.N. memorandum). The Act itself requires the State's consent to its terms in order to be effective. For Congress to unilaterally rewrite those terms would be to dishonor its grant of the royalty and to breach one of the conditions on which Alaska consented to be bound by the Statehood Act. This arrangement cannot be otherwise viewed than as a solemn compact between Alaska and the United States, which is entitled to the same constitutional protection afforded all such obligations.

As noted at the outset, the question herein concerns not whether or to what extent Alaskan natives should be compensated for lands taken, but whether such compensation may be taken out of land and property rights already granted by Congress to the State. A solution supported by legal authority would be one which honors the substantial and binding commitments already made by Congress to the State of Alaska.

Sincerely,

G. KENT EDWARDS,
Attorney General.

IN THE UNITED STATES COURT OF APPEALS

For the Ninth Circuit

No. 23603

State of Alaska,
Plaintiff - Appellee,

v.

Stewart L. Udall, Secretary of the Interior, et al.,
Defendant - Appellant.

No. 23597

State of Alaska,
Plaintiff - Appellee

v.

Native Village of Nenana,
Intervenor - Appellant.

On Appeal from the United States District Court
for the District of Alaska

BRIEF OF THE STATE OF ALASKA

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IN THE UNITED STATES COURT OF APPEALS

For the Ninth Circuit

No. 23603

State of Alaska,
Plaintiff - Appellee,

v.

Stewart L. Udall, Secretary of the Interior, et al.,
Defendant - Appellant.

No. 23597

State of Alaska,
Plaintiff - Appellee

v.

Native Village of Nenana,
Intervenor - Appellant.

On Appeal from the United States District Court
for the District of Alaska

BRIEF OF THE STATE OF ALASKA

ISSUES PRESENTED FOR REVIEW

1. May the Secretary of the Interior be compelled to issue and deliver patent to the State of Alaska for lands, the selection of which has been tentatively approved by the Secretary of the

Interior, pursuant to Sections 6(b) and 6(g) of the Alaska Statehood Act, Act of July 7, 1958, 72 Stat. 339; and to grant tentative approval to the selection of land by the State of Alaska after due selection by the state pursuant to Sections 6(b) and 6(g) of the Alaska Statehood Act, supra?

2. Were the procedural requirements for the granting of plaintiff's motion for summary judgment properly met?

3. Is the United States an indispensable party to an action brought to compel the Secretary of the Interior to issue tentative approval to state selection of lands under the Alaska Statehood Act, and to issue and to deliver patents to lands, the selection of which has received tentative approval by the Secretary of the Interior?

4. May the lower court decision be affirmed notiwthstanding contentions that a decision in this case must await congressional action; and that the Indian claim to the land is not extinguished; and notwithstanding the Secretary's withdrawal under the Pickett Act?

STATEMENT OF THE CASE

This is an action brought by the State of Alaska pursuant to 28 U.S.C. § 1361 (1962) to compel the Secretary of the Interior and other officials to issue patent and grant tentative approval to certain lands selected by the state pursuant to Sections 6(b) of the Alaska Statehood Act, 72 Stat. 339, et seq.

On February 17, 1967 the State of Alaska filed an amended complaint (R.15-28) against the Secretary of the Interior and other officials of the Interior Department asking, among other things, that the defendants be ordered to take all steps necessary to issue and deliver a patent to the state for certain land theretofore selected by it (tract "A") and to grant tentative approval for the state's selection of other land (tract "B").

On April 21, 1967 the Secretary of the Interior and the other officials of the Interior Department moved the court for an order dismissing the action (R.53) and on October 13, 1967 the United States District Court for the District of Alaska denied the motion to dismiss (R.129).

On January 4, 1968 the Native Village of Nenana moved to intervene as a defendant (R.161) on the ground that the "real property which forms the subject matter of the action is used, occupied, owned and claimed by the intervenor". (R.162).

On January 10, 1968 the District Court ordered that since there was no opposition to the motion to intervene the answer of the Native Village of Nenana might be filed. (R.166).

On April 3, 1968 each party to the action joined in and filed a stipulation with respect to undisputed facts. (R.179-184).

On April 3, 1968 the State of Alaska moved for summary judgment (R.188), and on May 20, 1968 the defendants moved for summary judgment (R.266).

On September 27, 1968 the District Court granted plaintiff's motion for summary judgment (R.305-306), and ordered defendant to issue and deliver to the State of Alaska a patent

to tract "A" and to grant tentative approval to the state's selection of tract "B".

On October 22, 1968 the Native Village of Nenana filed its notice of appeal (R.309), and on October 30, 1968 defendants filed their notice of appeal (R.311).

The following facts are relevant to the issues presented for review:

On or about September 29, 1960 the state filed with the Fairbanks Land Office of the Bureau of Land Management a land selection list (tract "A") comprising approximately 11,520 acres of unsurveyed public lands of the United States. (R.179). After publication of the required notice and payment of the proper fee, the Secretary of the Interior tentatively approved the selection of tract "A" on April 18, 1962 (R.181).

On or about January 22, 1962 the state filed with the Fairbanks Land Office of the Bureau of Land Management a land selection list (tract "B") comprising approximately 11, 520 acres of unsurveyed public lands of the United States. (R.182-183). The filing fee was paid and the notice of selection was published (R.182). The publication was completed July 25, 1962. No adverse claims to tract "B" were filed.

On April 1, 1963 the Bureau of Indian Affairs, on behalf of the Native Indians of Nenana, filed a petition of protest to the state's selections. The protest was dismissed by the manager of the Fairbanks Land Office as to tracts "A" and "B". On April 23, 1963 the Bureau of Indian Affairs appealed to the Bureau of Land Management and on July 31, 1963 the Director of the Bureau of Land Management transmitted the appeal to the Secretary of the

Interior (R.181).

No patent to tract "A" has been issued by any of the defendants to plaintiff, nor have the defendants issued, filed or delivered to plaintiff either tentative approval or patent to tract "B".

The second affidavit of Joseph Keenan, Director, Alaska Division of Lands (R.296-297) discloses the following:

1. Joseph Keenan is the Director, Division of Lands, State of Alaska;

2. That by virtue of his office he is familiar with the public lands comprising tracts "A" and "B";

3. That he has reviewed and is familiar with the contents and history of the protest and claim of the Native Indians of Nenana filed on April 1, 1963;

4. That he has personally examined the records of the Bureau of Land Management on file pertaining to the lands comprising tracts "A" and "B" and based upon his examination the lands are vacant of human settlement and are unappropriated and unreserved by any person or agency of government;

5. That to the best of his knowledge neither the Department of the Interior nor the Secretary of the Interior have taken any administrative action since July 31, 1963 with respect to the appeal of the Native Indians of Nenana following the dismissal of their protest and claim by the Bureau of Land Management nor with respect to the pending selection of the State of Alaska as to tracts "A" and "B".

Affidavits filed by David J. Esau and Richard Ketzler disclose the following facts:

1. Each is a resident of Nenana and a native of Alaska;

2. Each is familiar with the land comprised in tracts "A" and "B";

3. The familiarity of each is based on the fact that each has trapped and hunted there;

4. That the land comprising tracts "A" and "B" has been used by the Native people of Nenana and elsewhere ever since each can remember and is still being used by the native people for trapping, hunting and campsites.

In addition to the foregoing each party stipulated that tracts "A" and "B" were "vacant, unappropriated and unreserved except for any right, title or interest in and to said lands in the Native Indians of Nenana or the Native Village of Nenana arising from their claim of aboriginal right of Indian Title or their use and occupancy of the said land." (R.180-183).

ARGUMENT

I. MANDAMUS IS THE PROPER REMEDY OF THE STATE OF ALASKA IN THIS ACTION.

This action is brought under the provisions of 28 U.S.C. § 1361 (1962) which provides as follows:

> The district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff.

The duty which the plaintiff claims is owed to it by the Secretary of the Interior arises under the provisions of Sections 6(b) and 6(g) of the Alaska Statehood Act, Act of July 7, 1968, 72 Stat. 339. Section 6(b) provides in pertinent part:

(b) The State of Alaska, in addition to any other grants made in this section, is hereby granted and shall be entitled to select, within twenty-five years after the admission of Alaska into the Union, not to exceed one hundred and two million, five hundred and fifty thousand acres from the public lands of the United States in Alaska which are vacant, unappropriated, and unreserved at the time of their selection: Provided, That nothing herein contained shall affect any valid existing claim, location, or entry under the laws of the United States, whether for homestead, mineral, right-of-way, or other purpose whatsoever, or shall affect the rights of any such owner, claimant, locator, or entryman to the full use and enjoyment of the lands so occupied: And provided further, That no selection hereunder shall be made in the area north and west of the line described in section 10 without approval of the President or his designated representative.

Section 6(g) provides in pertinent part:

(g) Except as provided in subsection (a), all lands granted in quantity to and authorized to be selected by the State of Alaska by this Act shall be selected in such manner as the laws of the State may provide, and in conformity with such regulations as the Secretary of the Interior may prescribe. All selections shall be made in reasonably compact tracts, taking into account the situation and potential uses of the lands involved, and each tract selected shall contain at least five thousand seven hundred and sixty acres unless isolated from other tracts open to selection. . . . Where any lands desired by the State are unsurveyed at the time of their selection, the Secretary of the Interior shall survey the exterior boundaries of the area requested without any interior subdivision thereof and shall issue a patent for such selected area in terms of the exterior boundary survey; . . . All lands duly selected by the State of Alaska pursuant to this Act shall be patented to the State by the Secretary of the Interior. Following the selection of lands by the State and the tentative approval of such selection by the Secretary of the Interior or his designee, but prior to the issuance of final patent, the State is hereby authorized to execute conditional leases and to make conditional sales of such selected lands. . . .

The duty of the Secretary of the Interior was to grant

tentative approval to the State's selection of land comprising tract "A" and issue patent to tract "A", lands duly selected by the State of Alaska pursuant to the Alaska Statehood Act.

A. TRACTS "A" AND "B" WERE LANDS PROPERLY SUBJECT TO SELECTION UNDER THE PROVISIONS OF THE ALASKA STATEHOOD ACT.

1. Tracts "A" and "B" were Subject to Selection Because they were Vacant, Unappropriated, and Unreserved at the Time of their Selection.

The United States District Court properly determined as a matter of law, that even if the land comprising tracts "A" and "B" had been used by the native people of Nenana for trapping, hunting, and campsites, as stated in the affidavits of David J. Esau and Richard Ketzler (R.294-295), that fact did not deprive the State of Alaska of its right to select said lands and its right to receive tentative approval of its selection of lands comprising tract "B" and patent for lands comprising tract "A" from the Secretary of the Interior.

One issue to be determined is the meaning of that portion of Section 6(b) of the Alaska Statehood Act which states that the land selected by the state shall be "vacant, unappropriated and unreserved."

The case of Donley v. Van Horn, 49 Cal.App. 383, 193 P. 514 (1920) indicates what is meant by the term "vacant". This case involved an action by plaintiff to quiet title to certain land in California's Imperial Valley. The land was withdrawn from entry by the Secretary of the Interior prior to selection. During the period of withdrawal, but prior to plaintiff's selection, defendant settled on the land. The selection was limited to vacant, unappropriated and unreserved lands. The court defined

"vacant" lands as follows:

> 'Vacant lands' says the United States Circuit Court of Appeals in Cosmos Exploration Co. v. Gray Eagle Oil Company, 112 Fed. 13 . . . 'are such as are absolutely free, unclaimed, and unoccupied'. . . public land is not vacant if it is lawfully occupied by a settler under a claim or color of right. [193 P. at 517]

The cited case, Cosmos Exploration Co. v. Gray Eagle Oil Co., 112 F. 4 (9th Cir. 1901), discussed at some length the meaning of "vacant" as applied to lands which are the subject of selection under a congressional land grant act. Quoting from an earlier case the court stated, at page 13, "The word 'vacant,' when applied to lands, means those which have not been appropriated by individuals." It was also stated, at page 14:

> The land was not vacant and open to settlement at that time, because it was then occupied by the defendant's grantors under a claim and color of right. It matters not that they had not at that time acquired any rights against the United States.

The court further expounded several authorities on the meaning of the term "vacant". Among these was a decision of the Department of the Interior, in which the Secretary stated:

> 'To be vacant, the land must not be occupied by others. To be open to settlement, it must not be known to be valuable for minerals, or reserved from settlement for any other reason.' [112 F. at 17]

It is apparent from the holding of the court, as well as from the authorities cited, including this interpretation given by the Secretary of the Interior, that the term "vacant", unlike the terms "unappropriated", "unreserved", or "open to settlement", refers to the fact that the land is not actually occupied. It does not refer to the existence of a prior claim or a govern-

mental restriction which prevents selection of the land. It must be concluded, therefore, that the term "vacant" means vacant of human settlement, and that any use of the land short of actual occupancy leaves the land vacant. It is a term relating to the physical condition of the land, not to its legal status. See also Capron v. Van Horn, 201 Cal. 486, 258 P. 77 (1927).

Further light may be shed on the question of whether the alleged trapping, hunting and camping by natives prevents tracts "A" and "B" from being "vacant" by reference to Tlingit and Haida Indians of Alaska v. United States, 177 F.Supp. 452 (Ct.Cl. 1959). That case held to be compensable, under the jurisdictional act there involved, the taking of Indian lands which had been used for hunting and fishing as well as land under actual occupation as Indian village sites. In commenting on section 8 of the Organic Act of Alaska, 23 Stat. 24, (May 17, 1884), and the Act of June 6, 1900, § 1 et seq., 31 Stat. 321, which protected the Indians and others in Alaska against being "disturbed in the possession of any lands actually in their use or occupation or now claimed by them . . .", the court noted that these laws did not protect Indian hunting and fishing areas. This was indicated by the fact that other congressional enactments subjected those areas to potential mining claims, mineral locations, townsites, industrial sites, homesteading and taking of timber. The court stated at page 466:

> Again the Indians were to be protected only in lands 'actually in their use or occupation' and by that time it must have been apparent to Congress that the administrative interpretation of such language, which had appeared in prior acts, meant only village and home sites in intensive daily use, excluding

> hunting, fishing and gathering areas which these Indians had once used to the exclusion of all others.

Thus, Congress and the Department of the Interior have been well aware of the fact that the Alaskan Indians used and depended on the bounty of the lands and waters surrounding their village sites. Yet the consistent intent of Congress and the administrative interpretation by the Department have been to make available for white settlement and use those Indian lands in Alaska which were not in acqual occupation by "village and home sites in intensive daily use". The Supreme Court implied this same understanding when, in Organized Village of Kake v. Egan, 369 U.S. 60 (1962), it interpreted the Statehood Act as permitting state selection of Indian lands. Limitation of the grant to vacant lands does not prevent selection by the state of lands claimed on the basis of Indian use.

In making the foregoing contention, appellee does not impliedly concede that the lands here in question were shown by appellants' affidavits to be subject to the Indian right of occupancy. The affidavits alleged no more than that the two individual affiants used the lands for hunting and trapping and that the native people have so used the lands ever since those two individuals could remember. Nothing appears to explain how far the affiants' memories extend, or whether or not white usage of the land was concurrent with or even preceded whatever use the Indians made of the land. These affidavits certainly did not establish aboriginal use and occupancy from time immemorial. Further, it seems at least doubtful whether use and occupancy which is not exclusively in the Indians can render the land

"Indian land". (See United States v. 10.95 Acres of Land in Juneau, 75 F. Supp. 841 (D. Alaska 1948) and Johnson v. Pacific Coast S.S. Co., 2 Alaska 224 (1904), requiring the clearest and strongest proof of exclusive occupancy in order to establish Indian title under the Act of May 17, 1884, 23 Stat. 24.) The insufficiency of the affidavits to prove Indian title should dispose of appellant's contention that these lands were not subject to selection by the state. But in any event, affiants' allegations of use for hunting and trapping did not disprove that the lands in question were vacant, and, therefore, did not serve to exclude them from operation of the congressional grant which restricted the state to selection of vacant lands.

Amicus Curiae, the Tlingit and Haida Indians of Alaska, contend that tracts "A" and "B", by virtue of the fact that they are Indian lands, are to be considered "appropriated" and "reserved" and, therefore, exempted from selection under the Statehood Act. They contend the provisions of Sections 4 and 6(b) of the Statehood Act which provide that nothing contained therein should affect any claim against the United States, remove the land from the category of "vacant, unappropriated, and unreserved" land. In addition, they assert that the Acts of 1884 and 1900 which protect possessory rights in Alaska operated as an appropriation or reservation of Indian lands, and that case law has protected their alleged occupancy rights against the effect of public land grants. Apart from the fact that appellee does not concede that the lands here in question have been shown to be Indian lands, this position is not supported by the authorities relied on.

In Tee-Hit-Ton Indians v. United States, 348 U.S. 272, at 278-79 (1955), the Supreme Court stated, concerning the effect of the Acts of 1884 and 1900:

> We have carefully examined these statutes and the pertinent legislative history and find nothing to indicate any intention by Congress to grant to the Indians any permanent rights in the lands of Alaska occupied by them by permission of Congress. Rather, it clearly appears that what was intended was merely to retain the status quo until further congressional or judicial action was taken. There is no particular form for congressional recognition of Indian right of permanent occupancy. It may be established in a variety of ways but there must be the definite intention by congressional action or authority to accord legal rights, not merely permissive occupation. Hynes v. Grimes Packing Co., 337 U.S. 86, 101.

Sections 4 and 6(b) of the Statehood Act, provide that nothing therein should affect any valid existing claim, by their own terms do not create any rights in the Indians but likewise merely protect the status quo with respect thereto. Thus, the legislative authorities relied on by amicus curiae do no more than protect the status quo, and cannot be interpreted as appropriating or reserving land.

Even if the facts comprising the present "status quo" as to the lands here in question were judicially found sufficient to establish the right of Indian occupancy, the lands would still be subject to selection by the state. Contrary to the contention of amicus curiae it has been specifically held that Indian lands are not exempted from a congressional land grant which excludes appropriated or reserved lands, or lands subject to preemption or other claims or rights. Buttz v. Northern Pac. Ry., 119 U.S. 55 (1886); United States v. Minnesota, 270 U.S. 181 (1925); United States v. Santa Fe Pac. R.R., 314 U.S. 339 (1941).

Lands contained within an Indian reservation, however, are considered exempt from selection. United States v. Minnesota, supra; United States v. Santa Fe Pac. R.R., supra; Leavenworth L. & G. R.R. v. United States, 92 U.S. 733 (1875). But it is not contended that any of the land in tracts "A" and "B" lies within any Indian reservation.

Land is "appropriated" when it has been set apart for a particular purpose by competent authority, such as land that has been set apart by congress for use as a military post. Wilcox v. Jackson, 38 U.S. (13 Pet.) 498 (1839). It is "reserved" when it has been kept back by the government from disposition. Donley v. Van Horn, supra, at 518. No authority has been cited which appropriates or reserves the land here in question. Section 6(b) of the Statehood Act reserves from selection the area north and west of a certain line described elsewhere in the act. No such reservation refers to Indian lands or to the specific land involved here. In neither the Statehood Act nor the Acts of 1884 and 1900 can there be found any appropriation of the land to the Indians. The land has, therefore, not been appropriated and is not reserved, and these qualifications in the Statehood Act do not prevent its selection.

The reliance of amicus curiae Tlingit and Haida Indians on Minnesota v. Hitchcock, 185 U.S. 373 (1902), is misplaced. That case does not support the contention that Indian lands are excepted from congressional land grants in the absence of provision for compensation to the Indians. Certain sections of land had been granted to the state and were unidentified at that time. Subsequently, the Indians, by treaty, ceded to the United

States, for compensation, land including the sections covered by the land grant to the state. The granted sections were held to be included in the lands acquired by the United States under the treaty. Several factors underlay the decision: the sections were not identified at the time of the treaty; the treaty must be interpreted according to the probable understanding of the Indians whose object in ceding the lands was to obtain compensation from the government and who, therefore, could not have understood that they would lose the subject sections without receiving any compensation for them; and the grant to the state provided for alternative lands if the named sections were not available. The court made it clear that the holding stemmed from interpretation of the scope and effect of the treaty. It cannot be taken as establishing a general principal that Indian lands are excepted from land grants to states unless compensation to the Indians is provided.

Amicus curiae Tlingit and Haida Indians cites Newhall v. Sanger, 92 U.S. 761 (1875), for the proposition that inchoate land claims have been held to be "reserved from acquisition", and Nelson v. Northern Pac. Ry., 188 U.S. 108 (1903), for the proposition that rights gained from occupancy will exempt land from public land grants to railroads. Neither of these cases advance appellants' position. Newhall involved a grant of public lands to a railroad. The land in question was specifically within the provisions of an existing act which reserved it, thereby withdrawing its status as public land and exempting it from the operation of the railroad land grant, until such time as title could be adjudicated. The holding in Nelson was

Likewise the result of the wording of the specific legislation involved. The railroad land grant excluded from selection lands which were occupied by homestead settlers prior to the time the line of the road became definitely fixed. Prior to said time, but after the filing of a map of the general route, defendant settled on the land as a homesteader, thereby causing the land to be occupied and exempt from selection by the railroad under the act.

Thus, there is no authority for the novel contention that in the absence of any appropriation or reservation of tracts "A" and "B" they acquire the status of appropriated and reserved land purely by reason of their being lands claimed by Indians. Even if there had been a sufficient showing that these tracts were Indian land, the contention is wholly without merit. The lands were properly subject to selection by the state because they were vacant, unappropriated, and unreserved at the time of selection.

2. The Disclaimer Clause in Section 4 of the Statehood Act does not Prevent Selection of Indian Lands by the State of Alaska.

Section 4 of the Alaska Statehood Act provides, in part, as follows:

> As a compact with the United States said State and its people do agree and declare that they forever disclaim all right and title to any lands or other property not granted or confirmed to the State or its political subdivisions by or under the authority of this Act, the right or title to which is held by the United States or is subject to disposition by the United States, and to any lands or other property (including fishing rights), the right or title to which may be held by Indians, Eskimos, or Aleuts (hereinafter called natives) or is held by the United States in trust for said

> natives; that all such lands or other property, belonging to the United States or which may belong to said natives, shall be and remain under the absolute jurisdiction and control of the United States until disposed of under its authority, except to such extent as the Congress has prescribed or may hereafter prescribe, and except when held by individual natives in fee without restrictions on alienation: Provided, That nothing contained in this Act shall recognize, deny, enlarge, impair, or otherwise affect any claim against the United States, and any such claim shall be governed by the laws of the United States applicable thereto. . . .

This section does not prevent Alaska from selecting tracts "A" and "B" under the Statehood Act.

The intent that Native claims are not to be the basis upon which the state's right of selection granted under Section 6(b) of the Alaska Statehood Act may be refused is clear. An unsuccessful amendment to Section 6 was proposed which would have given the Secretary of the Interior the power to determine whether lands selected by the state were subject to Native claims of superior right, assertable under Section 4 of the Act. The Secretary's determination was to be required before selection could be consummated. (Hearings on H.R. 7999 before the Committee on Interior and Insular Affairs, 84th Congress, 1st Sess. at 381). The nature of the amendment proposed by Mr. Edmondson, a member of the Committee from Oklahoma, is stated as follows:

> Mr. Edmondson:
>
> Mr. Chairman, the simple effect of this amendment is to establish machinery whereby notice can be given and whereby the Secretary of the Interior is required to review carefully and to exercise his discretion in the matter of lands which were claimed by the new State of Alaska under the provisions of the statehood bill. The provision under which they will take over millions of acres

in the State really provides no mechanics to my way of thinking, under which lands were subject of existing claims could be safeguarded and prevented from passing over to the State without any remedy whatsoever to the claimants of the land.

Now this provision would set up machinery. It might delay the passing over to the State for a period of several years on certain lands that are subject of claims which the Secretary of the Interior believes are covered by this disclaimer. But if the Secretary of the Interior does believe that they are lands which are the subject of a disclaimer, which are the subject of existing titles and existing rights of the Indians and Aleuts and Eskimos, then I submit there should be some means to delay the passage of that land over to the State until those claims can be adjudicated.

Now I think this language would also have the effect of expediting the establishment of machinery for the settlement of those claims where the Secretary of the Interior sees validity in them and that is the purpose of this subsection, this new language. [House Hearings at p. 381].

Delegate Bartlett of Alaska made the following comment concerning the amendment:

My principal fear concerning it is that it does that which the Subcommittee on Indian Affairs in all its long study of these alleged Indian land rights has sought to avoid, namely, placing a very heavy measure of determination in the hands of the Secretary of the Interior instead of the courts or the Indian Claims Commission. That is the principal thing we are seeking to avoid. Could not this put it right back in his lap, as it were? [Hearings at page 382].

Mr. Edmondson then stated:

I think, in response to that question, that this section would operate in this way: if the State of Alaska picked a certain tract of land and wanted it passed over to the State of Alaska under its appropriation rights, this land would be considered by the Secretary of the Interior as to whether or not it was land which was subject to the disclaimer provision. Now if the Secretary of the Interior found it was land, title to which belongs to a native group or which was held in trust by the United States for a native group, then he would eliminate

> it from the choice of land by the State until such time as that title or that right of the native group had adjudicated. I think that is just making effective what we have said in this disclaimer provision.

Delegate Bartlett could have spoken just as well of this case when he stated that a period of years might elapse before determination were made. He then observed that the logical manner for the settlement of the land claims would be by congressional action rather than by delaying and adjudicatory tactics on the part of the Secretary of the Interior. He noted what the effect upon the state's selection right would be if the procedure as outlined in the Edmondson amendment were followed. Representative Metcalf of Montana asked the question:

> I ask for this time to ask the Delegate from Alaska if there is any land in Alaska that could be taken if this provision were written into the bill. [Hearings at p. 383].

Delegate Bartlett answered:

> No, there would not be any, of course, until the Secretary of the Interior had made his determination. [Hearings at p. 383].

Representative Metcalf observed:

> The gentleman from Washington made the statement earlier that all of the land in Alaska was subject to one or another of these native claims. [Hearings at p. 384].

The chairman of the committee, Claire Engel, stated:

> If the gentleman will yield to the Chair, this amendment relates to claims; and does not relate to rights. If it is true that the Indians and Eskimos in Alaska make the same kind of claims they do in California - there are no Eskimos in California, of course, but I mean the Indians in California - there is not a square foot of land in Alaska which would be subject to selection by the State, because there are going to be claims on the whole business. [Hearings at p. 384].

The amendment was then lost. Contrary to the insignificance attached to the proposed amendment by appellants, it is clear that in rejecting the amendment, the committee sought to avoid exactly the result which has been achieved by the Secretary of the Interior by his refusal to grant tentative approval to the state's selection of tract "B" and to issue patent to tract "A". It is also clear that only by its passage, could the amendment have given the Secretary of the Interior the discretion which he now claims. The amendment failed and the argument that the Secretary of the Interior has discretion in this matter must of necessity also fail. The claims which are preserved by Section 4 of the Alaska Statehood Act are those claims which congress may see fit to preserve in the event future legislation is passed with respect to this matter.

The only Supreme Court decision concerning the effect of Section 4 upon the State of Alaska's right to select lands granted by Section 6(b) is Organized Village of Kake v. Egan, supra. Regarding the rejection of Representative Edmondson's proposed amendment the court there stated:

> Feeling that experience had shown this procedure too slow to give prompt relief to the Indians, Oklahoma's Representative Edmondson prepared to exempt Indian property from the State's selection. This was rejected as virtually destroying Alaska's right to select lands. [369 U.S. at 66].

The court further clarified the effect of the disclaimer provision of Section 4 as follows:

> The disclaimer of right and title by the State was a disclaimer of proprietary rather than governmental interest. It was determined after some debate, to be the best way of ensuring that statehood would neither extinguish nor establish claims

> by Indians against the United States. If lands subject to the claim of Indian rights were transferred to the State, the Indians were not thereby to lose the right to make claim against the United States for damages. [369 U.S. at 69]

and:

> The disclaimer was intended to preserve unimpaired the right of any Indian claimant to assert his claim, whether based on federal law, aboriginal right or simply occupancy, against the Government. [369 U.S. at 67].

and:

> It was understood that the disclaimer provision left the State free to choose Indian 'property' if it desired, but that such a taking would leave unimpaired the Indians' right to sue the United States for any compensation that might later be established to be due. [369 U.S. at 65-66].

This is the only reasonable interpretation which could be given to the effect of Section 4 on Section 6(b). To hold otherwise would in effect destroy the State of Alaska's right to select land. It should be a matter of judicial notice, especially in light of the above quoted comments of Committee Chairman, Claire Engel, that the claims of Alaska Natives as to Alaska lands exist over large areas of Alaska.

Appellants place great weight on the opinion of Herbert J. Slaughter of the Office of the Solicitor, Department of the Interior, as to the meaning of the provions which allows selections of lands by the State of Alaska. The Department of the Interior Solicitor, quite predictably, attempted to give the Secretary more authority over the selection process than the committee was willing to give the Secretary by defeating the Edmondson amendment. The appellants have misplaced their emphasis in respect to the legislative history of the Alaska State-

hood Act when they give greater weight to the opinion of a Department of the Interior Solicitor than to the actions of the Committee on Interior Affairs.

In view of the above, it is apparent that the disclaimer provision of Section 4 of the Statehood Act does not prevent the state from selecting the lands here in question.

3. The Lands in Question were Duly Selected by the State of Alaska.

The statutes quoted at page 6 hereof impose upon the Secretary of the Interior the duty to issue tentative approval and patents to the State of Alaska once a selection has been duly made by the state. This duty is ministerial. Section 6(g) authorizes the Secretary of the Interior to make regulations setting forth the procedure to govern the manner in which the state shall make its selections. Section 6(g) states that ". . . all lands granted in quantity to and by this Act shall be selected in such a manner as the laws of the state may provide, and in conformity with such regulations as the Secretary of the Interior may prescribe." Once the state has complied with that portion of Section 6(g) it has duly selected its lands. Thereafter the Secretary's duty is purely ministerial.

The Secretary of the Interior's regulations governing the procedure by which the state shall select its lands are found at 43 C.F.R. § 2013.9-4 and § 2222.9. Those regulations are set forth in full in the appendix. Section 2222.9-4(c) prescribes the information which must be contained in an application for lands selected pursuant to Section 6(b) of the Alaska Statehood Act. Section 2222.9-5 sets forth other procedural

requirements for the state's selection, such as publication of notice of selection of lands under Section 6(b) of the Alaska Statehood Act. The stipulation with respect to undisputed facts (R.179-184) is clear to the effect that the state's selection was made in accordance with the regulations. Furthermore, there is no contention on the part of appellants that those regulations were not complied with. Thus, the State of Alaska has done all things required of it in respect to its selection of tracts "A" and "B". In summary those requirements are:

(1) the lands shall be selected in such a manner as the laws of the State may provide;

(2) the selection shall be made in conformity with regulations as the Secretary of the Interior may prescribe;

(3) all selections shall be made in reasonably compact tracts and each tract selected shall contain at least five thousand, seven hundred and sixty acres.

The duty of the Secretary of the Interior is to see only that the lands have been selected in conformity with the requirements set forth above. If the lands have been so selected, the regulations provide that the Bureau of Land Management will notify the appropriate state official in writing of its tentative approval of a selection after determining that there is no bar to passing legal title to the state other than a need for a survey of the lands or for the issuance of patent or both", 43 C.F.R. § 2222.9-4(d). The written tentative approval in 1962 of the state's selection of tract "A" was thus a determination

that there was no bar to the passage of title to the state. Once this determination was made, the duty of the Secretary of the Interior is clear:

> All lands duly selected by the State pursuant to this Act shall be patented to the State by the Secretary of the Interior. [Section 6(g) Alaska Statehood Act].

The Secretary of the Interior possesses no discretion in this matter.

The second affidavit of Joseph Keenan, Director, Alaska Division of Lands (R.296-297) makes clear that the status of tract "A" is the same as tract "B". The only possible factual difference between the status of the two tracts is that, in the case of tract "B", appellants have failed to tentatively approve the state's selection. Under the Secretary's own regulations, there was no further act required of the state as of July 25, 1962, and tentative approval of the state's selection of tract "B" should have been given. There are no legal barriers to the issuance of a patent to tract "B", and the lower court's order requiring the Secretary to issue the tentative approval was correct.

B. THE DUTY OF THE SECRETARY OF THE INTERIOR IS TO DETERMINE THAT THE LANDS INVOLVED HEREIN WERE DULY SELECTED BY THE STATE OF ALASKA AND THEREAFTER TO GRANT TENTATIVE APPROVAL OF THE STATE'S SELECTION OF LANDS COMPRISING TRACT "B" AND TO ISSUE PATENT TO THE STATE OF ALASKA FOR LANDS COMPRISING TRACT "A".

1. Mandamus Lies to Compel an Official such as the Secretary of the Interior to Perform a Ministerial Duty.

It is undisputed that mandamus lies to compel an official such as the Secretary of the Interior to perform a ministerial

duty, Noble v. Union River Logging R.R., 147 U.S. 165 (1892); Roberts v. United States ex rel. Valentine, 176 U.S. 221 (1900). The Union River Logging R.R. case involved an action by the railroad company to enjoin the Secretary of the Interior from executing his order revoking the approval of a map describing the railroad's right of way over public lands. In January 1889, the then Secretary of the Interior approved a grant to the railroad of a right of way over public lands. In June 1890, the railroad was served with a copy of an order from the Secretary of the Interior to show cause why the prior approval should not be annulled or revoked. The Secretary of the Interior did, in fact, revoke the order granting the railroad its right of way. In granting the injunction against the Secretary, the court stated:

> 1. With regard to the judicial power in cases of this kind, it was held by this court as early as 1803, in the great case of Marbury v. Madison, 5 U.S. (1 Cranch) 137, that there was a distinction between acts involving the exercise of judgment or discretion and those which are purely ministerial; that, with respect to the former, there exists, and can exist, no power to control the executive discretion, however erroneous its exercise may seem to have been, but with respect to ministerial duties an act or a refusal to act is, or may become, the subject of review by the courts. [147 U.S. at 171].

2. The Duty of the Secretary of the Interior to Grant Tentative Approval to the State's Selection of Tract "B" and Issue Patent to Tract "A" is Ministerial and May Therefore be Ordered to be Performed Forthwith.

An examination of Noble v. Union River Logging R.R., supra, discloses a fact situation strikingly similar to the situation posed in the case at bar. The railroad claimed title to a right of way over public lands of the United States.

The court concluded that the statute through which the lands were granted was an in praesenti grant to the railroad of lands to be thereafter identified. The court stated:

> The lands over which the right of way was granted were public lands subject to the operation of the statute, and the question whether the plaintiff was entitled to the benefit of the grant was one which it was competent for the Secretary of the Interior to decide, and when decided, and his approval was noted upon the plats, the first section of the Act vested the right of way in the railroad company. The language of the section is 'that the right of way through the public lands of the United States is hereby granted to any railroad company duly organized under the laws of any state or territory,' etc. The uniform rule of this court has been that such an Act was a grant in praesenti of lands to be thereafter identified. . . . The railroad company became at once vested with the right of property in these lands, of which they can only deprived by proceeding taken directly for that purpose. [147 U.S. at 176].

The Union River Logging R.R. case is determinative of the duty of the Secretary of the Interior in the case here presented. Section 6(b) of the Alaska Statehood Act grants to the State of Alaska one hundred two million five hundred fifty thousand acres from the public lands of the United States. The statute states that "the State of Alaska . . . is hereby granted and shall be entitled to select, . . ." It is unmistakable that Section 6(b) of the Alaska Statehood Act is a grant in praesenti of lands to be thereafter selected. The Secretary of the Interior lacks any authority to deny the state tentative approval of its selection or to deny patent to lands upon which tentative approval has been granted once that land has been duly selected by the state. The authority of the executive department and of its agent, the Secretary of the Interior, over the lands which have been conveyed by the Alaska Statehood Act has

ceased except insofar as the Secretary of the Interior has a duty to issue tentative approval and patent. See also Work v. Louisiana, 269 U.S. 250 (1925); Jamestown & N. R.R. v. Jones, 177 U.S. 125 (1900); and Santa Fe Pac. R.R. v. Fall, 257 U.S. 197 (1922).

The court in the Union River Logging R.R. case noted that since the Secretary of the Interior had no power to revoke the approval of the right of way grant, he was subject to an injunction just as "he would be to a mandamus if he refused to do an act which the law plainly required him to do." (147 U.S. at page 172). Thus, in the case at hand, the Secretary of the Interior, by virtue of the in praesenti grant, has no power to withhold tentative approval of tract "A" or patent to tract "B" and is subject to a writ of mandamus to compel him to do that which the law plainly requires him to do.

Of like effect is Payne v. Central Pac. Ry., 255 U.S. 228 (1921) wherein the Supreme Court stated in respect to selections of land from the public domain:

> Rightly speaking, the selection is not to be likened to the initial step of one who wishes to obtain the title to the public land by future compliance with the law, but rather to the concluding step of one, who by full compliance, has earned the right to receive title. [255 U.S. at 234-235].

Likewise, in this case, the State of Alaska by selecting the lands has taken not an initial step, but rather has taken the concluding step which shall entitle it to full title.

The principle of the Union River Logging R.R. case has been further clarified in Roberts v. United States ex rel. Valentine, supra. The Roberts case involved an action for a

writ of mandamus to compel the Treasurer of the United States to pay plaintiffs the amount represented by 2.35% interest on certain certificates issued by the District of Columbia. The Treasurer of the United States refused to pay the interest on the ground that the certificates upon which the interest was paid had not been redeemed within the meaning of the act allowing payment of the interest. The Supreme Court affirmed the judgment of the Court of Appeals ordering the writ of mandamus to issue and ordering of the payment of interest. The court noted in its opinion that the duty of the Treasurer of the United States in this case was a ministerial duty, and that the duty may be enforced by mandamus. The court stated:

> There is but one act of Congress to be examined, and it is specifically directed to the Treasurer. We think its construction is quite plain and unmistakable. It directs the Treasurer to pay the interest on the certificates which had been redeemed by him, and the only question for him to determine was whether the certificates had been redeemed within the meaning of the act. That they were, we have already attempted to show, and the duty of the Treasurer seems to us to be at once plain, imperative, and entirely ministerial, and he should have paid the interest as directed in the statute. [176 U.S. at 230]

In the case at hand, there is but one act of Congress to be examined. The Alaska Statehood Act, and the Secretary of the Interior has only one question to determine and that is whether the land has been duly selected by the State of Alaska. Thus, like the Treasurer in the Roberts case, the Secretary of the Interior in this case should have issued tentative approval of the state's selection of tract "B", should have issued patent to tract"A", and must be compelled to do so. See also Ballinger v. United States ex rel. Frost, 216 U.S. 240 (1910) (issuance of a

patent by the Secretary of Interior is a ministerial duty).

It is argued that the Secretary of the Interior must construe the meaning of the words "duly selected" in the Alaska Statehood Act, and that his construction of that meaning is a discretionary one. A similar argument was advanced by the Secretary of the Interior in Lane v. Hogland, 244 U.S. 174 (1917) and rejected by the United States Supreme Court. That case was an action for a writ of mandamus to compel the Secretary of the Interior to issue a patent to a homestead entryman. The Supreme Court affirmed the order of the Court of Appeals granting the writ of mandamus. The Supreme Court noted that the Secretary of the Interior must issue a patent when a homesteader has complied with all of the provisions of the law relative to the manner in which he shall select and acquire his homestead. The court discussed in general terms the purpose of a writ of mandamus and quoted with approval Roberts v. United States ex rel. Valentine, supra:

> Unless the writ of mandamus is to become practically valueless, and is to be refused even where a public officer is commanded to do a particular act by virtue of a particular statute, this writ should be granted. Every statute to some extent requires construction by the public officer whose duties may be defined therein. Such officer must read the law, and he must therefore, in a certain sense, construe it, in order to form a judgment from its language what duty he is directed by the statute to perform. But that does not necessarily and in all cases make the duty of the officer anything other than a purely ministerial one. If the law directs him to perform an act in regard to which no discretion is committed to him, and which, upon the facts existing, he is bound to perform, then that act is ministerial, although depending upon a statute which requires, in some degree, the construction of its language by the officer. Unless this be so, the value of this writ is very greatly

> impaired. Every executive officer whose duty is plainly devolved upon him by statute might refuse to perform it, and when his refusal is brought before the court he might successfully plead that the performance of the duty involved the construction of a statute by him, and therefore it was not ministerial, and the court would, on that account, be powerless to give relief. Such a limitation of the powers of the court, we think, would be most unfortunate, as it would relieve from judicial supervision all executive officers in the performance of their duties, whenever they should plead that the duty required of them arose upon the construction of a statute, no matter how plain its language, nor how plainly they violated their duty in refusing to perform the act required. [244 U.S. at 182-183]

Similarly, in the case at hand, the Alaska Statehood Act clearly requires the Secretary of the Interior to grant the tentative approval and to issue the patent. The fact that he, in some slight degree, must construe the statute in order to determine what is meant by the term "vacant, unappropriated, and unreserved" and by the term "duly selected" makes his duty no less a ministerial duty. To hold otherwise would be to achieve the result which the United States Supreme Court in Lane v. Hogland sought to avoid, the complete emasculation of the writ of mandamus. See also Wilbur v. United States ex rel. Krushnic, 280 U.S. 306 (1930).

An example of a statute vesting discretion in the Secretary of Interior is disclosed in the case of United States ex rel. McLennan v. Wilbur, 283 U.S. 414 (1931) wherein the Secretary of the Interior was empowered to execute leases for oil and gas upon certain land if he thought such leasing would promote the public welfare. The determination of what was the public welfare was clearly discretionary with the Secretary of the Interior. No provision can be found in the Alaska State-

hood Act granting the Secretary of the Interior discretion of the type noted in the McLennan case.

Appellant, Native Village of Nenana, cites numerous cases claimed to support its position that this is not the type of case in which the Secretary of the Interior is subject to a writ of mandamus to compel him to grant tentative approval of the selection of tract "B" and to issue patent to tract "A". The cases cited by appellants do not support them in this proposition:

(1) The express holding of Johnson v. M'Intosh, 21 U.S. (8 Wheat) 543 (1823) is that the plaintiff, who derived title under purchase from certain Indians, cannot maintain an action for ejectment against the defendants, who derived title under a grant from the United States. The court stated that the Indians had a right of occupancy as to tribal lands but that the sovereign could extinguish that right to occupancy. The case says nothing concerning the relationship between this right of occupancy and the correctness of subjecting the Secretary of the Interior to a writ of mandamus.

(2) United States v. Santa Fe Pac. R.R., supra, did not involve the issue as to whether or not the Secretary of the Interior could be the subject of a writ of mandamus. The Supreme Court enjoined the railroad from interfering with the possession and occupancy by Indians of lands contained within an Indian reservation in Arizona. The lands which are the subject matter of the case at bar are not within an Indian reservation and, therefore, the Santa Fe Pacific case has no bearing upon the issues presented here.

(3) In Udall v. Tallman, 380 U.S. 1 (1965) the authority of the Secretary to lease certain lands located in the Kenai National Moose Range of Alaska depended upon certain executive orders creating that range. The court noted in the Tallman case that there was no statutory limitation involved but that the Secretary of the Interior could construe his administrative regulations. Thus, the Tallman case is of no help to the appellants in this case.

(4) United States ex rel. Greathouse v. Dern, 289 U.S. 352 (1933) is cited as authority for the proposition that a writ of mandamus will not lie against the Secretary of the Interior in a case such as presented here. The Dern case is clearly of no value to appellants. The Supreme Court in Dern held that the Secretary of the Interior would not be subject to a writ of mandamus compelling him to authorize the construction of a wharf on the Virginia shore of the Potomac River. The court noted that the property upon which the wharf was to be constructed had been devoted by the District of Columbia Park Commission for the construction of a parkway. If the wharf were constructed, the land would have to be condemned, thereby imposing obligation to pay for the wharf which could not be used because of the condemnation. The court stated that the writ of mandamus would not lie to compel the doing of an idle act. Contrarywise, in the case at bar if the writ is granted, the act which the Secretary is to perform will not be an idle act but will be a confirmation of title to lands which the Alaska Statehood Act has granted to appellee.

(5) Cramer v. United States, 261 U.S. 219 (1923) has no relation to the facts of this case. This was an action brought by the United States as guardian for certain Indians for the purpose of cancelling a patent issued by the United States to the Central Pacific Railway Company. The Supreme Court ordered that the patent be cancelled because the patent was to land upon which certain Indians actually resided and because the Indians had under fence between 150 and 175 acres, portions of which they had irrigated and cultivated. The court observed that the Indians had constructed and maintained dwelling houses on the lands. The court stated:

> In our opinion the possession of property in question by these Indians was within the policy and with the implied consent of the government. That possession was definite and substantial in character and open to observation when the railroad grant was made. . . . [261 U.S. at 230]

The only evidence of Indian use of the lands here in question is the use set forth in the affidavits of Esau and Ketzler submitted by appellants below. (R.293-295). As noted elsewhere in this brief at pages 7-15 the court was proper in ruling as a matter of law that on the basis of the affidavits before it, the land in question was vacant, unreserved and unappropriated within the meaning of the Alaska Statehood Act.

(6) Duncan Townsite Co. v. Lane, 245 U.S. 308 (1917) is of no help to appellants in this regard. The court said that if the writ of mandamus prayed for in that case were granted that the court would be permitting a fraud. Plaintiff asked that the Secretary of the Interior execute and record a patent for land allotted to plaintiff's predecessor in interest, a Choctaw and

Chickashaw Indian. Plaintiff's predecessor in interest was entered on the rolls of the tribe pursuant to perjury in that he was not alive at the time of the entry of his name onto the rolls. Based upon these facts the court in Duncan properly denied the application for a writ of mandamus.

It is clear from the foregoing, therefore, that the duty of the Secretary to grant tentative approval and to issue the patent to the lands here in question is a ministerial duty as to which mandamus is available.

Because of the foregoing, any assertion that the lower court's judgment was an abuse of its discretion would not be well taken. When the duty of the official is clearly defined and ministerial, the granting of a writ of mandamus compelling the official to perform his duty is not an abuse of discretion, Prairie Band of Pattawatomie Tribe of Indians v. Udall, 355 F.2d 364 (10th Cir. 1966), cert. den. 385 U.S. 831 (1966).

3. The Secretary of the Interior Asserts he was Improperly Directed to Issue Patent to Tract "A" and Grant Tentative Approval for Tract "B" Forthwith. His Position is not Supported by the Facts of This Case nor the Applicable Law.

It has been shown above that the relevant provisions of the Alaska Statehood Act create in the Secretary of the Interior a ministerial duty rather than a discretionary power. Thus, since the Secretary of the Interior's authority under the above quoted statute was ministerial, the court could compel him forthwith to perform that which the statute required him to do, that is, to grant tentative approval to tract "B" and to issue patent to tract "A".

The Secretary of the Interior asserts that by requiring him to issue patent to tract "A" and to grant tentative approval to tract "B" the court has usurped his power to interpret the applicable provisions of the Alaska Statehood Act. However, the statute itself and the record of the case in the court below each demand the conclusion that there was nothing in respect to the Act for the Secretary to interpret. The Secretary cites the following cases to support his contention. None of these cases support his assertion.

(1) S.E.C. v. Chenery Corp., 318 U.S. 80 (1943) and 332 U.S. 194 (1947) is cited as authority to support his statement that the court has usurped the Secretary's power to interpret statutes. The Chenery cases involved an action brought to review an order of the S.E.C. approving a corporate plan or reorganization. In affirming the commission's order, the court noted that the S.E.C. acted within the power granted by the pertinent statute. The court stated that if the commission acts within its authority and applies the law properly the court's power of review is at an end. In the Chenery case, the Securities and Exchange Commission was definitely exercising discretionary power granted by statute in approving a reorganization plan for the corporation. The relevant statute allowed the Commission to determine what constituted the public interest. The context in which that case arose is much different from the case presented here, particularly when the Secretary has refused or has failed to take any action with respect to the subject matter of this action for approximately nine years. Moreover, the Secretary of the Interior in the case at bar has violated one of

the principles which the Supreme Court in the Chenery case stated should govern the administrative process. The court stated: "The administrative process will best be vindicated by clarity in its exercise." 318 U.S. at 94. The only clarity in the handling of this case by the Secretary of the Interior is in his disregard for the duties imposed upon him by the Alaska Statehood Act.

(2) F.C.C. v. Pottsville Broadcasting Co., 309 U.S. 134 (1940) is cited in support of the assertion that the lower court's judgment compelling the issuance of patent and tentative approval was improper. That case not only does not support the Secretary's contention, but is clear authority for the proposition that the Secretary's actions in this case are subject to judicial scrutiny. The court stated:

> Whether the Commission applies the legislative standards validly set up, whether it acts within the authority conferred or goes beyond it, . . . are appropriate questions for judicial decision. [309 U.S. at 144-145]

In this case the Secretary has gone beyond the authority conferred upon him by the Alaska Statehood Act and has refused to comply with the mandate given him by Section 6(g) of the Alaska Statehood Act that:

> All lands duly selected by the State of Alaska pursuant to this act shall be patented to the State by the Secretary of the Interior.

The lack of respect with which the Secretary has treated this mandate under the Alaska Statehood Act is pointed out clearly in the Secretary's brief in that, on page four of that brief, the portion of the Act cited above is deleted from the quotation of Section 6(g).

(3) Gray v. Powell, 314 U.S. 402 (1941) is likewise of no help to the Secretary of the Interior. The case involved a decision of the Director of the Bituminous Coal Division of the Department of the Interior that a particular company was not exempt from the provisions of the bituminous coal code. The statute under which the Director exercised his authority to consider exemptions from the code specifically granted this power. The power granted by the statute was discretionary in that the administrative agency was to consider the application for an exemption on the basis of all the facts before it, and could grant, deny, or otherwise dispose of the application.

(4) Crolley v. Tatton, 249 F.2d 908 (5th Cir. 1957), cited by the Secretary, involved an application for judicial review of a determination by a committee in charge of Texas cotton acreage allotments. The administrative committee acted improperly in taking testimony prior to notifying one of the parties. The Court of Appeals reversed a District Court decision insofar as it commanded the committee to reinstate an earlier decision which it had made in the matter. The court observed that the committee specifically had the power to hear and rule upon the particular contested facts before it. The case did not concern the extent of the power granted the committee by virtue of its enabling statute and is clearly distinguishable from the case at bar.

(5) Funderberg v. Udall, 396 F.2d 638 (9th Cir. 1968) was an action where the plaintiff sought to compel the Secretary of the Interior to recognize as valid, a grant, title or lease of a site where plaintiff had his cabin. The Secretary by statute

could only grant a patent to an individual who occupied the land for a period of seven years and used the land as his principal residence. The District Court granted a motion for summary judgment in favor of the Secretary of the Interior. The Court of Appeals stated it would not disturb the District Court's conclusion that the Secretary's decision was not arbitrary, capricious, or erroneous as a matter of law. That case does not in any way detract from the correctness of the United States District Court's decision in the case at hand. In fact, if anything, it supports the lower court in stating that the decision of a lower court in granting summary judgment should not be disturbed except upon the clearest grounds.

(6) The Secretary of the Interior argues that no statute or regulation imposes upon him a clear duty to issue a patent or tentative approval to the lands involved. This assertion by the Secretary is clearly erroneous. The only matter the Secretary is to consider is whether the state has duly selected the lands. The questions the Secretary is to consider in determining whether there is a due selection are discussed at another portion of this brief at pages 21-23. Thus, the case of Wilbur v. United States ex rel. Kadrai, 281 U.S. 206 (1930) is inapplicable. In that case the determination as to whether an individual who resided in Canada and was not of full Indian blood was a member of the Chippewa tribe was one clearly involving the Secretary's discretion.

The facts of this case clearly support the lower court's decision compelling the Secretary to grant tentative approval and

issue patent to land selected by the State of Alaska under the provisions of the Alaska Statehood Act. Tract "A" was selected by the State of Alaska on September 29, 1960. Tract "B" was selected on January 22, 1962. The Secretary of the Interior has failed to take any action on the state's selection from July 31, 1963 to the present date in spite of the fact that the state has complied with all the procedural requirements under the law and regulations of the Secretary of the Interior relative to its selection of lands. Presumably the Secretary of the Interior would raise the same complaints as raised in this case if the twenty-five year period in which the State of Alaska is allowed to select lands had elapsed prior to his issuing tentative approval or patents to the lands. The court correctly recognized and held that the Secretary of the Interior could not act so arbitrarily or capriciously in a matter involving the entire economic base of the State of Alaska.

In support of his contention that the District Court improperly directed him to issue patent and to grant tentative approval forthwith the Secretary of the Interior asserts that further time is necessary to study the problem raised by the Native land claims in Alaska. On page 12 of his brief, the Secretary states that all he has done is "to withhold action on the application of the State pending further study of the entire [land claims] situation". More properly stated, what the Secretary has done is for nine years to deprive the State of Alaska of the lands which it has been granted by Congress through the Alaska Statehood Act. More than one-third of the period in which the state may select land has elapsed and yet

the Secretary asks for more time. Nothing is more clearly unreasonable than this. The Secretary predicates his delay on the authority of Tee-Hit-Ton Indians v. United States, supra and Organized Village of Kake v. Egan, supra. The grossness of the Secretary's error is magnified when the clear intent of these cases is that any remedy which the Indians may have in respect to lands patented to Alaska is for compensation and nothing more. The case of United States v. Lynch, 7 Alaska 568 (1927) clearly supports the position of the State of Alaska. In that case, certain lands of the State of Alaska were claimed by a member of the Tlingit Indian tribe. The court stated:

> The title to these lands is in the United States and being tidelands, are held in reserve for the benefit of the future state. The control thereof is in the Secretary of the Interior, . . . No one Indian can bring an action of trespass against any person for trespassing on the reserve because of a lack of title, and because of a lack of possessory right to any particular portion thereof. [7 Alaska at 576]

Similarly, in the case at hand, the United States holds the land subject to selection for the benefit of the State of Alaska. No one but the United States has title to the land and no one has a possessory right to any particular portion of the land. To reach this conclusion the Secretary need take no more time than is necessary to read and understand the Tee-Hit-Ton case, the Kake Village case and Lynch case.

Moreover, the cases cited by the Secretary in support of his plea for additional time do not stand for the proposition that the Secretary may refuse to issue tentative approval or patent to the lands selected by the state under the Alaska

Statehood Act. Dunn v. Ickes, 115 F.2d 36 (D.C. Cir. 1940) cert. den. 311 U.S. 698 (1940), simply held that where the Secretary was possessed of the discretion to issue oil leases an order to compel him to issue a lease would be improper. The Secretary has no such discretion in this case. The cases of Mecham v. Udall, 369 F.2d 1 (10th Cir. 1966) and United States v. Midwest Oil, 236 U.S. 459 (1914) uphold the authority of the President and the Secretary of the Interior to make certain withdrawal orders. The validity of a withdrawal order is not at issue in this case. Furthermore, neither case concerned itself with land which was selected by a state during a period of time which is limited by statute. Morrow v. District of Columbia, (D.C. Cir. No. 22126 and No. 22131 1969) not yet reported, has no application to this case except insofar as the court noted:

> Mandamus is often issued by a court against some public official compelling him to perform a ministerial duty. (Page 8).

None of the cases cited by the Secretary of the Interior disclose any basis in law or fact why a period of nine years must elapse for the Secretary to understand the nature of the ministerial duty imposed upon him by the Alaska Statehood Act. The assertion that the Department of Interior needs more time to engage in further study of the entire situation involving Alaska Native land claims is nothing more than a bootstrap argument buttressing the federal government's falacious bureaucratic logic in support of its clearly unauthorized position in this case.

II. SUMMARY JUDGMENT WAS PROPER IN THAT THE PROCEDURAL REQUIREMENTS WERE MET.

Appellants assert that summary judgment in this case was improperly granted for the reason that a material issue of fact was in dispute. Appellants state that the question as to whether or not tracts "A" and "B" selected by the State of Alaska were vacant was in dispute and, therefore, the court was not in a position to render summary judgment. Appellants' position is improperly taken for several reasons.

Disregarding all other grounds, the District Court for the District of Alaska properly granted summary judgment because appellants failed to comply with Rule 5(H)(2) of the General and Criminal Rules, U. S. District Court for the District of Alaska. That rule provides as follows:

> (2) Any party opposing the motion [for summary judgment] shall, not later than three (3) days prior to the hearing, serve and file a concise "statement of genuine issues" setting forth all material facts as to which it is contended there exists a genuine issue necessary to be litigated.

An examination of the transcript of the record in this case makes clear that no such statement of genuine issues was filed by defendants in this case. In the absence of such a document, the court could properly conclude that there was no genuine issue of fact to be decided by it. Further, the fact that no statement of genuine issues as required by the rules of court was filed by defendants would support the conclusion that defendants themselves, at the time summary judgment was granted, believed there was no genuine issue of material fact to be resolved by the court. Appellants, in raising the issue of material fact at this late date, are acting in disregard of the

rules of the United States District Court for the District of Alaska and, having failed to raise the issue in that court, they may not properly do so at this time, before this court.

Disregarding the fact that defendants failed to comply with Rule 5(H)(2) of the General and Criminal Rules of the United States District Court for the District of Alaska, the District Court was proper in granting summary judgment on the basis of the memoranda and affidavits before it. Joseph Keenan, Director, Alaska Division of Lands, submitted an affidavit in support of the State of Alaska's motion for summary judgment. (R.296). The affidavit stated that the affiant was the Director of the Division of Lands of the State of Alaska and stated that he had personal knowledge of the following matters:

1. He was familiar with the public lands comprising tract "A" and tract "B" in dispute herein;

2. That he had reviewed and was familiar with the contents and history of the protests and claims of the Nenana Indians in respect to the disputed tracts;

3. That he has personally examined the records of the Bureau of Land Management and that on the basis of his examination he has determined that the lands are vacant of human settlement and are unappropriated and unreserved by any person or agency of government.

Thus, the court had before it the affidavit of the Director of the Division of Lands of the State of Alaska to the effect that the lands in question were vacant of human settlement, unappropriated and unreserved by any person or agency of government. This individual was the official of the state most

likely to have knowledge in this area. The court also had before it the affidavits of David J. Esau and Richard Ketzler (R.294-295). These affidavits were submitted by defendants and stated that the tracts in question had been used by the Native people of Nenana for trapping, hunting, and campsites. These facts were not disputed by plaintiff's affidavit, nor did those facts place in issue any of the facts in the Keenan affidavit. Therefore, the affidavits submitted by defendants were ineffective in raising an issue of fact as to whether or not the lands in dispute were vacant, unappropriated and unreserved at the time of their selection. Rather, the court had to determine whether, as a matter of law, the facts set forth in defendant's affidavit precluded the selection of said lands by the State of Alaska and their subsequent tentative approval and patent by the Secretary of the Interior.[1/] However, there having been presented no issue of material fact, the procedural requirements for summary judgment were met.

In support of their position that there is a material issue of fact which would prevent the lower court from granting plaintiff's motion for summary judgment, appellants cite a number of cases, none of which are applicable. Those cases are as follows:

(1) Johnson v. Pacific Coast S.S. Co., supra, was an action to have certain deeds made by the Trustee of the Juneau Townsite to the predecessor in interest of the Pacific Coast

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1/ See pages 7-15 herein for a discussion of the fact that the lands in question were "vacant, unappropriated and unreserved."

Steamship Company set aside. The plaintiffs in the case were Native Alaska Indians. Plaintiffs used and occupied the ground prior to the subdivision of the land. The court held that the patent to defendant's predecessor in interest should be upheld. The court found there was no evidence that the Indians ever occupied the land where defendant's wharf was situated. The court stated, in part: "There should be the clearest and strongest proof of occupancy by the natives on or before 1884." 2 Alaska at 246. Thus, rather than supporting appellants position herein the case cited sets forth the rule that if Native Alaskans are to lay claim to Alaska land there should be the clearest and strongest proof of occupancy by them. The defendants' affidavits filed in this case do not meet the test.

(2) United States v. Berrigan, 2 Alaska 442 (1904), and United States v. Cadzow, 5 Alaska 125 (1914) stand for the proposition that as against third parties the United States may successfully prosecute actions of ejectment in respect to land claimed by Native Alaskans. Neither case is determinative as to the power of the Secretary of the Interior to grant patents to land under the provisions of the Public Statehood Act nor is determinative as to the power of any United States official to deal with land claimed by Indians.

(3) In Heckman v. Sutter, 119 F. 83 (9th Cir. 1902) the court dealt with the rights of Indians in respect to third parties and not in respect to the power of the United States to deal with lands claimed by Indians. The court stated:

> Congress saw proper to protect by its Act of 1884 the possession and use by these Indians and other persons of any and all lands in Alaska against

intrusion by third persons, and so far has never deemed it wise to otherwise provide. [119 F. at 89]

In conclusion, for the reasons stated above, it is clear that the court was proper in granting summary judgment and that there is no material issue of fact.

III. THE UNITED STATES IS NOT AN INDISPENSABLE PARTY TO AN ACTION TO COMPEL THE SECRETARY OF THE INTERIOR TO ISSUE TENTATIVE APPROVAL AND PATENTS TO THE STATE OF ALASKA UNDER THE ALASKA STATEHOOD ACT.

The assertion that the District Court lacked subject matter jurisdiction because the United States is an indispensable party to the action and did not consent to be sued is not well taken. It must be noted that this is an action brought under the provisions of 28 U.S.C. § 1361 (1962) which allows an action in the nature of mandamus to be maintained against an officer of the United States to perform a duty owed to the plaintiff.

The lower court concluded as a matter of law that "defendants and their successors have no lawful discretion or power to interrupt, delay, impede or interfere with the process of selection under Section 6(b) of the Statehood Act on the ground of pending native claims." (R.303). It is the position of the State of Alaska that by impeding the process of selection, the Secretary of the Interior failed to perform a duty owed the state.

A. THE SECRETARY'S LACK OF AUTHORITY TO WITHHOLD TENTATIVE APPROVAL TO TRACT "B" AND PATENT TO TRACT "A" WAS ASSERTED IN THE COMPLAINT

Paragraph 13 of the first claim for relief and paragraph 8 of the second claim for relife in plaintiff's amended complaint make clear that the provisions of 28 U.S.C. § 1361 (1962) are

invoked. The Supreme Court has recognized that if the complaint asserts that the official lacked the authority to perform or withhold specific action, the United States is not an indispensable party to the action, Land v. Dollar, 330 U.S. 731 (1947). That case was an action by a steamship company against the United States Maritime Commission for an order restraining the sale of the steamship company's stock. The stock was pledged to the Commission as security for a loan which was repaid by the corporation. The Commission offered the stock for sale. The Supreme Court reversed the lower court's dismissal of the action and held that the United States was not a necessary party. The court stated:

> The allegations in the complaint, if proved, would establish that petitioners are unlawfully withholding respondent's property under the claim that it belongs to the United States. [330 U.S. at 735].

In discussing whether or not such an action is an action against the United States the court stated:

> But public officials may become tort feasors by exceeding the limits of their authority. And where they lawfully seize or hold a citizen's realty or chattels, recoverable by appropriate action at law or equity, . . . the dominant interest of the sovereign is then on the side of the victim who may bring his possessory action to restrain that which is wrongfully withheld. [330 U.S. at 738].

The reasoning of Land v. Dollar applies to the case at bar. Paragraph 13 of the first claim for relief and paragraph 8 of the second claim for relief in plaintiff's amended complaint assert that the actions of the defendant complained of were "unlawful, arbitrary, unreasonable, and without rational basis in law or in fact; were and are in violation of the exrpess and

mandatory provisions of the applicable statutes and policy of the Congress of the United States" and the Secretary of the Interior's regulations and practices. The complaint further states in what manner the Secretary's actions have been unlawful and upon what basis plaintiff claims that the defendants owe a duty to the plaintiff. The State of Alaska claims that the Secretary of the Interior is unlawfully withholding tentative approval and patent to lands duly selected by the State of Alaska under the Alaska Statehood Act. The State of Alaska is asserting the only remedy available to it, an action to compel the Secretary of the Interior to perform the functions required of him. In such a case, the interest of the United States is that its rules and regulations be complied with rather than disregarded. Thus, the United States is not an indispensable party. See also Atchison, T. & S. F. R.R. v. O'Conner, 223 U.S. 280 (1912), and Goltra v. Weeks, 271 U.S. 536 (1925) which state that since the complaint properly put the official's authority in issue, the United States was not a necessary party.

The rule of Land v. Dollar, supra, has been followed by the United States Supreme Court since its decision in United States v. Lee, 106 U.S. 196 (1882). The plaintiff in that case, Lee, sought to recover possession of a parcel of land, title to which the United States claimed through a tax sale. It was claimed by the plaintiff that the official having control of the land refused to accept payment from the plaintiff in a sum sufficient to redeem the land from the effect of the tax sale. The Supreme Court affirmed the lower court's judgment in favor of the plaintiff. In respect to the claim of the defendant that

the lower court had no jurisdiction because the United States was not a party and did not consent to the suit, the court stated:

> This examination of the cases in this court establishes clearly this result: that the proposition that when an individual is sued in regard to property which he holds as an officer or agent of the United States, his possession cannot be disturbed when that fact is brought to the attention of the court, has been overruled and denied in every case where it has been necessary to decide it. [106 U.S. at 215].

Similarly, in the case at hand, the fact that the Secretary of the Interior may hold the land as an officer or agent of the United States does not deprive this court of jurisdiction. See also Philadelphia Co. v. Stimson, 223 U.S. 605 (1912) which held that where the conduct of a public official constitutes an unwarranted interference with property rights of the complainant the action against the public official cannot be defeated on the ground that the suit is against the United States.

The reasoning of the Lee case was followed in Work v. Louisiana, supra. That case was an action by Louisiana against the Secretary of the Interior to compel him to grant certain swamp lands to the state. The Secretary had ordered that the state must first show the lands were non-mineral. The court stated:

> It is clear that if this order exceeds the authority conferred upon the secretary by law and is an illegal act, then under color of his office, he may be enjoined from carrying it into effect.

See also Ickes v. Fox, 300 U.S. 82 (1936) holding that where the action is against the Secretary of the Interior to compel him to

do that which the statute compels him to do, the United States is not a necessary party.

In support of their position that the United States is an indispensable party defendants state that White v. Administrator of Gen. Servs. Admin., 343 F.2d 444 (9th Cir. 1965) is controlling. That case is of no help to defendants in the present litigation, and is not even applicable by analogy to the facts presented in this case. In this case the title to tracts "A" and "B" is undisputably in the United States. In the White case the title to the tract of land involved was clearly in the Southern Pacific Railroad. That case involved an agreement between the General Services Administration and the plaintiff for the sale of a parcel of land. The invitation to bid on the parcel stated that the land was subject to a 20-foot-wide easement in favor of the Southern Pacific Railroad. Plaintiff paid the purchase price and later discovered that the easement of the Southern Pacific was 79 feet in width. Plaintiff brought an action demanding that the General Services Administration issue a deed reciting that the easement was only 20 feet in width. The action was not one to compel a public official to perform an act clearly within his authority. Rather, the plaintiff sought to obtain a grant from the United States of land, the title to which was clearly in another. No public official has this authority. The practical effect of the action would have been to make the United States or its agent a party to an unlawful grant subjecting the United States to possible liability based upon breach of warranty contained in the deed. The court properly found that

The action in effect asserted a claim against the United States and that it could not be maintained unless the United States consented to the action. The White case is, therefore, exactly opposite from the case presented here. Plaintiff in this case seeks to compel the Secretary of the Interior to do that which he is legally required to do and to cease doing that which he may not lawfully do. The courts have uniformly held that in such an action the United States is not an indispensable party.

Defendants note that the White case relied upon Larson v. Domestic & Foreign Commerce Corp., 337 U.S. 682 (1949). The latter case was an action by an alleged buyer of coal against the director of the War Assets Administration to enjoin the sale to a third party of certain coal claimed by the buyer, and for a declaration that the sale to the plaintiff from the War Assets Administrator was valid. The Supreme Court affirmed the lower court's decision dismissing the case for want of jurisdiction in that the United States was a necessary party which had not been joined. The court noted that there was no allegation that the War Assets Administrator had limitations imposed upon his actions by statute or that he acted unconstitutionally or unlawfully in attempting to sell to others the coal claimed by the plaintiff. The Larson case is, therefore, consistent with the White case in that in both cases neither official was alleged to be acting unlawfully or in excess of his authority. The Larson case may be distinguished from the case at hand in that paragraph 13 of the first claim and paragraph 8 of the second claim for relief in the amended complaint allege that the defendant, Secretary of the Interior, is exceeding his authority in withholding

tentative approval and patent. The court in the Larson case itself recognized the important distinction. Footnote 12 at 337 U.S. page 691 states:

> This case must, therefore, be clearly distinguished from cases like Noble v. Union River Logging Company, 147 U.S. 165 (1893). In that case, it was held that the officer being sued lacked power to refuse delivery because under the statutory scheme, his predecessor's determination that the plaintiff was entitled to delivery was binding. A similar case would be presented here if the statute expressly provided that the administrator's interpretations of contracts should be binding and irrevocable and if a later, or subordinate official refused to follow a prior binding interpretation. In such a case the issue would not be the correctness or incorrectness of the later decision under general but simply the power of the official under the statute to make a decision at all. cf. Ickes v. Fox, 330 U.S. 82 (1937).

Similarly, the issue facing the court in this case is the power of the Secretary of the Interior to refuse to issue tentative approval and to grant a patent of the applicable land to the State of Alaska. The court in Larson noted that in a case such as presented here its decision in Larson would not apply. The court stated:

> [W]here the officer's powers are limited by statute, his actions beyond those limitations are considered individual and not sovereign actions. The officer is not doing the business which the sovereign has empowered him to do or he is doing it in a way the sovereign has forbidden. His actions are ultra vires and therefore may be object of specific relief. [337 U.S. at 689].

It is clear, therefore, that where the Secretary of the Interior fails to do the acts required under the provisions of Sections 6(b) and 6(g) of the Alaska Statehood Act, he is not doing the business which the government empowered him to do. It must of necessity follow that the United States is not an indispensable

party to the action.2/

Cases cited by appellants are inapplicable. In Dugan v. Rank, 372 U.S. 609 (1963) there was no indication that Bureau of Reclamation officials in impounding the water claimed by plaintiff were acting in excess of their authority or with no authority. The case of Heckman v. Sutter, 119 Fed. 83 (9th Cir. 1902) has nothing to do with the issue of jurisdiction raised by defendants. Similarly, in Switzerland Co. v. Udall, 337 F.2d 56 (4th Cir. 1964) cert. den. 380 U.S. 914 (1965), there was no allegation that the officer acted in excess of his authority.

2/ For a complete discussion of the exact meaning of the Larson holding see Clackamas County v. McKay, 219 F.2d 479, 491-93, (D.C. Cir. 1954), vacated on other grounds, 349 U.S. 909 (1955). The reasoning of that case insofar as it related to the issue of mandamus was approved in Udall v. Wisconsin, Colo. & Minn., 306 F.2d 790 (D.C. Cir. 1962). In the Clackamas County case Judge Prettyman said the following relative to sovereign immunity:

> Possible philosophical justification for a doctrine of sovereign immunity in our concept of government is a tempting topic for inquiry. Neither of the two bases - divine right or the absolute and irrevocable transfer of power by the people - upon which the doctrine of sovereign immunity was built exists in our theory of government. And a notion that government officials can be too busy to respond to a citizen's assertion of rights is a precise antithesis of our proud postulate of government by law. And the amiable recitation that when an officer does right he acts officially but when he does wrong he acts individually is a bit of fiction designed to reconcile a maxim that the king can do no wrong with the plain fact that king, and every other government, frequently does do very wrong. . . . [219 F.2d at 488].

Hence, the ruling in that case would not be applicable to the facts presented here.

Other cases such as United States v. Berrigan, supra, United States v. Cadzow, supra, and United States v. Alaska, 197 F.Supp. 834 (D. Alaska 1961) have no bearing on the jurisdiction of the court because of the absence of the United States as a party.

B. THE UNITED STATES IS NOT A NECESSARY PARTY TO AN ACTION SEEKING TO COMPEL AN OFFICIAL TO PERFORM A MINISTERIAL DUTY.

The cases are clear to the effect that when an official of the government is charged with a ministerial duty to perform an act, a suit brought by the person entitled to the performance is not a suit against the government. It follows that in such a suit the United States is not a necessary party and its consent is not necessary. Houston v. Ormes, 252 U.S. 469 (1920).3/

IV. THE REMAINING CONTENTIONS RAISED BY APPELLANTS ARE WITHOUT MERIT.

A. RESOLUTION OF THE CASE NEED NOT AWAIT CONGRESSIONAL ACTION.

The Secretary of the Interior asserts that since the Federal Field Committee for Development Planning in Alaska has concluded that the problem of the native land claims is a complicated one, the matter should not be resolved by the Federal District Court. Appellants are aware of no rule of law, nor have appellees cited any rule of law, to the effect that

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3/ See Section I. B. herein where it is shown that the action required by the Secretary of the Interior pursuant to Sections 6(b) and 6(g) of the Alaska Statehood Act is a ministerial duty.

complicated issues are not within the province of the courts. The thrust of appellants' argument is that this particular matter should be settled by congressional rather than court action.

The above argument has no merit. The Secretary of the Interior is stating in effect that the decision in this case should wait until Congress conceivably would act to solve the problem. The absurdity of this argument is apparent when it is considered that Congress has had approximately 102 years in which to act to solve the problem but has not done so. In advancing this argument the Secretary is again showing his disregard and disrespect for the time limitation within which Alaska must act in order to acquire land and to exist as an active economic unit. Furthermore, appellees have shown the court was correct in ordering the Secretary to issue tentative approval and patent to the lands in question. The weakness of the Secretary of the Interior's argument is exposed when, notwithstanding the clear correctness of the state's position, he asks that any further judgment in this matter be delayed until Congress takes action. Such an assertion is unrealistic and not supported by law.

B. THE MATTER OF EXTINGUISHMENT OF INDIAN RIGHT OF OCCUPANCY IS NOT IN ISSUE.

Amicus curiae, Tlingit & Haida Indians, argue at length that neither the Statehood Act nor the selection of land thereunder has the effect of extinguishing Indian title. However, resolution of this question is not necessary to determination of the case.

The summary judgment of the District Court ordered appellants to issue a patent to tract "A" and tentative approval to

tract "B", said patent to be in the usual form and without any "reservations, restrictions or other derogations of title". That order may be affirmed in its present form whether or not it be determined that Indian title is extinguished by the grant.

It is a well established rule that the sovereign holds the ultimate fee title to lands which Indians occupy, and that this fee title may be alienated, Johnson v. M'Intosh, 21 U.S. (8 Wheat) 543 (1823); Clark v. Smith, 38 U.S. (13 Pet. 195 (1839). The validity of a grant of Indian land or of rights therein remains unaffected whether or not the Indian right of occupancy survives the grant. If it survives, the grantee takes fee title subject to the Indian right of possession, Beecher v. Wetherby, 95 U.S. 517 (1877); Leavenworth, L. & G. R.R. v. United States, supra; United States v. Santa Fe Pac. R.R., supra; Buttz v. Northern Pac. R.R., supra. Thereafter, when Indian occupancy is abandoned or extinguished, possession attaches itself to the fee without the necessity of a further grant, and the grantee holds the unencumbered fee, Beecher v. Wetherby, supra; Clark v. Smith, supra. On the other hand, the transfer itself may operate to extinguish Indian title as in Tee-Hit-Ton Indians v. United States, supra, where Congress authorized a sale of timber on Indian land, Tlingit and Haida Indians of Alaska v. United States, supra, where it was found that federal laws relating to mining claims, mineral locations, townsites, industrial sites, homesteading and cutting of timber on Indian lands in Alaska had deprived the Indians of their lands, and Spalding v. Chandler, 160 U.S. 394 (1895), where it was held that an act of Congress granting to the State of

Michigan land for a canal had the effect of extinguishing so much of the Indians' title to their reservation lands as was needed for the canal.

As shown by the Tee-Hit-Ton and Tlingit and Haida cases, the rule is that the transfer of Indian land or of rights therein constitutes in itself the extinguishment of Indian title. The fact that a similar result was not reached in Beecher may be attributed to the fact that the land in question had earlier been the subject of a boundary dispute between Indian tribes which the United States had undertaken to settle, thereby impliedly recognizing Indian rights in the land. In Leavenworth the grant by Congress excepted lands "heretofore reserved". The land in question was on an Indian reservation established by treaty and was, therefore, not included within the terms of the grant. In Buttz and Santa Fe the grant contained the specific stipulation that Congress would thereafter undertake to extinguish Indian title to the land, thereby making it clear that the grant was not intended to have that effect by its own operation. None of these factors are present in the instant case.

There is, therefore, every indication that Congress intended the grant and selection of land to operate as an extinguishment of Indian right of occupancy wherever such a right may exist in selected lands. A grant of Indian lands indicates at least a congressional intent to work either a present or a future extinguishment of Indian title. Leavenworth, L. & G. R.R. v. United States, supra. That Congress intended the grant and selection of the land to be itself the act that extinguished

whatever Indian title might exist in the land is indicated by the Supreme Court's opinion in Organized Village of Kake v. Egan, supra. Statements from the opinion in that case were earlier quoted herein to show the Supreme Court's understanding that the Statehood Act authorized selection of Indian lands. It is also apparent from the opinion that the court believed that selection of such lands operated to extinguish Indian title therein. The disclaimer provision and the first proviso of Section 4 of the Statehood Act were interpreted by the court as protecting the right of Indians to make a claim against the United States for damages which might be established to be due as a result of selection of Indian lands by the state. [369 U.S. at 65-66, 67, 69].

Amicus curiae asserts that the Kake opinion contains inconsistencies on the question of whether transfer of Indian lands to the state extinguishes Indian title. The language referred to provides.

> . . . that statehood would neither extinguish them [Indian claims] nor recognize them as compensable. [369 U.S. at 65],

and

> . . . that statehood would neither extinguish nor establish claims by Indians against the United States. [369 U.S. at 69].

Because this latter statement is followed immediately by the court's statement that selection of Indian land was not to destroy the Indians' right to sue the United States for damages, it is apparent that when the court spoke of neither extinguishing nor establishing claims it referred not to extinguishing or establishing Indian right of occupancy but rather referred to

the claims the Indians might have against the government for the extinguishment of a right which resulted necessarily from the transfer of land to the state. There is no inconsistency in this.

In any event, the matter of extinguishment of Indian right of occupancy need not be resolved in the present case. In the first place, appellants' affidavits are insufficient to establish that the tracts in question are Indian land. Further, even if they were Indian land, a conclusion which is not supported by the law or the facts, appellants may still be ordered to patent them to the state without any "reservations, restrictions or other derogations of title" because the Indian right of occupancy either is thereby extinguished or the state, by operation of law, holds the fee subject to Indian right of occupancy until it is later extinguished, thereby leaving the state with the unencumbered fee.

C. THE PICKETT ACT WITHDRAWAL OF PUBLIC LANDS IN ALASKA DOES NOT AFFECT THE PRESENT CASE.

Although appellants have not raised the issue, it should be noted that this case remains unaffected by Secretary Udall's withdrawal of public lands in Alaska under the Pickett Act, 43 U.S.C. § 141 by Public Land Order 4582, issued January 17, 1969 (34 Fed. Reg. 1025, F.R. Doc. 69-873). The order purports to withdraw all public lands in Alaska from selection by the state under the Statehood Act. Paragraph 4 of the order excepts from its operation selections of certain mineral lands made before January 4, 1969, and selections of other lands made before December 13, 1968. Selection of both tracts involved in the instant case preceded these two dates. The order, therefore, by

its own terms, does not apply to the land here in question.

Moreover, although appellee does not concede the applicability of a Pickett Act withdrawal order to selection under the Statehood Act, the present order cannot be applied to the land herein because such an order does not apply to lands selected at the time of the order. The terms of the Statehood Act operate as a grant in praesenti of lands to be thereafter identified. Noble v. Union River Logging R.R., supra. In such case selection is the final step by which the state earns the right to receive title. The lands so selected are not thereafter "public lands" within the meaning of the Pickett Act and are not subject to withdrawal thereunder. Payne v. Central Pac. R.R., supra. The state thereby becomes the equitable owner of the selected tracts and acquires a vested right thereto. Wyoming v. United States, 255 U.S. 489, 497, 500-501.

The above noted withdrawal order, therefore, does not prevent affirmance of the judgment of the District Court whereby the Secretary is compelled to issue patent and tentative approval of the lands here in issue.

CONCLUSION

For the foregoing reasons, the State of Alaska asserts that the District Court for the District of Alaska was correct in granting the State of Alaska's motion for summary judgment. The court below was correct in ordering the Secretary to grant forthwith tentative approval to the state's selection of the

lands comprising tract "B" and in ordering the Secretary to issue and deliver patent to tract "A". The lower court's order should therefore be affirmed.

Respectfully submitted,

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ATTORNEY GENERAL FOR THE
STATE OF ALASKA

By: _____
Charles K. Cranston
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_____
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APPENDIX

§ 2013.9-4 STATE SELECTIONS.

Lands desired by the State under the regulations Subpart 2222 will be segregated from all appropriations based upon application or settlement and location, including locations under the mining laws, when the State files its application for selection in the appropriate land office properly describing the lands as provided in § 2222.9-3(c). Such segregation will automatically terminate unless the State publishes first notice as provided by § 2222.9-5(c) within 60 days of service of such notice by the appropriate officer of the Bureau of Land Management.

§ 2222.9 ALASKA.

§ 2222.9-1 GRANT FOR COMMUNITY PURPOSES.

(a) Authority. The act of July 7, 1958 (72 Stat. 339, 340), grants to the State of Alaska the right to select, within 25 years after January 3, 1959, not to exceed 400,000 acres of national forest lands in Alaska which are vacant and unappropriated at the time of their selection and not to exceed 400,000 acres of other public lands in Alaska which are vacant, unappropriated, and unreserved at the time of their selection. The act provides that the selected lands must be adjacent to the established communities or suitable for prospective community centers and recreational areas. The act further provides that such lands shall be selected with the approval of the Secretary of Agriculture as to national forest lands and with the approval of the Secretary of the Interior as to other lands, and that no selection shall be made north and west of the line described in section 10 of the act without approval of the President or his designated representative.

(b) Applicable regulations. Unless otherwise indicated therein, the regulations in § 2222.9-4 (a) to (d) apply to the grant and selection of lands for community purposes. In addition to the requirements of § 2222.9-4(c), where the selected lands are national forest, the application for selection must be accompanied by a statement of the Secretary of Agriculture or his delegate showing that he approves the selection.

(c) Approval of selections outside of national forests. Selection of lands outside of national forests will be approved by the authorized officer of the Bureau of Land Management if, all else being regular, he finds that approval of a selection of lands adjacent to an established community will further expansion of an established community, or if the lands are suitable for prospective community centers and recreational areas.

(2) That the land applied for does not extend more than 160 rods along the shore of any navigable water or that such restriction has been or should be waived. (See § 2024.2 of this chapter.)

(3) All facts relative to medicinal or hot springs or other waters upon the lands must be stated.

§ 2222.9-3 GRANT FOR MENTAL HEALTH PROGRAM.

(a) Authority. The Act of July 28, 1956 (70 Stat. 709, 711,712), as supplemented July 7, 1958 (72 Stat. 339; 343; 48 U.S.C. 46-3) (referred to in this section as "the act"), grants to the State of Alaska the right to select, within 10 years from July 28, 1956, not to exceed the unsatisfied portion of one million acres from the public lands in Alaska which are vacant, unappropriated, and unreserved at the time of selection.

(b) Lands subject to selection; patents; minerals. (1) Under the act, the State may select any vacant, unappropriated, and unreserved public lands in Alaska, whether or not they are surveyed and whether or not they contain mineral deposits, except that no lands may be selected that lie north and west of the line described in section 10 of the act without approval of the President or his designated representative. Where the preference provisions of § 2222.9-5(a) do not apply, selections by the State of lands covered by an application filed prior to the State selection will be rejected when and if such application is allowed. Conflicting applications and offers for mineral leases, and permits, except for preference right applications filed pursuant to the mineral leasing acts and the regulations of this chapter, whether filed simultaneously with or prior or subsequent to the filing of a selection of this part, will be rejected if such selection is approved by the authorized officer of the Bureau of Land Management for survey, if applicable, and patenting.

(2) Patents will be issued for all selections approved under the act by the authorized officer of the Bureau of Land Management but such patents will not issue unless or until the lands are officially surveyed.

(3) Patents issued under the act will convey to the State all mineral deposits in the selected lands.

(c) Applications for selection. (1) Applications for selection of lands under the act will be made by the proper selecting agent of the State and will be filed, in duplicate, in the land office of the district in which such selected lands are situated. No special form is required but it must be typewritten and must contain the following information:

(i) A reference to the act of July 28, 1956 (70 Stat. 709), as supplemented.

(ii) A certificate by the selecting agent showing:

(a) That the selection is made under and pursuant to the laws of the State.

(b) The acreage selected and the cumulative acreage of all prior selection lists pending and finally approved for clear-listing or patenting.

(c) His official title and his authority to make the selection on behalf of the State.

(d) That no portion of the selected land is occupied for any purpose by the United States and that to the best of his knowledge and belief the land is unoccupied, unimproved, and unappropriated by any person claiming the land other than the applicant, and that at the date of the application no part of the land claimed or occupied under the mining laws.

(e) That the selected land does not extend more than 160 rods along the shore of any navigable water or that such restriction has been waived or should be waived. (§ 2024.2 of this chapter.)

(f) All the facts relative to medicinal or hot springs or other waters upon the selected lands.

(iii) If the selected lands are surveyed, the legal description of the lands in accordance with official plats of survey.

(iv) If the selected lands are unsurveyed and are described by approved protraction diagrams of the rectangular system of surveys, such description is required.

(v) If the selected lands are unsurveyed and are not described by approved protraction diagrams, a description of the lands and a map or maps, in duplicate, sufficient to permit ready identification of the location, boundaries, and area of the lands.

(2) Selections must be accompanied by a filing fee of $10 for each 5,760 acres or fraction thereof in the selection which fee is not returnable.

(3) All selections shall be made in reasonably compact tracts, taking into account the situation and potential uses of the lands involved. A tract will not be considered compact, if it excludes other public lands available for selection within its exterior boundaries.

(4) Segretation, publication. See § 2222.9-5 (b) and (c).

(d) Effect of approval of selection. Following the selection of lands by the State pursuant to the requirements of paragraph (c) of this section the State shall be authorized to lease and make conditional sales of such selected lands pending survey of the lands, if necessary, and issuance of patent.

§ 2222.9-4 GRANT FOR GENERAL PURPOSES.

(a) Statutory authority. (1) The act of July 7, 1958 (72 Stat. 339-343), referred to in paragraph (a) to (d) of this section as "the act," grants to the State of Alaska the right to select, within 25 years from January 3, 1959, not to exceed 102,550,000 acres from the public lands in Alaska which are vacant, unappropriated and unreserved at the time of selection. The act of September 14, 1960 (74 Stat. 1024), defines vacant unappropriated, unreserved public lands in Alaska to include the retained or reserved interest of the United States in lands which have been disposed of with a reservation to the United States of all minerals or any specified mineral or minerals.

(2) The act further provides that no selection shall be made in the area north and west of the line described in section 10 thereof (72 Stat. 345) without the approval of the President or his designated representative.

(b) Lands subject to selection; patents; minerals. (1) The act as amended August 18, 1959 (73 Stat. 395) provides that any lease, permit, license, or contract issued under the Mineral Leasing Act of 1920 (41 Stat. 437; 30 U.S.C. 181 et seq.), as amended, or under the Alaska Coal Leasing Act of 1914 (38 Stat. 741; 30 U.S.C. 432 et seq.), as amended, referred to in this section as "the mineral leasing acts," shall have the effect of withdrawing the lands subject thereto from selection by the State, unless the State files an application to select such lands within a period of five years after January 3, 1959.

(2) Under the act, the State may select any vacant, unappropriated, and unreserved public lands in Alaska, whether or not they are surveyed and whether or not they contain mineral deposits. For the purposes of selection, leases, permits, licenses, and contracts issued under the mineral leasing acts of 1914 and 1920 will not be considered an appropriation of lands if the selection conforms to the requirements of subparagraph (1) of this paragraph. Where the preference provisions of § 2222.9-5(a) do not apply, selections by the State of lands covered by an application filed prior to the State selection will be rejected to the extent of the conflict when and if such application is allowed. Conflicting applications and offers for mineral leases and permits, except for preference right applicants, filed pursuant to the Mineral Leasing Act, whether filed prior to, simultaneously with, or after the filing of a selection under this part will be rejected when and if the selection is tentatively approved by the authorized officer of the Bureau of Land Management in accordance with paragraph (d) of this section.

(3) Patents will be issued for all selections approved under the act by the authorized officer of the Bureau of Land Management but such patents will not issue unless or until the exterior boundaries of the selected area are officially surveyed.

(4)(i) Where the State selects all the lands in a mineral lease, permit, license, or contract, issued under the mineral leasing acts of 1914 and 1920, the patent issued under the act will convey to the State all mineral deposits in the selected lands. Any such patent shall vest in the State all right, title, and interest of the United States in and to any such lease, permit, license, or contract that remains outstanding on the effective date of the patent, including the right to all rentals, royalties, and other payments accruing after that date under such lease, permit, license, or contract, and including any authority that may have been retained by the United States to modify the terms and conditions of such lease, permit, license, or contract. Issuance of patent will not affect the continued validity of any such lease, permit, license, or contract or any rights arising thereunder.

(ii) Where the State selects a portion of the lands subject to a mineral lease, permit, license, or contract issued under the mineral leasing acts of 1914 and 1920, the patent issued under the act shall reserve to the United States the mineral or minerals subject to that lease, permit, license, or contract, together with such further rights as may be necessary to the full and complete enjoyment of all rights, privileges, and benefits under or with respect to that lease, permit, license, or contracts. Upon the termination of the lease, permit, license, or contract, title to minerals so reserved to the United States shall pass to the State.

(c) Applications for selection. (1) Applications for selection under the act must conform with the requirements of § 2222.9-3(c) (1) and (2), and with the following modifications of:

(i) Section 2222.9-3(c)(1)(i) is modified to require a reference to the act of July 7, 1958 (72 Stat. 709).

(ii) Section 2222.9-3(c)(1)(i) is modified to require a statement that the selection, together with other selections under the act pending or approved, does not exceed 102,550,000 acres (400,000 acres where one of the grants for community purposes is involved).

(2) All selections shall be made in reasonably compact tracts, taking into account the situation and potential uses of the lands involved. A tract will not be considered compact if it excludes other public lands available for selection within its exterior boundary. Each tract selected shall contain at least 5,760 acres unless isolated from other tracts open to selection.

(3) If the selected lands are in the area north and west of the line described in section 10 of the act, all selection made or confirmed by the act must be accompanied by a statement of the President or his designated representative showing that he approves the selection.

(4) Lands selected must be described as provided by § 2222.9-3(c).

(5) Section 2222.9-3(c)(1)(ii), and paragraph (a)(1) of this section do not apply to the extent that an application embraces a reserved or retained interest.

(d) Effect of approval of selections. Following the selection of lands by the State and the tentative approval of such selection by the authorized officer of the Bureau of Land Management, the State is authorized to execute conditional leases and to make conditional sales of such selected lands pending survey of the exterior boundaries of the selected area, if necessary, and issuance of patent. Said officer will notify the appropriate State official in writing of his tentative approval of a selection after determining that there is no bar to passing legal title to the lands to the State other than the need for the survey of the lands or for the issuance of patent or both.

§ 2222.9-5 ALL GRANTS.

(a) State preference right of selection; waivers. (1) The acts of July 28, 1956 (see § 2222.9-3(a), and July 7, 1958 (see paragraph (a) of this section), provide that upon the revocation of any order of withdrawal in Alaska, the order of revocation shall provide for a period of not less than 90 days before the date on which it otherwise becomes effective during which period the State of Alaska shall have a preferred right of selection under the acts of 1956 and 1958, except as against prior existing valid rights, equitable claims subject to allowance and confirmation and other preferred rights of application conferred by law.

(2) Where the proper selecting agent of the State files in writing in the appropriate land office a waiver of the preference provisions of paragraph (a) of this section in connection with the proposed revocation of an order of withdrawal, the order affecting such revocation will not provide for such preference.

(b) Segregative effect of applications. Lands desired by the State under the regulations of this part will be segregated from all appropriations based upon application or settlement and location, including locations under the mining laws, when the State files its application for selection in the appropriate land office properly describing the lands as provided in § 2222.9-3(c)(1) (iii), (iv), and (v). Such

segretation will automatically terminate unless the State publishes first notice as provided by paragraph (c) of this section within 60 days of service of such notice by the appropriate officer of the Bureau of Land Management.

(c) Publications and protests. (1) The State will be required to publish once a week for five consecutive weeks in accordance with 1824.4 of this chapter, at its own expense, in a designated newspaper, and in a designated form, a notice allowing all persons claiming the land adversely to file in the appropriate office their objections to the issuance of patent or certification for lands selected under the regulations of this part. A protestant must serve on the State a copy of the objections and furnish evidence of service to the appropriate land office.

(2) The State must file a statment of the publisher, accompanied by a copy of the notice published, showing that publication has been had for the required time.

Senator METCALF. The next witness is Mr. Max Barash. You are here to give us a little different perspective from the point of view of the 10 independent Canadian companies. We are delighted to have you before us.

STATEMENT OF MAX BARASH, ATTORNEY, WASHINGTON, D.C.

Mr. BARASH. Mr. Chairman and members of the Committee, my name is Max Barash. I am an attorney in private practice with offices in Washington, D.C.

My appearance here today is in behalf of 10 independent Canadian companies who are vitally concerned with the impact of the Native claims bill, S. 1830, on their pending applications for noncompetitive oil and gas leases in Alaska.

My letter of June 25, 1969, to Chairman Jackson outlined in some detail the reasons for the companies' vigorous objections to subsection 12(a)(1) of S. 1830 which provides that oil and gas, among other mineral deposits therein enumerated, in all public lands in Alaska shall be leased by the Secretary of the Interior by competitive bidding only. This would have the effect of abolishing the present noncompetitive leasing system to Alaska alone and thus wipe out the rights and equities of the companies whose pending priority applications for noncompetitive oil and gas leases were filed in good faith and in reliance upon the integrity of the present provisions of the Mineral Leasing Act.

With your permission, Mr. Chairman, I shall appreciate having my letter of June 25, 1969, made part of the record of this hearing.

Senator METCALF. At the conclusion of your presentation it will be made a part of the record.

Mr. BARASH. My purpose now is simply to reemphasize two or three of the major points contained in my letter of June 25.

When the companies acquired their priority applications for noncompetitive leases in Alaska at a cost in excess of $3 million there was no inkling given by the Secretary of the Interior that pending applications for noncompetitive leases would not be honored and that he would later seek to abolish the noncompetitive leasing provision of existing law to Alaska alone to the exclusion of all other public land states. On the contrary, the Secretary's formal order of January 17, 1969 (Public Land Order 4582), withdrawing all public lands in Alaska from appropriation and disposition pending determination and protection of the rights of the native Aleuts, Eskimos, and Indians of Alaska contained in essence assurances that noncompetitive leases would in fact be issued. Paragraph 2 of Public Land Order 4582 provides that:

> Unless otherwise required by law, all applications for leases, licenses, permits, or land title transfers which were pending before the Department of the Interior on the effective date of this order, will be given the same status and consideration beginning at 12 (noon) A.s.t., on April 2, 1971, as though there had been no intervening period, unless previously recalled by the applicant.

The quoted language speaks for itself. On the basis status and consideration beginning on April 2, 1971 in the same manner as if there had been no intervening period of suspension. Absent any change in the law, the Secretary's Withdrawal Order indicates clearly that pri-

ority applicants will be entitled to receive noncompetitive leases beginning on April 2, 1971.

In addition, unlike the present bill, S. 1830, several Native Claims bills which were introduced in the 90th Congress during 1967 and 1968 protected the rights of pending priority applicants for noncompetitive leases and thus provided additional assurance that leases would be issued. One was S. 3586 introduced in 1968 by Chairman Jackson, by request. A companion bill, H.R. 17129, was introduced in the House in 1968 by Chairman Aspinall, by request.

In 1967 H.R. 11213 was introduced by Chairman Aspinall and Subcommittee Chairman Haley, by request. All three bills contained identical provisions (sec. 7(b) of S. 3586 and H.R. 17129; sec. 2(b) of 11213) as follows:

(b) A native claim based on use and occupancy of unwithdrawn land shall not be the basis for the rejection of State selections or other applications or claims under the public land laws.

The language indicates clearly that applications for noncompetitive oil and gas leases were to be protected.

In the light of the language of paragraph 2 of Public Land Order 4582 and of the language of the identical provisions of the Native claims bills in the 90th Congress cited above, the right of the companies to rely upon the integrity of the present noncompetitive leasing system being maintained is beyond dispute. In these circumstances, we submit that it would be unconscionable at this late date to repudiate the rights of priority applicants for noncompetitive leases in Alaska.

We submit further, Mr. Chairman, that it is highly unusual and certainly unprecedented for the Native claims bill to be used as a vehicle for amending the Mineral Leasing Act to provide for competitive leasing of all public lands in a single State, Alaska, to the exclusion of all other public land States.

It seems clear that any proposed change in the Mineral Leasing Act of such magnitude and impact, even if it were deemed justified, should be applied uniformly to all the public land States and not piece-meal to any one State. Certainly, it should not be made retroactive. Entitled to consideration, too, is the fact that the question as to the advisability of changing the present leasing procedures on public lands of the United States is under study by the Public Land Law Review Commission, along with other important questions of policy affecting the public domain. It seems reasonable to suggest, therefore, that existing provisions of the Mineral Leasing Act governing oil and gas leasing on the public domain should be followed until the Public Land Law Review Commission has made its recommendations to the Congress and appropriate action is taken thereon.

For all the reasons stated in our letter of June 25, 1969, as amplified and supplemented in this presentation, we respectfully request either that Subsection 12(a)(1) of S. 1830 be eliminated from the bill or, in the alternative, that a saving provision be added at the end of Subsection 12(a)(1) reading as follows:

Nothing in this Act shall affect any valid right or claim in existence prior to the effective date of this Act, including the right under pending noncompetitive oil and gas lease offers to the issuance of leases therefor, and such right of claim shall be governed by the law in effect on the date the right or claim was initiated.

The foregoing saving provision will protect the rights of the independent Canadian oil companies in their pending valid noncompetitive lease applications which they acquired at great cost and in good faith reliance upon the present provisions of the Mineral Leasing Act. Moreover, the saving provision would be consistent with fundamental concepts of fairness and equity in honoring commitments implicit in the noncompetitive leasing system. Any change in the law should operate prospectively only—never retrospectively to the detriment and injury of good faith applicants.

(The letter referred to follows:)

MAX BARASH, ATTORNEY AT LAW,
Washington, D.C., June 25, 1969.

Hon. HENRY M. JACKSON,
Chairman, Interior and Insular Affairs Committee,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: On behalf of ten independent Canadian companies who are vitally concerned with the impact of the pending Native Claims bill, S. 1830,[1] on their oil and gas operations in Alaska, we respectfully request your consideration and the consideration of the members of the Committee of the views hereinafter presented. Through subsidiary domestic oil companies organized under the laws of the United States and authorized to do business in this country the ten companies are engaged in oil and gas exploration on public lands of the United States including Alaska. In my discussion of the Native Claims bill, S. 1830, I speak for all ten companies and I shall refer to them collectively as "the companies."

In general we support the objectives of the Native Claims bill. Settlement of these claims at the earliest possible date is clearly in the public interest. The details governing the settlement of Alaska Native Claims are, of course, matters solely within the discretion of your Committee and the Congress. Our great concern goes to the protection and preservation of the rights held by the companies in pending noncompetitive oil and gas lease offers embracing Federal lands on the North Slope and other areas of Alaska. Collectively, the companies have acquired priority lease offers in Alaska at a cost in excess of $3,000,000.00. Their investment is therefore substantial and their concern a real one.

As now drafted, S. 1830 provides in Sec. 12(a)(1) [at pps. 33 and 34 of the bill] that oil and gas, among other mineral deposits therein enumerated, in all public lands in Alaska shall be leased by the Secretary of the Interior *by competitive bidding*. There is nothing in this subsection or elsewhere in the bill which protects "valid existing rights or claims", including pending noncompetitive oil and gas lease offers, that were initiated or acquired under existing law. In the light of previous native claims bills, introduced in the 90th Congress, which contained appropriate saving provisions protecting rights under pending oil and gas lease offers, we are hopeful that this omission in S. 1830 is an oversight on the part of the draftsmen rather than deliberate. In the last Congress several bills were introduced to provide for the settlement of Alaska native claims. One was S. 3586 introduced by the Chairman of the Senate Interior and Insular Affairs Committee. Another was H.R. 17129 introduced by the Chairman of the House Interior and Insular Affairs Committee. Others were S. 3859, H.R. 11213 and H.R. 15049. All contained appropriate saving provisions for the protection of pending applications or claims under the public land laws. Thus, Sec. 7(b) of S. 3586 and H.R. 17129 provided that:

"A Native claim based on use and occupancy of *unwithdrawn land* shall not be the basis for the rejection of State selections *or other applications or claims under the public land laws.*" (Emphasis added.)

In the same bills, Sec. 7(a) also provided that public lands *withdrawn* by the Secretary of the Interior for the use and benefit of Native groups were "subject to valid existing rights" and, similarly, land grants to Native groups under Sec. 5(a) were made "subject to valid existing rights." It is evident, therefore, that the Alaska native claims bill introduced in the 90th Congress expressly provided for the protection of valid existing rights or claims including pending noncompetitive oil and gas lease offers.

[1] In the House of Representatives the companion bill is H.R. 10193.

May I add, Mr. Chairman, that this committee, as well as the House Committee on Interior and Insular Affairs, has uniformly protected valid existing rights or claims in enacting legislation amending the Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. 181 et seq.). Thus, the last comprehensive modification of the Mineral Leasing Act which was the Act of September 2, 1960 (Public Law 86-705, 86th Cong., H.R. 10455), provided in Section 8 as follows:

"No amendment made by this Act shall affect any valid right in existence on the effective date of the Mineral Leasing Act Revision of 1960."

Similarly, some 14 years earlier in a previous comprehensive revision of the Mineral Leasing Act by the Act of August 8, 1946 (Public Law 696, 79th Cong., S. 1236), Section 15 of that Act provided that:

"No repeal or amendment made by this Act shall affect any right acquired under the law as it existed prior to such repeal or amendment, and *such right shall be governed by the law in effect at the time of its acquisition* * * *." (Emphasis added.)

It seems hardly necessary to mention to this Committee that numerous public land statutes contain a saving provision protecting those holding valid existing rights or claims to public lands. Among them is the Alaska Statehood Act itself which in its various grants of public lands to the new State expressly made them subject to valid existing rights or claims.[2] In your consideration of the Native Claims bill, S. 1830, we respectfully suggest to your Committee the insertion of a saving provision at the end of subsection 12(a)(1) as follows:

> Nothing in this Act shall affect any valid right or claim in existence prior to the effective date of this Act, including the right under pending noncompetitive oil and gas lease offers to the issuance of leases therefor, and such right or claim shall be governed by the law in effect on the date the right or claim was initiated.

The foregoing saving provision will protect the rights of the independent Canadian oil companies in their pending valid noncompetitive lease offers which they acquired at great cost and in good faith reliance upon the present provisions of the Mineral Leasing Act. United States companies in great numbers are and have been engaged for many years in exploration and development of oil and gas deposits in Canada with the encouragement of the Canadian Government. Conversely, Canadian oil companies through their domestic subsidiary companies, are and have been engaged in exploration and development of oil and gas deposits on the public domain of the United States. Comity among nations, especially as between the United States and Canada, dictates that existing laws relied upon in good faith for the acquisition of property rights in public lands of the United States should not be abrogated to the detriment and irreparable injury of our good neighbors—the independent Canadian oil companies across the border. Not to be overlooked is the fact that these Canadian oil companies have tens of thousands of stockholders who are citizens of the United States and who likewise would be adversely affected should this Committee and the Congress fails to protect by a saving provision the priority lease offers of the companies.

Summarizing briefly the equitable considerations which amply justify inclusion in the Native Claims bill, S. 1830, of the saving provision suggested above for the protection of the rights of the companies concerned therewith, they are as follows:

1. The pending lease offers held by the companies were filed in good faith over the period from March 1, 1967, to November 7, 1968, in reliance upon the provisions of existing law.

2. Collectively, the companies have acquired priority lease offers in Alaska at a cost in excess of $3,000,000.00.

3. Normally, noncompetitive oil and gas leases would have been issued promptly after the pending offers were filed. However, the assertion of Native claims at various times and for different areas over a period of several years resulted in piece-meal suspension of action on the pending offers by the Department of the Interior in such areas and ultimately led to the Secretary's formal order of January 17, 1969 withdrawing all public lands in Alaska from appropriation and disposition pending settlement of Native claims (Public Land Order 4582). The imposition of the freeze, which has impeded exploratory

[2] See subsections 6(a) and 6(b) of Section 6 of the Alaska Statehood Act of July 7, 1958 (Public Law 85-508, 85th Cong., H.R. 7999), and House Report No. 624 on that bill.

operations, should not at this late date be permitted to operate to the detriment and injury of the applicants for noncompetitive oil and gas leases.

4. It would be contrary to fundamental concepts of equity and contrary to well-established precedent for this Congress to fail to honor by a saving provision the commitments implicit in the noncompetitive leasing provisions of the Mineral Leasing Act upon which the companies have relied in acquiring priority lease offers on the North Slope and elsewhere in Alaska.

5. It would be manifestly unfair and unjust to change the rules in the middle of the game where large sums of money have been expended by the companies in good faith and in reliance on existing lay in the acquisition of the acreage sought for lease under their pending lease offers.

6. The fact that the Prudhoe Bay discoveries on the North Slope of Alaska during the summer of 1968 have focused attention on the potentially large oil deposits believed to underlie portions of that area does not justify a renunciation of the noncompetitive leasing system authorized by existing law in favor of a new and retrospective competitive leasing system for all public lands in Alaska.

7. Any repeal or amendment of existing law, tantamount in its legal effect to an ex post facto law, which would operate to deprive applicants for noncompetitive oil and gas leases or rights authorized to be acquired by such existing law is morally and equitably wrong, even if legally permissible.

8. The fact that the Federal Government may be the recipient of much greater income by leasing public land of the United States in Alaska under competitive bidding procedures, rather than noncompetitive, should never be the sole criterion when fairness, equity and justice dictate that rights acquired under existing law be honored.

9. Lastly, it is highly unusual and certainly unprecedented for the Native Claims bill to be used as a vehicle for amending the Mineral Leasing Act to provide for competitive leasing of all public lands in a single State, Alaska, to the exclusion of all other public land States. We submit, Mr. Chairman, that any proposed change in the Mineral Leasing Act of such magnitude and impact, even if it were deemed justified by your Committee and the Congress, should be applied uniformly to all the public land States and not piece-meal to any one State. Equally significant is the fact that the question as to the advisability of changing the present leasing procedures on public lands of the United States is under study by the Public Land Law Review Commission along with other important questions of policy affecting the public domain. In these circumstances, it seems reasonable to suggest that existing provisions of the Mineral Leasing Act governing oil and gas leasing on the public domain should be followed until the Public Land Law Review Commission has made its recommendations to the Congress and appropriate action is taken thereon.

In conclusion, Mr. Chairman, we are confident that your Committee will act fairly and justly in protecting the rights of the companies—bearing in mind that the position they find themselves in is not of their own making but rather has resulted from the freeze imposed by the Department of the Interior and the long delay in the issuance of noncompetitive leases. The inclusion in the bill, S. 1830, of the saving provision previously suggested is an absolute prerequisite if their rights, acquired at great cost, are not to be completely destroyed. Moreover, inclusion in the bill of a saving provision will adhere to long established precedent.

Copies of this letter have been forwarded to all the members of the Senate Interior and Insular Affairs Committee.

Respectfully submitted,

MAX BARASH,

Attorney for Asamera Oil Corporation, Ltd., Banff Oil Ltd., Home Oil Co., Ltd., Husky Oil Ltd., National Nickel Co., Ltd., Ranger Oil Ltd., Scurry-Rainbow Oil Ltd., Sunlite Oil Company, Ltd., Ulster Petroleums Ltd., Western Decalta Petroleum Ltd.

Mr. BARASH. Mr. Chairman, with your permission, I appreciate having my letter of June 25, 1969, as well as this presentation entered into the record of the hearing.

Senator METCALF. Yes. That is the letter to which you previously referred?

Mr. BARASH. Yes.

Senator METCALF. It has already been incorporated in the record at the conclusion of your statement.

Mr. BARASH. Thank you.

Senator METCALF. Senator Hansen.

Senator HANSEN. I would like to compliment Mr. Barash for a very fine statement. I think he obviously reflects very great knowledge in the field in which he addresses himself.

Your concern is that the bill, as it is presently drafted does not make adequate provision for some of the valid existing rights and claims that are now of record?

Mr. BARASH. Yes, Senator.

First, I want to thank you for the very fine compliment paid to me. Actually if this bill were enacted with a present section 12(a)(1) it would wipe out, as I stated, completely the rights of pending applicants for noncompetitive leases in Alaska.

Senator HANSEN. I have no further question.

Senator METCALF. Mr. Barash, I think that you have made a significant contribution to this hearing in analyzing this problem.

You were here when a corollary problem was rather extensively discussed by the senior Senator from Alaska this morning, as to what would happen to analogous rights of the State to make selections in areas where the statutory right had not completely ripened, such as when tentative approval had been given. We now run into a direct conflict between the right of the prior occupant, the contention of the natives that they lived on the land, it was their home, and the right granted to somebody that was subsequently a tenuous and intangible right, all of which have accrued to the State government since then.

This committee is aware of the problem you have raised, and was aware as soon as your letter was written, and we have asked the Department of Interior to comment on this proposition. We are going to have to determine what, in all equity, should be done. Some rights that have not ripened into something analogous to the patent or the issuance of a lease are inevitably going to have to be interfered with, and it is our hope that we can work out something that will protect our friends. I notice down here some of these Canadian companies are also American companies and our friends in Canada are American companies that are in the same situation, and I am sure you have made a very comprehensive presentation on behalf of your clients.

This matter will be explored and we will ask for additional information from the Department of Interior, and be assured that this committee will do everything we can to protect these rights of our Canadian neighbors.

Mr. BARASH. Thank you very much, Mr. Chairman, for your kind words.

Thank you, Senator Hansen.

Senator METCALF. Thank you for your appearance here today.

Mr. BARASH. Thank you.

(Following the hearing additional comments concerning Mr. Barash's testimony was received as follows:)

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., August 22, 1969.

Hon. HENRY M. JACKSON,
Chairman, Committee on Interior and Insular Affairs,
U.S. Senate, Washington, D.C.

DEAR SENATOR JACKSON: Thank you for giving us the opportunity to comment on the letter which Mr. Max Barash sent to you on June 25, 1969, concerning S.

1830, the Alaska Native Claims bill. Mr. Barash proposed an amendment to section 12(a)(1) which would protect valid existing rights and claims and would provide that such rights and claims would be governed by the law in effect on the date when the right or claim was initiated. Of particular importance is the fact that Mr. Barash's amendment would explicitly include, as valid rights or claims, rights "under pending noncompetitive oil and gas lease offers to the issuance of leases therefor."

We recommend against any amendment of the Alaska Native Claims bill along the lines urged by Mr. Barash because: (1) valid existing rights are in fact protected by existing principles of law and (2) so-called "rights" for which Mr. Barash seeks protection are in fact not rights at all.

It is true, as Mr. Barash points out, that amendments to the Mineral Leasing Act of February 25, 1920, as amended and supplemented (30 U.S.C. secs. 181–287), customarily protect all valid rights existing on the date of the enactment of the amendment; such protection was given, for example, in section 8 of the Mineral Leasing Act Revision of 1960 (74 Stat. 781, 791). We, of course, are very much in favor of the protection of valid existing rights, and have no objection to statutory provisions protecting such rights as they are commonly understood. Whether a statute explicitly protects such rights or not is probably immaterial, since property rights are protected under the Fifth Amendment to the United States Constitution.

However, we strongly disagree with Mr. Barash's proposal that pending noncompetitive oil and gas lease offers be treated as valid existing rights. The Courts and the Department have always held that the filing of an offer for a noncompetitive oil and gas lease does not create in the offeror any vested right. This proposition was discussed recently in *Solicitor's Opinion*, M–36686, 74 I.D. 285 (1967). In that Opinion the Solicitor held that, when a noncompetitive lease offer had been filed on land which after the filing of the offer, but before the issuance of a lease, became land within the known geologic structure of a producing oil or gas field, a noncompetitive lease could not be issued, but instead the land had to be leased competitively. The basis for this holding was the fact that an offeror obtains no vested right by the filing of his offer, but only the assurance of a preferential right to a noncompetitive lease if such a lease should be issued.

The Courts have sustained the Department's interpretation that the filing of an offer creates no vested right in the offeror. *Duesing* v. *Udall*, 350 F.2d 748 (D.C. Cir. 1965), *cert. den.*, 383 U.S. 912 (1966); *Haley* v. *Seaton*, 281 F.2d 620, 624 (D.C. Cir. 1960). A Departmental decision which appears particularly in point is *Harold Ladd Pierce*, 69 I.D. 14 (1962). Section 8 of the Mineral Leasing Act Revision of 1960 had, as Mr. Barash pointed out in his letter, explicitly protected valid existing rights. However, in the *Pierce* case the Department held that a lease which was issued after September 2, 1960, but pursuant to an offer filed on June 9, 1959, was subject to all the provisions imposed by the Mineral Leasing Act Revision. This Departmental decision was sustained in the Courts. *Miller* v. *Udall*, 317 F.2d 573 (D.C. Cir. 1963). On July 22, 1969, the Court of Appeals for the District of Columbia Circuit held, in *Schraier* v. *Hickel* (Civil No. 22,616), that the provision in section 6(b) of the Alaska Statehood Act (72 Stat. 339, 340) protecting valid existing rights was not applicable to pending offers for oil and gas leases under the Mineral Leasing Act. It will be noted that in both the *Miller* case and the *Schraier* case a statute, cited by Mr. Barash in his letter as an example of the statutory protection given in the past to valid existing rights, has been held by the courts not to give such protection to pending offers for oil and gas leases.

It would thus be completely inconsistent with past legislative practices to give to parties who had filed offers for noncompetitive leases the right to have such leases issued to them after the enactment of S. 1830. This would constitute creating for such parties a right which they do not now have. It is, of course, possible for the Congress to include such a provision in the bill. When the Senate on Interior and Insular Affairs was considering H.R. 10455 of the 86th Congress which became the Mineral Leasing Act Revision of 1960, a provision to protect pending offers was actually proposed, but the Committee did not adopt it. We know of no justification for giving the offerors which would be affected by S. 1830 rights which have never been granted to offerors in the past.

Consequently, the Department is very strongly opposed to the adoption of the amendment offered by Mr. Barash.

Sincerely yours,

JAMES R. SMITH,
Assistant Secretary of the Interior.

(The following letter was received in answer to the above:)

WASHINGTON, D.C., *September 17, 1969.*

Hon. HENRY M. JACKSON,
Chairman, Committee on Interior and Insular Affairs,
U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: I cannot permit to go unchallenged the Acting Secretary of the Interior's letter of August 22, 1969, commenting on my letter of June 25, 1969, which I submitted on behalf of ten Canadian companies concerned with the impact of the Alaska Native Claims bill S. 1830, on their pending priority applications for noncompetitive oil and gas leases in Alaska.

Regretfully I am constrained to take sharp issue with the Department's letter of August 22. I find it unbelievable that the Department in its overly zealous efforts to defeat the rights of pending priority applicants would engage in specious arguments to confuse the real issue. In essence, the Department fails completely to distinguish for the Committee the legal difference between an "existing valid right" and a "vested right."

Please note the opening sentence of the fourth paragraph of the Department's letter in which disagreement is voiced with the proposal "that pending noncompetitive oil and gas lease offers be treated as valid existing rights." The reason for such disagreement is stated to be that "The Courts and the Department have always held that the filing of an offer for a noncompetitive oil and gas lease does not create in the offeror any vested right." Again, in the opening sentence of the fifth paragraph the Department states that "The Courts have sustained the Department's interpretation that the filing of an offer creates no vested right in the offeror."

It is submitted that not one word in my letter of June 25, 1969, contains even the slightest suggestion that an application for a noncompetitive oil and gas lease confers on the applicant a vested right. I would not insult the intelligence of the Committee with any such absurd contention. Our position is simply that an application for a noncompetitive lease is a right conferred by the Mineral Leasing Act which falls in the category of an "existing valid right or claim". The phrase "existing valid claims" constitutes words of art which have been used time and again in public land laws and in Executive and public land orders. In interpreting this phrase or comparably worded language both the courts and the Department of the Interior have consistently held that a saving clause excepting "existing valid claims" from the impact of a particular statute or an order of withdrawal means something less than a "vested" right. Perhaps the leading case on this subject is *Stockley* v. *United States*, 260 U.S. 532 (1923), which involved an Executive Order that withdrew a large body of public lands, including land occupied by Stockley under a homestead entry. Stockley's homestead entry had been perfected by final proof and he had been issued a Receiver's receipt evidencing full compliance with the law and payment of all required fees. No patent had been issued. The Executive Order of withdrawal was made subject to "existing valid claims". The question before the Court was whether the homestead entry was protected by the saving clause "existing valid claims". Holding in favor of Stockley, the Supreme Court said (at pp. 533–544):

"* * * The validity of that order is, of course, settled by the decision in *United States* v. *Midwest Oil Co.*, 236 U.S. 459, 35 Sup. Ct. 309, 59 L. Ed. 673, but, as already stated, there is excepted from the operation of the order 'existing valid claims.' *Obviously this means something less than a vested right, such as would follow from a completed final entry, since such a right would require no exception to insure its preservation.* The purpose of the exception evidently was to save from the operation of the order claims which had been lawfully initiated and which, upon full compliance with the land laws, would ripen into a title. The effect of the preliminary homestead entry is to confer upon the entryman an exclusive right of possession which continues so long as the entryman complies in good faith with the requirements of the homestead law. *Stearns* v. *United States*, 152 Fed. 900, 906, 82 C.C.A. 48, *Peyton* v. *Desmond*, 129 Fed. 1, 12, 63 C.C.A. 651. Since it is conceded that Stockley made such an entry in 1905 and his compliance with the requirements of the homestead law prior to the withdrawal order is not questioned, it follows that he had, when that order was issued, an existing valid claim, within the meaning of the exception. * * *" [Emphasis added.]

As previously stated, the Department has consistently followed the principle enunciated by the United States Supreme Court in the *Stockley* case that the

language "existing valid claims" means something less than a "vested right". Thus, in *Ben S. Miller*, 55 I.D. 73 (1934), the Secretary reversed the decision of the General Land Office, now the Bureau of Land Management, and upheld the propriety of an application to purchase a tract of land under the color of title act of December 22, 1928 (43 U.S.C. 1068), in the light of a 1925 Executive Order of withdrawal which excepted "valid existing claims" from its operation. Holding that the color of title application was protected by the saving clause "valid existing claims" in the Executive Order, the Secretary said (at p. 75):

"The act of December 22, 1928 (45 Stat. 1069), was subsequent to the withdrawal of April 25, 1925, and prior to that act there was no provision of law authorizing the patenting of public land generally to those holding possession thereof under claim and color of title, accompanied by tangible evidence of improvement or cultivation. The rule, however, long before then had been settled that land held in good faith under claim of title was not subject to appropriation by others under the public-land laws while so occupied and claimed, and the Supreme Court has held that a claimant in this situation who has been misinformed or has misunderstood his rights and paid valuable consideration therefor, may, in the discretion of the Department, have the title withheld in the United States until 'within the limits of existing law or special Act of Congress' he may obain title to the land which he holds under color of title. See *Williams* v. *United States* (138 U.S. 514, 524); *Northern Pacific Railway Co.* v. *McComas* (250 U.S. 387, 393). And the Department has considered such claimants as having a preferred right to initiate and perfect title to the land. *A. R. Bowdre et al.* (50 L.D. 486, 489). *It has also been held that the exception of 'valid existing claims' occurring in a withdrawal means something less than a vested right. Stockley* v. *United States* (260 U.S. 532, 544). It is believed that lands claimed, possessed, and improved under color of title long before and at the time of the withdrawal of April 25, 1925, fall within the exception of 'valid existing claims' and are not affiected by the withdrawal. * * *" [Emphasis added.]

To the same effect is the Secretary's decision of June 2, 1949 (A–25411), and, on reconsideration, his decision of August 4, 1950 (60 I.D. 428), involving the State of California. There, the State filed an application in 1942 pursuant to Sec. 8(c) of the Taylor Grazing Act (43 U.S.C. 315–g) to exchange 6,000 acres of State lands, among other lands not here pertinent, for an approximately equal amount of public lands. Before the State could complete the exchange application by performing certain requirements prescribed by the applicable regulations of the Department the 6,000 acres of public lands were added to the Shasta National Forest by the Act of March 19, 1948 (62 Stat. 83). The latter Act contained the saving clause "subject to any valid claim or entry now existing and hereafter legally maintained". The Department of Agriculture, which has primary jurisdiction over national forests protested the Secretary's initial decision of June 2, 1949, approving the State's exchange application on the ground that the State had acquired no vested right in the land which had been added to the Shasta National Forest. Citing *Stockley* v. *United States, supra*, and *Ben S. Miller, supra*, the Secretary, on reconsideration, dismissed the protest in his decision of August 4, 1950 and stated (at p. 433):

"That the phrase 'any valid claim' was used in the act of March 19, 1948, to mean something less than a vested right seems unquestioned, and that it includes an application filed by a State to acquire public land by means of an exchange under the Taylor Grazing Act seems entirely reasonable in view of the nature of the statute conferring upon States the right to make such exchanges. *I am unable, therefore, to ascribe to the phrase 'any valid claim' the limited meaning which the Department of Agriculture urges as the proper interpretation of the phrase.*" [Emphasis added.]

In the case last cited the right of the State of California to exchange State land for then open and available public land (prior to the Executive Order of withdrawal) was in all respects no different than the pending priority applications for noncompetitive oil and gas leases filed by the applicants pursuant to the Mineral Leasing Act. Contrary to the Acting Secretary's letter of August 22, 1969, the Department followed the principle enunciated by the Supreme Court in the *Stockley* case, *supra*, and held that the saving clause encompassed the State's exchange application.

As indicated earlier, we do not contend that an application for a noncompetitive oil and gas lease is a vested right. It is, however, an inceptive or inchoate right to a lease as the Department itself has ruled. Thus, the Department has held that the right of an applicant for a noncompetitive oil and gas lease is superior to subsequent rights sought to be initiated under the United States mining laws.

In *Monolith Portland Cement Co., et al.*, (61 I.D. 43–1952), the Secretary stated (at pp. 48–49) :

"Moreover, it is clear that rights under the mining laws cannot be acquired in a tract of public land after the filing and during the pendency of a proper application for a noncompetitive oil and gas lease on such land. Although the mere filing of a proper application for a noncompetitive oil and gas lease on a tract of public land does not obtain for the applicant a vested right to lease, the *person first submitting a proper application does acquire an inceptive or inchoate right to be offered a lease on the land* before a lease is offered to a subsequent applicant, if it is decided by the Secretary of the Interior (or his delegate), in the exercise of his discretion, that the land will be made available for oil and gas development, if it is decided that the land is not within any known geological structure of a producing oil or gas field, and if it is decided that the applicant is qualified to obtain and hold a lease on the land. (See *Warwick M. Downing*, A–25798, August 16, 1950, 60 I.D. 433 ; *Bettie H. Reid et ano.*, A–26330, February 4, 1952, 61 I.D. 1.) *The inceptive rights of the senior applicant for a noncompetitive oil and gas lease on a particular tract of public land must be protected* pending a determination as to whether the land will be made available for oil and gas development, as to whether the land applied for is within the known geological structure of a producing oil or gas field, and as to whether the applicant is qualified to hold the lease for which he has applied. *For this reason, rights cannot be acquired under the mining laws in land that is covered by a pending proper application for a noncompetitive oil and gas lease, since such rights would be incompatible with the rights of an oil and gas lessee if the applicant's inchoate or inceptive right should ripen into an oil and gas lease.*" [Emphasis added.]

True, as the Department points out in the *Monolith* case, the right to a noncompetitive lease may be denied in certain circumstances. But here the lands in Alaska were open and available for noncompetitive oil and gas lease filing when the applications were made, the land applied for has not been designated as being a known geological structure of a producing oil or gas field, and the applicants are all qualified to obtain and hold leases. Refusal to issue leases because the Department no longer favors noncompetitive leasing, which the present statute authorizes, is not a proper or lawful reason for withholding leases to applicants who in good faith and in reliance upon existing law expended large sums of money in acquiring property applications.

Aside from the foregoing, for almost 50 years since the Mineral Leasing Act became law in 1920 the well-established rule of the Department has been that the filing of a noncompetitive oil and gas application segregates the land and affords the applicant priority of right over any adverse interest thereafter sought to be initiated. Thus, in *Filtrol Company* v. *Brittan and Echart*, 51 I.D. 649 (1926), the Department said (at p. 653) :

"Under the rulings of the Department the filing of an allowable oil and gas prospecting permit application has a segregative effect and the applicant has priority of right over any adverse interest thereafter sought to be initiated. * * *"

Again in *Lula T. Pressey*, 60 I.D. 101 (1947), the Department reemphasized the same principle as follows:

"This rule has been followed repeatedly by the Department, both with respect to applications for permits and for leases. *Stahl* v. *Stiffler*, 49 L.D. 406 (1923) ; *State of New Mexico* v. *Weed*, 49 L.D. 580 (1923) ; *Fred L. Alger*, 50 L.D. 201 (1923) ; *Harvey* v. *Craig*, 50 L.D. 202 (1923) ; *Hill v. Williams and Liddell*, 59 I.D. 370 (1947), motion for rehearing denied April 30, 1947, A–24248, A–24255."

Recognizing as it has over a long span of years that an applicant for a noncompetitive oil and gas lease has priority of right over any adverse interest thereafter sought to be initiated, the Department's obvious attempt to downgrade the rights acquired by the filing of such applications is inconsistent with and contrary to its own decisions.

With the harsh position now taken by the Department, in contradistinction to earlier draft bills which it submitted in the 90th Congress in settlement of Alaska native claims and documented in my letter of June 25, 1969, we respectfully request the Committee to honor the commitment implicit in the present provisions of the Mineral Leasing Act either by deleting from S. 1830 the provision for leasing all Federal lands in Alaska by competitive bidding or by incorporating the saving provision heretofore submitted reading as follows:

"Nothing in this Act shall affect any valid right or claim in existence prior to the effective date of this Act, including the right under pending noncompetitive oil and gas lease offers to the issuance of leases therefor, and such right or

claim shall be governed by the law in effect on the date the right or claim was initiated."

With your approval, I shall appreciate the inclusion of this letter in the record of the hearings on S. 1830.

Respectfully submitted.

MAX BARASH,
Attorney for Asamera Oil Corporation, Ltd.; Banff Oil, Ltd.; Home Oil Co., Ltd.; Husky Oil, Ltd.; National Nickel Co., Ltd.; Ranger Oil, Ltd.; Scurry-Rainbow Oil, Ltd.; Sunlite Oil Company, Ltd.; Ulster Petroleums, Ltd.; Western Decalta Petroleum, Ltd.

FEDERAL FIELD COMMITTEE
FOR DEVELOPMENT PLANNING IN ALASKA,
Anchorage, Alaska, August 6, 1969.

Hon. HENRY M. JACKSON,
Chairman, Committee on Interior and Insular Affairs, U.S. Senate, New Senate Office Building, Washington, D.C.

DEAR SENATOR JACKSON: This is in reply to your letter of August 1 asking for comments on the letter you received from Max Barash. He represents some ten Canadian independent companies who claim to have invested in oil lease offers in Alaska.

The letter was discussed with the Field Committee staff and the consensus is that:

(1) The Canadian companies apparently purchased—or had assigned to them—offers to lease made by individuals. Some companies may have made offers to lease in their own name. In either event they represent no right since a lease was not granted.

(2) These companies find themselves in the same position as many Alaskans (and probably U.S. oil companies also) who made offers to lease prior to the land freeze. The state has taken the position that no prior lease offer rights exist on North Slope lands selected by the state and that leases will be by competitive bidding only.

(3) Competitive bidding on oil leases is in the best public interest in that the maximum revenue is realized and it all accrues to the general public use.

(4) S–1830 appears to provide protection to leases and other rights already in existence.

(5) The omission of a provision to require non-competitive leasing in the Federal Field Committee report was not an oversight.

Mr. Barash's letter does not reveal on what lands the lease offers were made. If they are on land since selected by the state, state lease regulations probably will apply; and existing priority lease offers will be invalid.

Attempts were made in the last session of the state legislature to validate lease offers made prior to a certain date, without success.

It will, of course, be up to Congress to decide if priority lease offers on federal lands made prior to the land freeze will have any rights under Native claims legislation.

If we can be of further help, please let me know.

Very sincerely yours,

GEORGE SHARROCK, *Chairman.*

Senator METCALF. The next witness we have this morning is Mr. Tom Joseph. Mr. Joseph represents the Indian Interne program, and we welcome him as a witness this morning.

STATEMENT OF TOM JOSEPH, CALIFORNIA

Mr. JOSEPH. Thank you, Mr. Chairman.

I also want to thank the honorable Senators of this committee for giving me an opportunity to be before you in support of the Alaskan land claims settlement.

There should be no question as to the importance of the mentioned bill S. 1830 to the natives of Alaska I want to commend the people who

have contributed to the Alaskan land claims issue, especially the honorable Alaskan congressional Representatives. I will not elaborate any as to the contents of the bill. I think it is plainly stated as to what the native people of Alaska want.

It has been said time and time again that something should be done for the natives of this great country. The U.S. Government has passed bills and organized committees that have spent hundreds and thousands of dollars on the behalf of the American Indian. Grant you, this is all well and good but we should be more concerned with the results.

There is not a people on this land that is more researched or surveyed than the American Indian. There have been many plans and programs promoted on numerous reservations that were supposedly for the betterment of the people. The reason I say supposedly for the betterment of the people is that the plans or programs on reservations are there because someone from the outside thought it would be helpful to the Indian. What I want to say is, you cannot do something for people that is going to be effective and lasting unless the people concerned asked for assistance or want to be helped.

The Indians are a proud people; they have been put down and stepped on and put off for a long time. It has always been hard for the Indian to ask for help or even accept aid only in extreme cases. The reason programs have failed on reservations was that the people were not interested and in many cases were not well informed. In other cases, the Indian on the reservation was never contacted and asked if the people wanted the program or if the people would even benefit from it.

I think the Indian knows better his needs now than he has in the past. The natives of this great country should be given an opportunity to request, promote, and develop their own needs. This is nothing more than what the natives of Alaska are asking.

The American Indian has been a sore thumb for the U.S. Government and it seems some people in the Government who are familiar with Indians are sometimes ashamed of how the Government has dealt with the Indians in the past. The American Indian in this country was defeated by violent, inconsiderate, and sometimes bloodthirsty white invaders. The Indian people know how the people of Czechoslovakia felt when their country was overrun by foreigners. It has been said by a U.S. President that the only good Indian is a dead one. There was a bounty on the Indian at one time where he was hunted down like an animal.

All the Indian tried to do in the early days of this country was to defend his homeland. This is why the Indian always will go back to his homeland, now nothing but an underdeveloped reservation. On the 30th of July, 1969, in Seattle, Wash., the Secretary of Interior, Mr. Walter Hickel, said the Indians have to cut the cord, and I quote the former Governor of Alaska:

> Indians have worked temporarily in the cities and if they cannot cut the mustard, they always have that crutch of being able to go back to the reservation.

Maybe the Secretary of the Interior does not know that the reservation is now the home of the Indian, inasmuch as Alaska is the home of the Alaskan native. People in the cities migrate to the country by

the tens and thousands every weekend where they live like Indians, and apparently some people think the Indian should live in the city after living in the country or wilderness all his life.

The Indian tried to do right in the beginning. We celebrate Thanksgiving to recognize this fact. This country and other countries have been given the wrong impression of the American Indian. What people see on television and in the movies does not help the image. It should be made known that the Indian played a great part in the development of this country. As a matter of fact, the structure of the U.S. Government is patterned after one of the Indian tribe's form of government.

The native people in Alaska are asking for land that they already occupy and utilize for homes, businesses, fishing and hunting camps. It is only right that they should be compensated in cash for lands taken in the past by withdrawal for Federal purposes. The proposal that the natives of Alaska want is intended to accomplish with certainty and in conformity to the real economic and social needs of Alaska natives today.

I often cry inside because of the way the Indian is living and by the way he is treated by the country that he loves. I cannot see why any Indian should be turned away from his requests. If anybody deserves anything, it is the native people of this great land.

I don't want anybody to think that I am unhappy with the Government, or maybe I should say unpatriotic. Four months ago I was a sergeant in the U.S. Marine Corps. I served in Vietnam and I would have died for this country. In the first World War, there were 6,000 Indians who voluntarily enlisted in the armed services. This was one of the factors that caused Congress to pass the Indian Citizenship Act of 1924. The native people of this land were not considered citizens of this country by Congress until 1924. The Indians of the State of Maine were not given the right to vote until 1953. The land issue that has been facing the natives of Alaska is similar to the problems we have had and are having in this, "the lower 48."

The 91st Congress has the opportunity to render true justice and equity in the settlement of the claims to land of the Alaskan natives. These claims to lands used and owned since time immemorial have been recognized both in law and in the moral commitment of our nation to justice. The Congress in the past further reserved to itself for future disposition the ultimate settlement of the Alaska native land claims question. With the Alaska natives banded together in unison petitioning the 91st Congress, the time has come for Congressional action.

The 91st Congress should give the native people of Alaska an opportunity to develop and handle their own needs. It is a small amount that the natives are requesting in comparison to the size of the great State of Alaska.

For a long time the Indian people could not trust the white man and his word. This is still true with many of the old people today. It is useless to point out the numerous times that the government agent did not stand by his words. Just briefly, I want you to vision this picture in your minds. I want you to see an Indian chief dressed in his native clothes; now you vision a government agent with an inter-

preter trying to get information and his desires across to the Indian leader.

The great Indian leader is tired of running and fighting, his home has been destroyed, and he and his people that he has cared for are hungry. I quote the words of the great Indian leader after surrendering to the Federal troops:

"Let me be a free man," he said. "Free to travel, free to work, free to trade where I choose, free to choose my own teachers, free to follow the religion of my fathers, free to think, free to talk, free to act for myself and I will obey every law or submit to the penalty. When the white man treats the Indian as his own, then there will be no more wars. We shall all be alike, brothers of one father and one government for all." Date 1877.

I don't think the Indian had much of a choice as to some of the decisions that were made that day. For example, the Treaty of 1867 was a secret negotiation between the Secretary of State, William H. Seward, and the Russian Minister of the United States, Baron Edoward Stoeckel.

This treaty did not clarify what obligations the U.S. Government would have to the native people of Alaska. It merely said that the uncivilized natives will be subject to such laws and regulations that the United States may from time to time adopt in regards to aboriginal tribes of that State.

Due to the fact that the negotiation was secret, the natives of Alaska were not aware of the contents of that treaty or even aware that it was being made. Many treaties were made prior and after being placed on lands designated by the Government. From the looks of some of the reservation lands, they were nothing but concentration camps. Even today the Indian has not played a big part in some of the decisions that are made in his behalf.

Today the white man is still taking advantage of the Indian on his own land. The Indian has been kneeling down a long time, it is now time that he stands up, but in order to do this he must receive some help and cooperation from people who are in positions to assist.

It is time that Congress starts to help promote legislation that will be for the betterment of the natives of this great country.

This completes my prepared statement.

Once again I express my gratitude to this honorable committee for this opportunity.

Senator METCALF. Thank you very much, Mr. Joseph.

I think we have ended this hearing on a most eloquent and impassioned note. I think it is appropriate that you, as an Indian from—you are not from Alaska, are you?

Mr. JOSEPH. I beg your pardon, sir.

Senator METCALF. You are not an Alaskan, are you?

Mr. JOSEPH. No, I am from California.

Senator METCALF. Yes, from one of the other Indian tribes who would come in here at the conclusion of the hearing and add your own voice and the voice of the Indian internes that you represent in behalf of this legislation.

I want to say that we do recognize that we did not get Indian land when we negotiated that treaty with Russia. As was pointed out by General Clark, this country took the sovereignty that Russia had,

so we did not take rights and control over the lands of the natives. That not only has been a decision of the ninth circuit, but that is the considered decision, I think, of most of the members of this committee, and ultimately will be a decision of Congress.

I do not know what the terms of this bill are going to be. I hope they are as generous to the natives as we were generous to all of Alaska citizens in creating statehood, and I hope that we will have the generosity so that we will have in justice and equity extinguished the Indian claims, in my opinion justifiable claims, for the taking in the past and in the present of native land.

So thank you very much for your contribution to this hearing.

Mr. JOSEPH. Thank you, Mr. Chairman.

Senator METCALF. That concludes the list of witnesses. We have some statements which have been sent for inclusion in the hearing record. They will be printed at this point.

(The statements referred to follow:)

STATEMENT BY JOHN H. PICKERING, ON BEHALF OF WESTERN OIL AND GAS ASSOCIATION

My name is John H. Pickering. I am an attorney practicing in the District of Columbia, and I am appearing on behalf of Western Oil and Gas Association to state its position on legislation to settle the Alaskan Native claims. The Western Oil and Gas Association is a petroleum trade association whose members are active in production, refining and marketing operations in the six far western States of California, Arizona, Nevada, Oregon, Washington, and Alaska. Its members account for approximately 85 percent of the production and 90 percent of the refining and marketing in those States. In Alaska they account for 100 percent of that State's oil production, which now stands at about 195,000 barrels per day.

We support a prompt, fair, and comprehensive legislative resolution of the Alaskan Native claims. Settlement of these claims has been postponed, time and again, for almost a hundred years and should be deferred no longer. Further delay in the enactment of appropriate legislation, and the consequent continuance of the land freeze and the formal withdrawal made by Public Land Order 4582 to preserve the status quo pending a legislative settlement, is detrimental to everyone—to the Natives, to the fiscal stability and economic development of the State of Alaska, to the public generally, and to our industry. We are therefore glad to join in urging that legislation be enacted during the current Congress to settle the matter.

Legislation settling the Alaskan Native claims is a complex matter, as appears from the detailed provisions of the bills before the Committee. Most of those provisions do not concern us and are more appropriately left to the comments of others who are directly affected by them. This is particularly true of the formula for a fair and equitable settlement. The compensation to be paid by the United States to the Natives for settlement of their claims, in terms of how much land should be granted, how much money should be paid, and what revenue sources should be tapped for that, are matters which primarily concern the Natives, the United States, and the State, and are to be decided by Congress which has, of course, complete power to grant as much, or as little, compensation as it sees fit.[1] We accordingly do not presume to make suggestions concerning the terms of settlement, since it would be gratuitous and we have no special information or competence to offer. The report of the Federal Field Committee for Development Planning in Alaska is an impressive study of the matter. Its suggestions for a fair settlement, reflected in H.R. 10193, appear imaginative and generous. The same is true of the alternative proposals of the Department of the Interior contained in H.R. 13142. We take no position on the settlement terms in either of those bills, however, or on any other formula which may be suggested or commend itself to the Committee and the Congress as fair and equitable.

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[1] *Tee-Hit-Ton Indians* v. *United States*, 348 U.S. 272, 278–82 (1955); *United States* v. *Santa Fe Pacific R. Co.*, 314 U.S. 339, 347 (1941).

Our statement is limited to three matters which are of direct interest to us and on which we think we have some constructive suggestions to offer. These three specific points are:

1. Comprehensive description of the Native claims which are being settled and extinguished.
2. Appropriate provisions for existing Federal and State mineral leases.
3. Authority for granting easements.

I shall discuss each of these points in turn, generally and with specific reference to the Departmental bill (H.R. 13142) and that of the Federal Field Committee (H.R. 10193). We have also prepared suggested language changes to implement our suggestions on these three points which are appended to this statement and submitted for what help they may be to the Committee.

I. COMPREHENSIVE DESCRIPTION OF THE NATIVE CLAIMS WHICH ARE BEING SETTLED AND EXTINGUISHED

It is generally agreed that the legislation should effectuate a complete settlement and extinguishment of the Native claims, once and for all. Loose ends and uncertainties should not be left for subsequent resolution, and no basis should remain for asserting any of those claims in the future against anyone. Achievement of this objective requires a careful and comprehensive description of the claims.

Section 3(a) of H.R. 10193, and the identical provision in section 4(a) of H.R. 13142, makes a good beginning in this regard, but it should be improved in three respects:

First.—The settlement should specifically extend, not only to the United States, but also to the State of Alaska and all other persons to whom the United States has granted, sold, or leased lands claimed by the Natives.

The Native claims are moral claims, not enforceable legal rights, to land. When lands claimed by the Natives are "taken" by the United States, either for its own use, or by transfer to third parties, the Native claims to those lands are extinguished, and the Natives then have a moral claim to compensation for the loss. As the Federal Field Committee has pointed out, that claim, like the claim to the land itself, "is against the federal government."[2] Although the Native claims are thus claims against the United States, not against third parties to whom the United States has transferred any lands or interests therein, and although the settlement of these claims against the United States will inure to the benefit of its transferees, we think it is desirable to spell this out by providing that the settlement extends to the State of Alaska and all other persons, as well as to the United States. That will eliminate any possibility, no matter how remote or unfounded, that the Native claims can be asserted in the future against third parties, such as the State of Alaska, mineral lessees, or anyone else to whom the United States has granted any interest in lands claimed by the Natives.

Second.—Some of the Native claims purport to cover waters in addition to land. Accordingly, in order to effectuate a complete settlement, the claims should be extinguished to water, as well as to land, areas. This is necessary for water areas generally and for submerged areas beneath navigable waters in particular. As the Court of Claims held in the *Tlingit and Haida* case, navigable waters "are not subject to private possession."[3] Title to submerged areas beneath navigable waters is either in the State of Alaska under the grant made to it by the Submerged Lands Act (67 Stat. 29) as made applicable by the Statehood Act (72 Stat. 343), or in the United States under the Outer Continental Shelf Lands Act (67 Stat. 462). As the Federal Field Committee states in its report, ". . . the Statehood Act extinguished any personal proprietorship and vested general ownership of lands beneath navigable water in the state."[4]

In view of this, it would be unfortunate if the legislation overlooked settling the Native claims to waters and thereby left open the possibility that such claims might be asserted to water areas in the future.

Third.—The Native claims are based on asserted use and occupancy. The legislation should broadly cover all such use and occupancy claims—not just those

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[2] *Alaska Natives and the Land* (October, 1968), p. 537. See also *Village of Kake* v. *Egan*, 369 U.S. 60, 65–66, 69 (1962).

[3] *Tlingit and Haida Indians* v. *United States*, 182 Ct. Cl. 130, 145, 389 F. 2d 778, 788 (1968). See also *United States* v. *Holt Bank*, 270 U.S. 49 (1926), and *Hynes* v. *Grimes Packing Co.*, 337 U.S. 86 (1949).

[4] *Alaska Natives and the Land* (October 1968), p. 538.

based upon claims of aboriginal title or the provisions of the Acts of 1884 and 1900 as provided in section 3(a) of H.R. 10193 and section 4(a) of H.R. 13142. The 1884 and 1900 Acts cited in those identical sections are the acts usually considered as affording protection for Native claims based on use and occupancy. However, other statutes may be invoked, such as the Act of March 3, 1891 (26 Stat. 1095), the Act of May 1, 1936 (49 Stat. 1250), or even section 4 of the Statehood Act (72 Stat. 339, 73 Stat. 141). And there are doubtless others. Indeed, the Treaty of Cession itself might be cited.[5] Accordingly, if the legislation is to accomplish the intended purpose of settling the Native claims once and for all, it should not cite just the Acts of 1884 and 1900, but should refer to any other statute or treaty of the United States.

Appendix A to this statement contains a suggested revision of section 3(a) of H.R. 10193 and section 4(a) of H.R. 13142 which would strengthen them in the three respects which have just been discussed.

II. APPROPRIATE PROVISIONS FOR EXISTING UNITED STATES AND STATE OF ALASKA MINERAL LEASES

Land grants to the Natives must, of course, be "subject to valid existing rights", and all legislative proposals have so provided, including the bills now before the Committee. The United States cannot impair rights which it has created, nor can it grant what it no longer controls. Outstanding mineral leases issued by the United States or the State of Alaska are among the "valid existing rights" which are thus protected. In addition, as we shall point out, it is not sufficient to use just the bare phrase "subject to valid existing rights" in the case of United States mineral leases, and, since those leases differ from State mineral leases in their effect on what can be granted to the Natives, it is also important that these differences be kept in mind in the legislation so that there will not be any inadvertent confusion or doubt as to what can and is intended to be granted.

The need for legislative clarity on these matters is evident from the extent of mineral leasing in Alaska, the contribution it has made to the Alaskan economy, and the very substantial investments involved.

The Statehood Act contemplated, of course, that revenues from Federal leasing and from the State's leasing of its land selections would provide a major part of the support needed to make statehood economically viable.[6] This expectation has been borne out. As the Federal Field Committee reports, it is "oil and gas and their derivatives above all—exploration, development, and processing, as well as production—which are now the main engine of economic growth in Alaska."[7] Details on this for the decade following statehood—in terms of number of leases, lease revenues, and industry investment—appear in *Alaska Petroleum Industry Facts, 1968*, prepared by the Alaska Oil and Gas Association, a division of Western Oil and Gas Association. I request that this document be included in the record as an appendix to this statement.

All of these considerations—the reliance upon Federal and State oil and gas leases to provide the financial sinews of statehood, the large numbers of these leases, the extensive acreage covered by them, the rentals, royalties and bonuses paid for them, and the substantial investment of almost $2 billion by the industry in Alaska since statehood—require that the legislation recognize the status which mineral leases issued by the United States and the State of Alaska have as valid existing rights and how that status bears on what can and is intended to be granted to the Natives. Otherwise, the legislation will fall short of the objective of a full and final settlement, once and for all, of the Native claims issue.

The differences between United States and State mineral leases which must be kept in mind in fashioning the Native grants are as follows:

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[5] There is still, for example, an unresolved split of authority over whether the Native claims survived this Treaty with Russia (15 Stat. 539). The Ninth Circuit held in *Miller* v. *United States*, 159 F. 2d 997, 1001–02 (1947), that Russia extinguished aboriginal title as part of the consideration for the Treaty. However, the Court of Claims reached a contrary conclusion in *Tlingit and Haida Indians* v. *United States*, 147 Ct. Cl. 315, 333–34, 177 F. Supp. 452, 463–64 (1959), holding that the aboriginal title of those particular Indians had not been extinguished by the Treaty.

[6] See sections 6 and 28(b) of the Statehood Act, and H.R. Rep. No. 624, 85th Cong., 1st Sess. (1957), pp. 5–8, 14; S. Rep. No. 1163, 85th Cong., 1st Sess. (1957), p. 2; 104 Cong. Rec. 9224, 9344, 9511, 9515, 12032, 12037 12208.

[7] *Alaskan Natives and the Land* (October 1968), pp. 520–21.

A. United States mineral leases

When the United States issues a mineral lease, it retains the basic fee, as well as the lessor's interest, in the land leased. It thus has interests in the land which it can grant, burdened with the lease. However, the bare use of the phrase "subject to valid existing rights" with respect to land covered by a United States mineral lease gives rise to a number of ambiguities and questions such as: Is it really intended to grant the land? If so, is any part of the rights reserved to the United States as lessor to be included?[8] What happens if only part of the land covered by a lease is granted, and so forth?

Because of these ambiguities and questions it is not sufficient to use just the phrase "subject to valid existing rights," and the practice has been to spell these matters out in legislation when it is intended that land covered by a United States mineral lease is to be granted.[9] The extent of the grant is thus made clear, rather than being left uncertain by merely providing that grants are "subject to valid existing rights". Similar clarity should be employed in the legislation settling the Native claims by including provisions which:

(1) would make clear that United States mineral leases, although they are valid existing rights, do not operate to bar a grant to the Natives of the land covered thereby;

(2) would specify that the Secretary of the Interior will continue to administer such leases for their duration if the land covered thereby is granted; and

(3) if Congress deems it appropriate to give the Natives any share in the lease revenues reserved to the United States, would specify the amount of that share.

The importance of including provisions along these lines in the legislation—to spell out what is intended and thereby avoid the ambiguities and questions which have been mentioned—is underscored by the extent of United States mineral leases in Alaska. According to the latest published figures of the Bureau of Land Management there were 3,948 Federal mineral leases covering some 6.9 million acres of public lands in Alaska.[10] In addition, the United States has issued significant mineral leases on public lands which have been withdrawn in connection with Native affairs, such as the Moquawkie reserve.

B. State mineral leases.

The situation with respect to State mineral leases is quite different. Here, the United States has parted with the land before the State may lease it, and the United States has nothing left to grant to the Natives. In this context, unlike the case of a United States mineral lease where the United States has something left which it can grant burdened with the lease it has issued, the phrase "subject to valid existing rights" operates to bar the grant.

There are various categories of land on which the State of Alaska may issue mineral leases. These include submerged areas under navigable waters granted to the State under the Submerged Lands Act, State selections which have been patented, and State selections which have been approved but not yet patented. In each case the State has a "valid existing right" which bars a grant of the same land to the Natives. This is axiomatic in the case of the State's patents and grants, and it is equally true of the approved but unpatented State selections.

Section 6(g) of the Statehood Act specifically authorizes the State to lease and to sell conditionally its land selections following "the tentative approval of such selection by the Secretary of the Interior or his designee, but prior to the issuance of final patent". The purpose of this provision is to permit the State to dispose of its approved selections without having to wait for the lengthy time needed to complete the surveys which are required before final patent can be issued.[11] This provision was taken from section 202(d) of the previous Alaska Mental Health Enabling Act (70 Stat. 709), which the Department of the Interior explained as follows:

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[8] The Solicitor of the Department of the Interior has ruled that, unless statutory authorization is given, the Secretary cannot assign his jurisdiction over Federal leases or the interest of the United States as lessor. See Solicitor's opinions M–36254 (Dec. 28, 1954), M–36436 (May 9, 1957), and Supplement to M–36436 (April 14, 1958).

[9] Examples of such legislation include: the Act of September 14, 1960, 74 Stat. 1024, amending R.S. 2276 (43 U.S.C. 852(a)) and section 6(h) of the Alaskan Statehood Act; and the Act of July 14, 1956, 70 Stat. 546, and the regulations under that Act in 25 CFR § 171.1a.

[10] These figures are as of June 30, 1968. See *Public Land Statistics, 1968*, p. 88.

[11] See *Hearings before the Subcommittee on Territorial and Insular Affairs of the House Committee on Interior and Insular Affairs, on the Statehood bill (H.R. 50 and Related Bills)*, 85th Cong., 1st Sess. (1957), pp. 218–225.

"The Territory would be authorized specifically to lease or make conditional sales prior to the issuance of a final patent by the Secretary, in order that the Territory's disposition of the land would not be required to be deferred until surveys are completed." H.R. Rep. No. 1399, 84th Cong., 1st Sess. (1955), p. 13.

The regulations carry out the purpose of this section 6(g) by providing that tentative approval is to be given only after "determining that there is no bar to passing legal title to the lands to the State other than the need for the survey of the lands or for the issuance of patent or both" (43 CFR § 2222.9–4(d)). As the Federal Field Committee states: "Tentative approval creates a jurisdictional transfer. . . ." [12] The rights of the State are accordingly vested at that time, if not before.[13] The fact that naked legal title still remains in the United States until the issuance of patent thus cannot be the basis for a grant to the Natives.

The extent of the patents and tentative approvals which have been issued, as well as the extent to which the State has issued mineral leases, demonstrate the importance of recognizing in the legislation that the State's grants, patents and tentatively approved selections (and as a result any State leases issued thereon) are valid existing rights which bar granting the lands to the Natives, and leave the Natives instead with a moral claim against the United States for any "taking" resulting therefrom. According to the Federal Field Committee's report, through 1967 the State had received patents to 5.4 million acres of its selections and another 8.5 million acres had been tentatively approved.[14] As of December 31, 1968, there were 1,715 active State oil and gas leases covering some 2.4 million acres (see *Alaska Petroleum Industry Facts*, submitted herewith). These leases cover submerged areas, patented selections, and tentatively approved selections, but we do not have a breakdown by categories.[15]

With this general background discussion of the differences between United States and State mineral leases and how they should be treated in the legislation, we turn to the bills before the Committee. Taking the Department's bill, H.R. 13142, first, it appears to us that it generally makes adequate and proper provision for both United States and State mineral leases. All conveyances are to be made from the "public land" of the United States, as defined in section 3(e). The patents are "subject to all valid existing rights"; and minerals covered by the mineral leasing laws are excepted. Also, and most important, section 10(j) carefully provides for the continuation of existing leases and the preservation of the rights granted and reserved thereby. Under its terms: if a contract, lease, or permit has been issued for utilization of mineral or surface resources prior to patent, the patent is to contain provisions making it subject to the lease, contract, or permit and to the right of the lessee, contractee or permittee to the complete enjoyment of all rights, privileges, and benefits granted him thereby; also, the income is to continue to be received, and administration is to continue to be conducted, by the lessor, contractor, or permitter.

These provisions in general, and section 10(j) in particular, appear satisfactory for United States mineral leases—both those issued on the public

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[12] *Alaska Natives and the Land* (October, 1968), p. 449.

[13] *Cf. Payne* v. *New Mexico*, 255 U.S. 367 (1921); *Wyoming* v. *United States*, 255 U.S. 489 (1921).

[14] *Alaska Natives and the Land* (October, 1968), p. 449.

[15] The desirability for recognizing in the legislation the status which tentatively approved State selections have as valid existing rights is further indicated by the position taken by the Government in its pending appeal to the Ninth Circuit from the State's successful challenge to the land freeze, *Alaska* v. *Udall*, No. 23603.

In urging reversal of the District Court's judgment directing the Secretary to patent one tentatively approved selection and to give tentative approval to another, the Government does not argue that tentatively approved State selections are not "valid existing rights". Instead, the Government's brief carefully states at pp. 11–12 that the Secretary has not refused "to issue patents to the State on the grounds that he was precluded from such action by the existence of the Natives' claims. Therefore, that issue is not in this case, and we do not discuss it." The Government also asserts that the Secretary has not reached an administrative determination of the complex questions of statutory interpretation, and that all that he has done is to withhold action on the State's applications pending further study. Finally, the Government urges that the policy questions involved should be left to resolution by Congress unimpeded by the judgment of the District Court.

In view of the position thus taken by the Government, it is necessary that the legislation, if it is to effect an overall settlement of the Native claims issue, specifically recognize the status which tentatively approved State selections have as valid existing rights which bar grants to the Natives—a status which those selections have by virtue of the provisions of the Statehood Act and the formal determinations made at the time of tentative approval "that there is no bar to passing legal title to the lands to the State other than the need for the survey of the lands or for the issuance of patent or both." Surely Congress, having authorized the State to lease its tentatively approved selections, will not want to leave any possible question in this regard, concerning the rights which follow from what it authorized.

domain and those issued on lands withdrawn in connection with Native affairs. They spell out the scope of the grant and how the leases are to be handled, thereby avoiding the ambiguities and questions which, as has been pointed out, arise if only the phrase "subject to valid existing rights" is used when United States mineral leases are involved.

These provisions likewise appear generally satisfactory for State mineral leases. Lands leased by the State are not "public land". They are also "valid existing rights" which prevent any grant by the United States. Moreover, even if lands leased by the State could somehow be granted to the Natives, section 10(j) would operate to preserve and continue the State leases. Even though the intent and effect of the Department's bill thus seems clear enough, it may nevertheless be desirable to provide specifically that tentatively approved State selections are not included in the definition of "public land". That would eliminate the possibility, absurd though it seems, of an argument that the legal title which remains in the United States until patent is granted to the State is an interest in land within the meaning of section 3(e) that could be granted to the Natives.

The Federal Field Committee bill, H.R. 10193, of course takes a different approach but it, too, appears to recognize the differences between United States and State mineral leases and, in general, to deal appropriately with them. This bill would grant minerals to the Alaska Native Development Corporation and would also give that Corporation certain lease revenues received by the United States, as well as amounts which are equivalent to certain State revenues. This scheme is much more complex than that proposed by the Department and is accordingly more difficult to integrate. It is understandable therefore that, although the general approach seems satisfactory, a number of technical, clarifying changes appear in order so far as mineral leases are concerned.

With respect to United States mineral leases, the scheme of H.R. 10193 and the clarifying changes we suggest are generally as follows:

1. Lands withdrawn under section 8 for the purpose of making Native grants remain subject to the mineral leasing laws and may continue to be leased under those laws as modified by section 12. Existing Federal mineral leases, and any new leases issued during the withdrawal period, would continue to be administered by the Secretary of the Interior and the revenues derived by the United States, after deducting the costs of administration, would be paid into the Alaska Native Compensation Fund. Although this appears to be the intent of section 8(c), it seems desirable to spell it out somewhat more clearly.

2. When patents are issued under section 10 for lands covered by an existing contract, lease, or permit for the utilization of mineral or surface resources, subsection (k) requires the patent to contain provisions making it subject to the contract, lease, or permit and to the rights granted thereunder. The income derived, after allowance for administrative costs as determined by the Secretary of the Interior, is to be paid to the Alaska Native Development Corporation. This subsection 10(k) is generally all right as far as it goes. However, the language should be improved in a few respects for clarity. For instance, the word "lessor" is used where "lessee" is clearly intended, and the subsection does not consistently repeat the terminology of "contract, lease, or permit". Also, provisions should be added which will: (1) specifically state that the Secretary will continue to administer the contract, lease, or permit; (2) provide for appropriate division of the revenues received, if only part of the land covered by a contract, lease, or permit is patented; and (3) provide for vesting in the grantee of the surface or the mineral estate, as appropriate, of the estate reserved by the contract, lease, or permit when it expires.

3. In addition, there are two other places in the bill where reference should be included to valid existing rights. The first is in section 8(d) which provides that withdrawn lands not patented within ten years are to be returned to the status that they had on the date of withdrawal. That return should be made subject to valid existing rights at the time of return, to take care of rights which may have been created in the interval.

The second place is in section 15 which provides for the revocation or grant of the Moquawkie Reservation as the Tyonek Indians may decide by vote. The grant or the revocation, as the case may be, should be made subject to valid existing rights of any non-Natives, the same as is provided in section 16 for the revocation of other reservations. Also, appropriate provisions should be added to both of these sections for handling outstanding leases issued by the United States which are included among such valid existing rights.

So far as State mineral leases are concerned. H. R. 10193 proceeds on the unexceptionable premise that the State will receive patents for its selections. Thus, section 11 provides for payment of $100 million as compensation for Native rights in lands withdrawn by the United States and "in lands selected by Alaska under the Statehood Act . . . prior to the effective date of this Act." Also, section 12(f) in effect grants to the Natives a 10 percent share of the revenues received by the State from lands patented to it after December 31, 1968. These provisions preclude any notion that the State's selection are available for grant to the Natives, but it would seem desirable to make the point explicit.

Although it thus seems to be clearly intended that the State's selection will be treated as the valid existing rights which they are (which has the result of appropriately protecting leases issued by the State on those selections), and that the Natives will be compensated under section 11 for any "loss" caused by thost selections, some confusion is created by the anomalous provision in section 10(j) that the Secretary shall take such measures as he deems appropriate to extinguish valid existing rights "where they conflict with the grants made" to the Natives. The Secretary has no power to extinguish valid existing rights by his own *fiat*, and the Department of the Interior stated in its original report on the Federal Field Committee bill that it does not support this provision. We suggest that it be deleted and that a definition of valid existing rights be substituted which would make clear what rights preclude grants to the Natives (such as State patents, grants, and approved selections) and what rights do not preclude grants to the Natives (such as United States mineral leases).

Language carrying out our suggestions for clarification of the bills with respect to mineral leases is contained in Appendix B to this statement.

III. AUTHORITY FOR GRANTING EASEMENTS

The size of the contemplated land grants to the Natives, and the landlocking which may result, make it important for the legislation to contain appropriate authority for the Secretary to create easements necessary in the public interest. Otherwise, access to and utilization of Federal and State lands may be impaired. In view of the sizable amount of compensation contemplated by the bills, it is submitted that this possibility should not be permitted to happen.

Neither of the bills covers this point. The Departmental bill (H.R. 13142) contains nothing on the subject of rights of way.

The only mention of rights of way in the Federal Field Committee bill (H.R. 10193) is in subsections (f) and (j) of section 10. Subsection (f) provides that patents to individual Natives residing outside the areas withdrawn under section 8 shall be "subject to a reservation in the United States for access or rights-of-way for public roads or utilities." Subsection (j), which, as previously mentioned, contains the anomalous direction to the Secretary to extinguish valid existing rights which conflict with the Native grants, excepts from that direction "easements or rights-of-way for public purposes."

As a minimum, we suggest that the legislation should clearly authorize easements for public purposes by including the substance of the provision which was section 7(g) of the bill proposed last year by the Department of the Interior (H.R. 17129) and the revision of that bill endorsed by the Alaska Federation of Natives. That provision reads:

"(g) The Secretary is authorized to make any grant of land under this Act subject to easements for any public use, benefit, or purpose, including easements for the administration and utilization of any Federal lands."

We also recommend that the words "or lands owned by the State of Alaska" be included in order to make it explicit that the authority granted to create easements for public purposes includes the creation of easements which are needed for the administration of State, as well as Federal, lands.

A provision along these lines should be sufficient for needs which can be foreseen at the time the grants are made. However, the relatively undeveloped character of much of Alaska, the size of the land grant which may be made to the Natives, the possibility that landlocked areas of Federal and State lands may result, and the difficulty of predicting future use patterns, all indicate that there may be needs which cannot be foreseen at the time of the grants but which will be necessary in the future for the proper utilization and administration of lands owned by the United States and the State of Alaska. It therefore seems appropriate to consider whether a further provision should be included making the

grants subject to the right of the United States to create the same kinds of easements for public purposes in the future. It is realized that such a provision could have adverse effects on the value of the grants unless appropriate safeguards are included, such as provisions for release and for judicial review, or for a time limit on the authority to create easements. The need for authority to create future easements for public purposes seems sufficiently likely, however, to warrant exploring how the balance can be struck so as to create the authority without at the same time unduly impairing the grants. Our suggested language for accomplishing this appears in Appendix C. The first paragraph gives authority for creating present easements. It is the same in substance as section 7(g) of last year's Departmental bill, except that reference to State lands has been added. The second paragraph gives authority to create future easements under safeguards designed to prevent adverse effects on the use of the grants.

IV. CONCLUSION

This completes our suggestions on the three matters of direct interest to us. The time available for study of H.R. 13142 has, of course, been short. It may be that we will have additional suggestions or refinements to submit after further study and with the benefit of the views expressed by others at these hearings. We respectfully request that the record be kept open for a time for this purpose.

We thank you very much for the opportunity to express these views on this important legislation which we hope will move forward as promptly as possible.

APPENDIX A

COMPREHENSIVE DESCRIPTION OF NATIVE CLAIMS

The following is a suggested revision of section 3(a) of H.R. 10193 and the identical section 4(a) of H.R. 13142 to provide a more comprehensive description of the Native claims which are being settled and extinguished. Changes are shown by deleting matter in brackets and by adding language printed in italic.

"Sec. 3. (a) The provisions of this Act shall [be regarded as] *constitute* full and final settlement and extinguishment of any and all claims against the United States, *the State of Alaska, and all other persons which are* based upon [aboriginal right, title,] use, or occupancy of lands, *waters, and submerged areas* in Alaska by any native or native group, *including claims based upon aboriginal right, title, use, or occupancy* [or,] claims arising under the Act of May 17, 1884 (23 Stat. 24), or the Act of June 6, 1900 (31 Stat. 321), *or any other statute or treaty of the United States,* [including] *and* claims pending before the Indian Claims Commission on the effective date of this Act."

APPENDIX B

APPROPRIATE PROVISIONS FOR EXISTING FEDERAL AND STATE MINERAL LEASES

The following changes are suggested to deal appropriately with existing Federal and State mineral leases as valid existing rights:

H.R. 13142

In this bill we suggest adding the underlined words to subsection 3(e) on page 3, lines 18 through 21:

"(e) 'public land' means all Federal land and interests therein situated in Alaska, except any improved land used in connection with the administration of any Federal installation, *and does not include any land selections of the State of Alaska which have been tentatively approved under section 6(g) of the Alaska Statehood Act as amended (72 Stat. 341, 77 Stat. 223);*"

H.R. 10193

As indicated in our statement, we suggest more extensive changes in this bill. This is because its scheme is more complex and, also, because some of the approaches taken in it have been articulated more fully in the later bill proposed by the Department which has had the benefit of and the time to study H.R. 10193.

The changes we suggest in H.R. 10193 with respect to mineral leases are as follows:

1. On page 2, in line 13, following the word "parties," insert the phrase "or by selection by the State."

2. On page 4, in line 15, insert the following between the word "installation" and the semi-colon:

", and does not include any land selections of the State of Alaska which have been tentatively approved under section 6(g) of the Alaska Statehood Act as amended (72 Stat. 341, 77 Stat. 223)."

3. On page 26, in line 25, change the period to a comma and insert the following phrase "including the continuation of existing and the issuance of new leases, permits, and contracts under the mineral leasing laws."

4. On page 27, in line 5, strike the period and insert the following phrase "subject to any valid existing rights at the time of return."

5. On page 32, in line 23, after the word "withdrawals," insert the words "under section 8 of this Act."

6. On page 32, in line 25, substitute a period for the comma after "person," strike the balance of that line and all of lines 1 through 4 on page 33, and insert in place thereof the following:

"The term 'valid exiting rights' as used in this Act shall include, but not be limited to, (1) grants made and patents issued to the State of Alaska or to other third parties, (2) land selections made by the State of Alaska under the Statehood Act of July 7, 1958 (72 Stat. 339) which have been tentatively approved thereunder, and (3) contracts, leases, or permits issued by the United States or the State of Alaska for the utilization of mineral or surface resources. Lands which have been granted or patented to the State of Alaska or to other third parties and lands which have been selected by the State and tentatively approved, may not be withdrawn or patented or granted under this Act. Lands covered by a contract, lease, or permit issued by the United States for the utilization of mineral or surface resources may be withdrawn and patented or granted under this Act subject to such contract, lease, or permit and the continued administration thereof by the Secretary as provided in sections 8(c) and 10(k) of this Act."

7. On page 33, at the end of line 6, insert the words "by the United States."

8. On page 33, change line 9 to read as follows.

"contract, lease, or permit the right of the contractor, lessee, or permittee to".

9. On page 33, in line 11, change "lease or contract" to "contract, lease, or permit".

10. On page 33, delete the sentence which begins in line 11 and continues through line 14, and insert in its place the following:

"The Secretary shall continue to administer such contract, lease, or permit, and the revenues reserved to the United States thereunder accruing subsequent to the patent, after allowance for administrative costs as determined by the Secretary, shall be paid to the corporation, provided, however, that if only part of the land covered by such contract, lease, or permit is patented, then the amount to be paid to the corporation shall be such proportion of said revenues, after allowance for administrative costs as determined by the Secretary, as the acreage of the land covered by such contract, lease, or permit which is included in the patent bears to the total acreage of such contract, lease, or permit. Upon the expiration of any such contract, lease, or permit the estate reserved thereby, if surface, shall vest in the patentee of the surface and, if mineral, shall vest in the corporation in accordance with subsection (g) of this section."

11. On page 33, insert the following sentence after the period in line 21:

"Such selections by the State of Alaska are hereby confirmed and, without regard to the Native claims settled and extinguished by this Act, shall proceed to patent where patent has not already issued, all else being regular."

12. On page 41, insert the following after the period in line 10:

"Any grant under clause (a) or (b) or revocation under clause (c) of this section shall be subject to valid existing rights of any nonnatives, including the complete enjoyment by lessees of all rights, privileges, and benefits granted to them under any outstanding leases. Such leases shall continue to be administered by the Secretary." [Provisions may also be added for disposing of the revenues reserved to the lessor under those leases depending upon whether any change is desired or appropriate in that regard as part of the settlement.]

13. On page 41, in line 18, strike the period and insert the following:

", including the complete enjoyment by lessees of all rights, privileges, and benefits granted to them under any outstanding leases. Such leases shall continue to be administered by the Secretary." [Provisions may also be added for dis-

posing of the revenues reserved to the lessor under those leases depending upon whether any change is desired or appropriate in that regard as part of the settlement.]

APPENDIX C

AUTHORITY FOR GRANTING EASEMENTS

The following new section is suggested for inclusion in H.R. 10193 or H.R. 13142 in order to provide appropriate authority for granting easements for public purposes:

"SEC. —. (a) The Secretary is authorized to make any land withdrawn or patented under this Act subject to easements for any public use, benefit, or purpose, including easements for the administration and utilization of any Federal lands or lands owned by the State of Alaska.

"(b) In addition, patents issued under this Act shall contain a reservation to the United States of the right to create easements in the future for any public use, benefit, or purpose, including easements for the administration and utilization of any Federal lands or lands owned by the State of Alaska, on such terms and conditions, which may include payment of compensation, as the Secretary shall determine to be reasonable, appropriate, and just. If such reservation should materially interfere with the sale or use of any land patented under this Act, the owner thereof may apply to the Secretary for a release of such reservation in whole or in part and shall furnish to the Secretary such information as the Secretary may require in order to determine whether a release is warranted.

"Any determination made by the Secretary under this subsection (b) shall be subject to judicial review by the United States district court in Alaska upon the filing in such court within 30 days from the date of such determination of a petition by the person aggrieved by the determination praying that the action of the Secretary be modified or set aside in whole or in part. A copy of the petition shall forthwith be sent by registered or certified mail to any other party to the proceeding and to the Secretary, and thereupon the Secretary shall certify and file in such court the record upon which the determination complained of was issued. The court shall hear the matter on the record made before the Secretary. The findings of the Secretary, if supported by substantial evidence on the record considered as a whole, shall be conclusive. The court may affirm, vacate, or modify the determination or any remand the proceeding to the Secretary for such further action as it directs. The judgment of the court shall be subject to review by the United States court of appeals for the circuit in which the petitioner resides and by the Supreme Court of the United States upon certiorari or certification as provided in section 1254, title 28, United States Code."

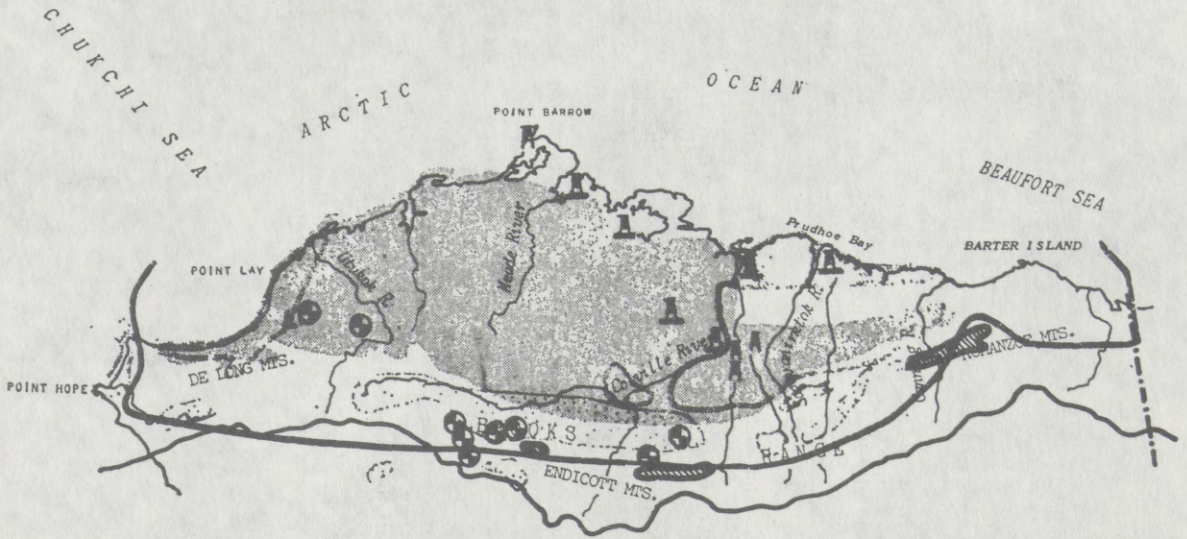
In addition to including the foregoing suggestion, it is suggested that the following changes should be made in subsections (f) and (j) of section 10 of H.R. 10193:

1. On page 31, insert a period in place of the comma after "Act" in line 12, and strike the balance of that line and all of lines 13 and 14.
2. On page 32, insert a period in place of the comma after "person" in line 25, and strike the balance of that line and all of lines 1 through 4 on page 33.

No similar changes are needed in H.R. 13142.

ALASKA PETROLEUM INDUSTRY FACTS

1968



Alaska Oil and Gas Association
January 1, 1969

	1966	1967	1968
I. PERSONNEL			
A. In Alaska:			
1. Oil companies	608	686	1,065
2. Drilling, geophysical, supply, and service companies	1,242	1,834	2,483
3. Total	1,850	2,520	3,548
B. Hired in Alaska:			
1. Oil companies	308	286	514
2. Drilling, geophysical, supply, and service companies	903	1,489	2,329
3. Total	1,211	1,775	2,843
C. Owning homes in Alaska:			
1. Oil companies	301	371	555
2. Drilling, geophysical, supply, and service companies	138	369	990
3. Total	439	740	1,545
D. Payroll:			
1. Oil companies	$7,976,533	$11,430,476	$16,188,791
2. Drilling, geophysical, supply, and service companies	16,342,721	29,925,221	41,323,292
3. Total	24,319,254	41,355,697	57,512,083

	1958 through 1966	1967	1968	Cumulative
II. TAXES (STATE AND LOCAL)				
A. Oil companies	$36,170,783	$7,167,448	$10,182,346	$53,520,527
B. Drilling, geophysical, supply, and service companies	1,313,576	1,894,028	2,140,036	5,347,640
C. Total	37,484,359	9,061,476	12,312,382	8,868,2175
III. INVESTMENT FOR ALASKA OPERATIONS				
A. Oil companies	850,876,129	305,744,690	538,298,697	1,694,919,516
B. Drilling, geophysical, supply, and service companies (equipment, yards, offices, payroll, etc.)	[1] 50,229,763	76,665,638	86,557,130	213,452,531
C. Total	901,105,892	382,410,328	624,885,827	1,908,372,047
IV. MISCELLANEOUS				
A. Number of miles of all-purpose roads constructed by industry	[2] 447	14.2	89	550.2
B. Number of miles of seismic trails	5,240	4,220	4,570	14,030
C. Number of permanent bridges constructed	3	0	0	3
D. Number of airstrips constructed	20	7	11	38
E. Number of miles of pipelines	210.5	102.3	71	383.8
Dual (submarine) lines	49.5	53.6	8.3	111.4

[1] Reported only.
[2] State division of oil and gas.

ALASKA'S DIRECT INCOME—OIL AND GAS INDUSTRY

PART I.—FEDERAL RENTALS AND ROYALTIES

	Rental [1]	Royalty		State royalty [2]—gas	Total
		Oil [1]	Gas		
1958 [3]	$3,279,373.05				$3,279,373.05
1959	4,403,375.12				4,403,375.12
1960 [3]	2,705,605.71	$98,235.13	$319.96	$110.87	2,804,271.67
1961	3,018,753.90	1,621,863.86	5,785.38	761.18	4,647,164.32
1962	4,871,016.90	2,952,516.98	29,903.11	4,247.49	7,857,684.38
1963	4,929,708.60	3,128,503.48	92,542.04	10,418.68	8,161,175.80
1964	5,529,110.40	3,190,879.54	73,200.03	21,933.26	8,815,123.23
1965	3,519,920.13	3,159,519.14	12,350.55	0	6,691,789.82
1966	4,112,165.20	[4] 3,187,282.99	[4] 168,662.56	0	7,468,110.75
1967	3,526,398.00	4,070,451.00		0	7,596,849.00
1968	2,894,533.00	4,954,597.00		0	7,849,130.00
Total	42,789,960.11	26,746,615.65		37,471.48	69,574,047.14

[1] Obtained through the cooperation of the Department of the Interior from BLM statistical appendixes and public land statistics. Computed at 90 percent of Federal payments.
[2] Computed at 100 percent on State royalty gas collected by the Government until Jan. 1, 1965.
[3] The Fairbanks land office indicates the 1958 rental figure includes $127.871.95 bonus earned in the first Gubik competitive sale, and the 1960 figure includes $42,939.60 bonus earned in second Gubik sale (total competitive bonus earned $170,811.55)
[4] Obtained from the Alaska USGS office and applying difference between figures obtained from division of lands for actual receipts to rental receipts.

PART II.—STATE LEASING RENTALS AND BONUSES [1]

	Competitive	Noncompetitive	Bonus on competitive	Total
1959		$921.28	$4,020,342.43	$4,021,263.71
1960	$93,699.00	11,774.25	442,979.85	548,453.10
1961	223,315.00	22,461.78	22,415,800.16	22,661,576.94
1962	627,243.00	356,164.94	15,719,209.60	16,702,617.54
1963	737,246.00	413,827.55	7,178,905.66	8,329,979.21
1964	922,857.00	373,340.25	5,537,100.94	6,833,298.19
1965	2,294,632.00	361,640.00	10,819,816.33	13,476,088.33
1966	2,261,006.00	576,062.00	7,157,460.00	9,994,528.00
1967	2,357,599.78	666,000.45	[2] 20,236,635.23	23,260,235.46
1968	2,424,490.40	766,992.49	4,045,493.00	7,237,075.89
Total	11,942,188.18	3,549,184.99	97,573,743.20	113,065,116.37

	1967		1968	
	Number	Acres	Number	Acres
Active leases, Jan. 1	1,373	2,260,951.24	1,537	2,357,599.78
Issued or segregated	280	300,769.51	293	225,306.66
Terminations	116	204,120.97	115	158,316.04
Active leases, Dec. 31	1,537	2,357,599.78	1,715	2,424,590.40

[1] Revised to reflect new system of report from division of lands.
[2] Does not include $611,564.19 forfeited in 20th sale.

PART III—MISCELLANEOUS

Year	State royalties		State filing fees [1]	State drilling permits	Totals
	Oil	Gas			
1959			$620	$800	$1,420,00
1960			2,294	1,500	3,794.00
1961			310,393	2,750	313,143.00
1962	3,472.50		318,155	1,900	323,527.50
1963	25,484.29		139,038	1,250	165,772.29
1964	50,212.61		60,969	750	111.931.61
1965	172,791.78		92,065	1,950	266,806.78
1966	941,562.00		132,053	3,200	1,076,815.00
1967	3,517,136.00		447,267	4,400	3,968,803.00
1968	14,232,822.00	$241,309	330,896	5,800	14,810,827.00
Totals	18,943,481.18	241,309	1,833,750	24,300	21,042,840.18

[1] All figures obtained from the Alaska Division of Lands and Mines and Minerals personnel. Includes a relatively small amount of other fees in addition to those on noncompetitive oil and gas sales.

PART IV.—STATE TAXES

[State taxes from oil and gas estimated in part. Production tax, 3 percent of gross wellhead value; conservation tax, 50.00 mills/barrel of oil and 0.005 mills per 50,000 cubic feet of gas.[1]]

Year	Production		Conservation		Total
	Oil	Gas	Oil	Gas	
1959	$2,817.50		$932.95		$3,750.45
1960	12,171.01	$45.25	2,789.99	$1.81	15,008.06
1961	176,662.71	631.90	31,631.50	25.28	208,951.39
1962	311,883.02	3,934.29	51,296.55	157.57	367,271.43
1963	326,494.90	8,123.21	53,699.82	324.93	388,642.86
1964	339,517.47	11,689.90	55,448.13	467.60	407,123.10
1965	340,533.48	15,459.79	55,633.01	1,200.34	412,826.62
1966	442,422.93	60,136.00	71,791.06	3,311.40	577,661.39
1967[2]	676,406.25		111,145.05		787,551.30
1968[3]	3,802,221.96		293,911.95		4,096,133.91
Total	6,531,151.57		733,768.94		7,264,920.51

[1] These figures will never quite agree with the report from the department of revenue from the State of Alaska because of fiscal versus calendar basis of reporting. These are compiled from gross production figures obtained from the division of mines and minerals report and computed as indicated, and will be subject to adjustment to exclude State and Federal royalties which are exempt after computation of wellhead values.

[2] Source: State department of revenue.

[3] $1,525,795.94 represents the 1-percent disaster tax.

PART V—SUMMARY BY YEARS

Year	Territory	Year	State
1947	$296.72	1958	$3,279,373.05
1948	187.50	1959	8,429,809.28
1949	0	1960	3,371,526.83
1950	1,380.00	1961	27,830,835.65
1951	2,568.25	1962	25,251,100.85
1952	8,556.75	1963	17,045,570.16
1953	118,917.73	1964	16,167,476.13
1954	51,931.87	1965	20,847,611.55
1955	82,505.82	1966	19,113,911.14
1956	175,731.10	1967	35,613,438.76
1957	314,729.30	1968	37,161,953.40
Total	756,805.04	Total	214,112,606.80

ALASKA STATISTICS

FEDERAL LEASE ACREAGE[1]

1950	14,720	1960	33,287,120
1951	27,400	1961	26,807,695
1952	91,272	1962	19,550,312
1953	1,268,536	1963	15,005,988
1954	553,940	1964	11,589,149
1955	880,064	1965	10,174,063
1956	1,874,464	1966	9,264,163
1957[2]	3,357,112	1967	7,111,737
1958	19,552,999	1968	6,817,158
1959	22,652,733		

[1] Source: Bureau of Land Management statistical appendixes and public land statistics.

[2] Swanson River discovery 1957.

EXPLORATION (CREW-MONTHS) [1]

	Geological field parties	Seismic conventional	Geophysical gas exploder, sparker and vibroseis	Gravity	Aeromagnetics
Prior to 1957	25	9		4	
1957	13	11		7½	1
1958	115	53		5	5
1959	129	94½		7½	½
1960	57½	40		4½	2
1961	58	66¾	6½	14¼	
1962	43	64	17¼	9½	9
1963	64¼	92¼	13¾	12½	
1964	52	87¼	7¾	18	2
1965	38¼	45¾	14½	7	3
1966	45¼	44½	34¼	2	½
1967	39	37½	25½	6	
1968	35	48	35	4	1
Total	685¾	693½	154½	101¾	24

[1] Included USGS petroleum-oriented studies.

Source: State division of oil and gas, AAPG bulletins, and International Oil Scouts Yearbooks.

DRILLING SUMMARY

EXPLORATION AND PRODUCTION WELLS

	Proven field wells			Exploratory wells			Proven field and exploratory			Total all wells
	Oil	Gas	Dry	Oil	Gas	Dry	Oil	Gas	Dry	
Previous to 1957							28	6	129	163
1957				1		2	1		2	3
1958			1			2			3	3
1959	3	2	1		1	5	3	3	6	12
1960	12	1	2	1	2	7	13	3	9	25
1961	25		2	3	5	16	28	5	18	51
1962	7	4	2		3	21	7	7	23	37
1963	7	3		1	1	13	8	4	13	25
1964		2		1	4	18	1	6	18	25
1964	2	6		7	3	9	9	9	9	27
1966	9			6	5	25	15	5	25	45
1967	36	1	3	1	3	31	37	4	34	75
1968	81	7	11	3	1	20	84	8	31	123
Total	182	26	22	24	28	169	234	60	320	614

Source: AAPG bulletins and State division of oil and gas.

OIL DISCOVERIES

Umiat	December 1946.
Swanson River	July 1957.
Middle Ground Shoal	September 1963.
Trading Bay	June 1965.
Granite Point	August 1965.
McArthur River	November 1965.
Dolly Varden	August 1966.
Foreland	Do.
Trading Bay State No. 1	July 1967.
Prudhoe Bay	June 1968.
New pool: Trading Bay State No. 2	December 1966.
Extensions:	
North Redoubt State No. 1	June 1966.
McArthur State No. 1	September 1966.
Tyonek State No. 1	Do.
Trading Bay State No. 1	October 1966.

GAS DISCOVERIES

Kenai	October 1959.
Swanson River	May 1960.
West Fork	September 1960.
Falls Creek	June 1961.
Sterling	August 1961.
Middle Ground Shoal	June 1962.
West Foreland	March 1962.
Cook Inlet	August 1962.
Beluga River	December 1962.
East Umiat	March 1964.
Birch Hill	June 1965.
Moquawkie	Do.
North Fork	January 1966.
Nikolai Creek	May 1966.
Ivan River	October 1966.
Beaver Creek	August 1967.
Deeper pool: Kenai Deep Unit	November 1967.
Extensions:	
Cook Inlet State No. 2	July 1966.
Nikolai State No. 2	October 1966.
Nikolai Creek Unit No. 3	July 1967.

Source: State division of oil and gas and AAPG bulletins.

OIL PRODUCTION—BARRELS

	Swanson River field	Middle Ground Shoal field	Trading Bay field	Granite Point field	McArthur River field	Total all fields
1959	186,590					186,590
1960	557,999					557,999
1961	6,326,301					6,326,301
1962	10,259,310					10,259,310
1963	10,739,964					10,739,964
1964	11,089,626					11,089,626
1965	11,099,404	27,197	1,684			11,128,285
1966	11,711,744	2,646,468	0	286		14,358,498
1967	12,980,482	7,408,091	727,012	7,053,064	748,815	28,917,464
1968	13,619,458	14,137,040	3,474,704	13,131,377	21,782,310	66,144,889
Total	88,570,878	24,218,796	4,203,400	20,184,727	22,531,125	159,708,926

Source: State division of oil and gas.

GAS PRODUCTION—MCF
AT PRESSURE BASE 14.65 PSI 60° F.

	Swanson River	Kenai	Sterling	Beluga River	Middle Ground Shoal	Birch Hill	Falls Creek
Prior to 1959	5,643						
1959	27,292						
1960	119,441	17,474					
1961	1,293,258	214,718					
1962	2,071,186	1,460,175	25,186				
1963	7,645,518	3,105,539	45,724	13,538			
1964	7,176,314	4,493,170	58,383	136,937			
1965	5,972,691	5,985,342	120,319	0	10,405	65,331	
1966	6,362,619	33,374,960	157,490	0	1,198,386	0	18,982
1967	13,541,027	39,623,964	179,544	0	4,863,976	0	0
1968	25,434,328	46,014,108	198,213	2,018,166	6,656,657	0	0
Total	69,649,317	134,289,450	784,859	2,168,641	12,729,424	65,331	18,982

Source: State division of oil and gas and division of mines and minerals annual report.

GAS PRODUCTION—MCF—Continued

	South Barrow	Trading Bay	North Fork	Granite Point	McArthur	Moquakie	Nicolai Creek	Total all fields
Prior to 1959	944,862							950,505
1959	132,624							159,916
1960	173,186							310,101
1961	172,437							1,680,413
1962	196,734							3,753,281
1963	210,748							11,021,067
1964	248,953							12,113,757
1965	388,846							12,542,934
1966	437,512	515	104,595					41,655,059
1967	475,382	722,705	0	4,899,550	219,915	34,399		64,560,462
1968	503,724	2,961,128	0	10,036,431	6,155,431	353,440	26,189	100,357,815
Total	3,885,008	3,684,348	104,595	14,935,981	6,375,346	387,839	26,189	249,105,310

WILMER, CUTLER & PICKERING,
Washington, D.C., August 15, 1969.

Re Alaskan native claims.

WILLIAM J. VAN NESS, Jr., Esq.,
Special Counsel, Committee on Interior and Insular Affairs,
Washington, D. C.

Dear MR. VAN NESS: Enclosed herewith is a supplemental statement of the Western Oil and Gas Association which we request be included in the record of the hearing on S. 1830, along with the document entitled *Alaska Petroleum Industry Facts*, 1968 which is referred to in the supplemental statement and is also enclosed.

This supplemental statement brings up to date the position set forth in our original statement, by covering the subsequent bill prepared by the Department of the Interior which has been introduced as an amendment in the nature of a substitute to S. 1830.

Additional copies of the supplemental statement are enclosed for distribution to the members of the Committee and for the Committee's use.

The opportunity to present these supplemental views on this important matter is appreciated, and we hope they will be of assistance.

Very truly yours,

JOHN H. PICKERING.

SUPPLEMENTAL STATEMENT OF THE WESTERN OIL & GAS ASSOCIATION

This statement supplements the statement, appearing at pp. 139–151 of the printed record, which we gave at the first session of this hearing on April 29, 1969.

That statement was addressed to the bill then before the Committee, S. 1830, embodying the legislative recommendations of the Federal Field Committee for Development Planning in Alaska. It covered the following three points of direct interest to us:

1. Comprehensive description of the Native claims which are being settled and extinguished;
2. Appropriate provision for existing Federal and State mineral leases;
3. Authority for granting easements, and it included draft language for changes in S. 1830 to implement our suggestions on these three points.

The purpose of this supplemental statement is to update our position by covering these points in relation to the bill subsequently prepared by the Department of the Interior to embody its recommendations. That bill, of course, has been introduced as an amendment in the nature of a substitute to S. 1830, and at a continuation of the hearing on August 7 and 8, 1969, the Committee heard the views of the Department of the Interior, the State of Alaska, and the Alaska Federation of Natives.

In this supplemental statement S. 1830 is sometimes referred to as the Federal Field Committee bill, and the amendent in the nature of a substitute is generally referred to as the Departmental bill.

As we shall discuss, the Departmental bill appears to deal satisfactorily with one of our points, the need for appropriate provisions for existing Federal and State mineral leases. However, on our other two points it is the same as S. 1830 and should, we believe, be improved along the lines suggested in our original statement.

I. COMPREHENSIVE DECRIPTION OF THE NATIVE CLAIMS WHICH ARE BEING SETTLED AND EXTINGUISHED

Section 4(a) of the Departmental bill is identical to Section 3(a) of S. 1830. In our original statement we pointed out in some detail that this provision should be improved in at least three respects to achieve the full and final settlement of the Alaskan Native claims which everyone desires:

First. The legislation should make explicit, rather than leaving to implication, that the settlement extends not only to the United States, but to third parties to whom the United States has granted, sold or leased lands claimed by the Natives, such as the State of Alaska, homesteaders, mineral leassees, and so forth.

Second. Since some of the aboriginal use and occupancy claims embrace water as well as land areas, the legislation should extinguish claims to submerged lands as well as uplands.

Third. The legislation should extinguish use and occupancy claims based on any statute or treaty of the United States, not just those based on the Acts of 1884 and 1900 which are the only statutes cited in Section 3(a) of S. 1830 and the identical Section 4(a) of the Departmental bill.

The need for broadening this provision of the bills along the foregoing lines was brought out in the presentations of the State of Alaska and the Alaska Federation of Natives at the hearing on August 7 and 8.

The Governor of Alaska stated that the language should make clear that the legislation "is a full and final settlement of all Native claims against the United States and whatever claims the Natives may have against the State of Alaska and all other persons which are based upon use and occupancy of lands, waters, and submerged areas in Alaska."

The position paper of the Alaska Federation of Natives states (p. 14) that the legislation should be a full and final settlement of any and all claims based upon aboriginal use and occupancy arising under the Acts of 1884 and 1900 "or any other Act of Congress." Justice Goldberg stated that the Natives, in return for a just settlement, are ready for a final extinguishment of their land claims so that everybody in Alaska will be protected, and that this should encompass extinguishment of their claims to land rights whether they are against the United States, the State, or third parties. And in a colloquy with Senator Stevens a question was raised about the desirability of settling not only the land claims, but also claims to other property (including fishing rights) mentioned in Section 4 of the Statehood Act.

Appendix A to our original statement (p. 149 of the printed record) contains a suggested revision of this provision of the bills which we hope will be a helpful start toward the changes which are necessary in this provision if the Native claims are to be fully and finally settled.

II. APPROPRIATE PROVISIONS FOR EXISTING FEDERAL AND STATE MINERAL LEASES

In our original statement we explained the need for appropriate provisions for existing Federal and State mineral leases, in recognition of their status as valid existing rights and how that status bears on what can and is intended to be granted to the Natives. We also suggested certain clarifying and technical changes in S. 1830 for this purpose.

Whatever form the legislation eventually takes, it should be clear on these matters, we submit, because of the extent of mineral leasing in Alaska, the contribution it has made to the Alaskan economy, and the very substantial investments which have been made in reliance on the rights granted by the Federal and State mineral leases.

The Statehood Act contemplated, of course, that revenues from Federal leasing and from the State's leasing of its land selections would provide a major part of the support needed to make statehood economically viable.[1] As the

[1] See Sections 6 and 28(b) of the Statehood Act, and H.R. Rep. No. 624, 85th Cong., 1st Sess. (1957), pp. 5–8, 14; S. Rep. No. 1163, 85th Cong., 1st Sess. (1957), p. 2; 104 Cong. Rec. 9224, 9344, 9511, 9515, 12032, 12037, 12208.

Committee knows, this expectation has been borne out. According to the report of the Federal Field Committee, it is "oil and gas and their derivatives above all—exploration, development, and processing, as well as production—which are now the main engine of economic growth in Alaska." [2] Details on this for the decade following statehood—in terms of number of leases, lease revenues, acreage covered and industry investment—appear in *Alaska Petroleum Industry Facts, 1968*, prepared by the Alaska Oil and Gas Association, a division of Western Oil and Gas Association. This document was not available at the time of our original statement. We submit it herewith, and request that it be included in the record. According to it, the industry has invested almost $2 billion for operations in Alaska during the decade from 1958 through 1968, and at the end of 1968 Federal leases covered some 6.8 million acres and there were 1,715 active State leases covering approximately 2.4 million acres.

The Departmental bill generally appears to make appropriate provision for both Federal and State mineral leases. All conveyances are to be made from the "public land" of the United States as defined in Section 3(e). Under Section 10 patents conveying land to the Natives are to be "subject to all valid existing rights," and minerals covered by the mineral leasing laws are excepted. Also, Section 10(j) carefully provides for the continuation of existing leases and the preservation of the rights granted and reserved thereby. Under its terms: if a contract, lease, or permit has been issued for utilization of mineral or surface resources prior to patent, the patent is to contain provisions making it subject to the lease, contract, or permit and to the right of the lessee, contractee or permittee to the complete enjoyment of all rights, privileges, and benefits granted him thereby; also, the income is to continue to be received, and administration is to continue to be conducted, by the lessor, contractor, or permitter.

These provisions in general, and Section 10(j) in particular, appear satisfactory for mineral leases issued by the United States—both those issued on the public domain and those issued on lands withdrawn in connection with Native affairs. They spell out the scope of the grant and how the leases are to be handled, and they thereby avoid the ambiguities and questions which, as pointed out in our original statement, will arise if only the phrase "subject to valid existing rights" is used when United States mineral leases are involved.

These provisions of the Departmental bill likewise appear generally satisfactory for State mineral leases. Conveyances to the Natives are to be made from the "public land", and lands leased by the State do not come within that term as defined in Section 3(e). In particular, this definition does not include land selections by the State of Alaska which have been tentatively approved; as Secretary Hickel explained in response to a question from Senator Allott, it will not affect those tentatively approved lands in any way. It would nevertheless seem desirable to make this construction explicit in the language itself. We therefore suggest that the following clause be added to Section 3(e) in line 23 on page 3 of the proposed amendment:

> "and does not include any land selections of the State of Alaska which have been tentatively approved under section 6(g) of the Alaska Statehood Act as amended (72 Stat. 341, 77 Stat. 223) ;".

While the Departmental bill thus gives appropriate recognition and protection to existing Federal and State mineral leases, there is one more aspect which we want to mention before concluding our discussion of the Department's recommendations concerning leases. That is the provision of Section 11 which, like Section 12 of the Federal Field Committee bill, would require that future disposition of minerals under the mineral leasing laws in Alaska be done by competitive bidding. We do not take any position on the general proposition of whether competitive bidding should henceforth be required for Federal mineral leasing in Alaska. If Congress should decide to accept this recommendation of the Department of the Interior and the Federal Field Committee for competitive bidding in Alaska, we urge, however, that the following clarification should be made in the case of oil and gas leases:

Under existing law and regulations [3] lands "within any known geologic structure of a producing oil or gas field" are required to be leased by competitive bidding, and such competitive leases are limited to "units of not more than six hundred and forty acres" and to a "primary term of five years." Noncompetitive

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[2] *Alaska Natives and the Land* (October, 1968), pp. 520–521.

[3] Section 17 of the Mineral Leasing Act as amended (30 U.S.C. § 226), and 43 CFR § 3122.1.

leases on the other hand, those which are for lands not within any known geologic structure of a producing oil or gas field, may be issued for not more than 2,560 acres and are "for a primary term of ten years."

If noncompetitive lands are now to be placed on a competitive leasing basis in Alaska, we believe that it is essential to retain the same acreage and primary term requirements as are presently provided for noncompetitive leases. The problems of operating in Alaska, logistical, climatic, and so forth, are such that the 640 acre and 5 year primary term limitation for leases on lands which are within the known geologic structure of a producing oil or gas field would not be appropriate for leases covering so-called "wildcat" acreage, *i.e.*, acreage which is not within any known geologic structure of a producing oil or gas field. Accordingly, if all Federal mineral leasing of public lands in Alaska is to be put on a competitive basis, we submit that the legislation should provide that all leases issued for lands not within any known geologic structure of a producing oil or gas field will continue to be for a maximum of 2,560 acres and for a primary term of 10 years.

Finally, we want to emphasize that if the compensation package recommended in the Departmental bill should be changed—if, for example, it is decided that the leasable minerals should be granted to the Natives or that they should have some share in reserved royalties—care will have to be exercised, as has been done in the Departmental bill, to avoid confusion or inadvertent impairment of the rights granted by the United States and by the State of Alaska in the mineral leases which they have issued. In this connection, particular attention should be paid to the land selections of the State of Alaska which have been tentatively approved and on which the State has issued leases, in view of the different positions stated by the Department of the Interior, the State of Alaska, and the Alaska Federation of Natives on August 7 and 8, 1969.

Under the Departmental bill, as Secretary Hickel stated, Alaska's tentatively approved State selections would not be affected in any way. Governor Miller, on the other hand, pledged that the State would transfer to the villages the State's title to its land selections within the village area in accordance with the formula applicable to Federal lands, reserving minerals, of course, as required by the Statehood Act. The Alaska Federation of Natives stated that it was not willing to concede at this time that the Natives do not have any claim to the tentatively approved State selections, but former Attorney General Clark stated that the Federation has not done anything that would challenge a lease that may have been entered into and that the lessees are not threatened.

We do not object, of course, to any disposition of tentatively approved State selections which is appropriate and properly protects the rights of those holding leases issued by the State on such selections. We wish to stress, however, the importance of leaving no question as to those rights. This can hardly be overemphaized and is essential to a full and final legislative solution. As discussed at the August 7 and 8 portion of the hearing, the potential oil value indicated by the discoveries on the North Slope enters into the question of how much compensation should be given to the Natives. Those discoveries were made on leases issued by the State on tentatively approved selections, and the State has a lease sale scheduled next month on other tentatively approved selections. The rights and equities which these State lessees have—both under their leases and by virtue of the considerable amount of money and effort which is being expended on them and the discoveries which have resulted—must be preserved in any legislative resolution of the Alaska Native claims.

This is especially true because, as pointed out in our original statement, these tentatively approved State selections are "valid existing rights", equivalent to a patent or grant, and Congress has specifically authorized the State to lease them. Without going into detail again, the essential points are briefly:

Tentative approval is given only after "determining that there is no bar to passing legal title to the lands to the State other than the need for the survey of the lands or for the issuance of patent or both." Once a selection is tentatively approved, Section 6(g) of the Statehood Act expressly authorizes the State to lease it. This provision was adopted to permit the State to deal with the land immediately, without the long wait needed for completion of the surveys which are required before patents can be issued. Neither the existence of the Native claims nor the disclaimer in Section 4 of the Statehood Act bars State selections or their tentative approval for, as the Supreme Court stated in *Kake Village* v. *Egan*, 369 U.S. 60, at 65–66 and 69 (1962):

"It was understood that the disclaimer provision left the State free to choose Indian 'property' if it desired, but that such a taking would leave unimpaired the Indians' right to sue the United States for any compensation that might later be established to be due."

* * * * * * *

"If lands subject to the claim of Indian rights were transferred to the State, the Indians were not thereby to lose the right to make claims against the United State for damages." [4]

It thus follows, we submit, that the Natives may properly claim that the settlement should include compensation for lands which have been transferred to the State by tentative approval or other means such as a patent or grant, but that the Natives have no right to those lands as such. It likewise follows that the legal and equitable rights of those holding leases from the State on its tentatively approved selections must be recognized and protected in any transfer of tentatively approved selections to the Natives—either a transfer such as Governor Miller has pledged that the State will make of its selections in village areas, or any transfer which the United States may make assuming (which does not appear to be the case in view of the foregoing) that the United States has any power to transfer tentatively approved selections without the State's consent—and we do not understand that the Natives are urging otherwise so far as such State leases are concerned.

III. AUTHORITY FOR GRANTING EASEMENTS

Our final point is the need for the legislation to contain some appropriate authority for the creation of easements necessary in the public interest, including easements needed for the administration and utilization of Federal and State lands. We discussed the reasons for this in our original statement and suggested language to permit the creation of such easements at the time of the grants and to reserve the right to create easements in the future under appropriate conditions and safeguards.

This point about the need for some easement authority in the legislation has also been raised by others. The problem of access was mentioned by the Department of Agriculture at pp. 56–57 of the printed record and in the statement of Mr. Greeley of the Forest Service on August 7, 1969. Also, Governor Miller testified on August 7 that there should be some provision in the legislation for the reservation or acquisition of easements in the public interest.

The Departmental bill does not contain any provision for easements. We accordingly urge that consideration be given to including in it some provisions along the lines of the subsection we proposed for S. 1830 in Appendix C to our original statement (pp. 150–51 of the printed record).

We appreciate the opportunity to submit these supplemental views and hope they will be of assistance to the Committee in fashioning legislation which will fairly, fully, and finally settle the Alaska Native claims.

ALASKA MINERS ASSOCIATION,
Anchorage, Alaska, September 9, 1969.

HON. HENRY M. JACKSON,
Chairman, Committee on Interior and Insular Affairs,
U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: The Alaska Miners Association is concerned by parts of S. 1830. Section 12(d) of S. 1830 provides for a royalty on locatable minerals. Mineral development in Alaska is already retarded by the lack of transport facilities and the high costs of labor and materials. Additional costs in the form of royalties will effectively prohibit development of mineral properties in Alaska.

[4] By the land freeze and Public Land Order 4582 the Secretary of the Interior has, of course, suspended action on State land selections and is not making any further transfers while the current 91st Congress considers legislation to settle the Alaska Native claims. According to the report of the Federal Field Committee, the State has received patents to some 6 million acres and tentative approval for another 8.4 million (*Alaska Natives and the Land*, p. 449).

Further, the provision would be discriminatory, in that no other state has such royalties.

We are even more deeply concerned by Amendment #112 introduced on August 4 as a substitute to S–1830. This amendment would in effect halt all mining activity until June 30, 1991. Section 8 of this amendment provides for withdrawal until "Jnne 30, 1991, all public lands in the State of Alaska . . . from all forms of appropriation under the public land laws . . . including the mining laws." At a time when a severe shortage of all major minerals is forecast, we cannot afford to prohibit exploration and development of mining in our largest and least developed state for nearly a quarter of a century.

Alaska needs jobs which will be provided by a stable mining industry. The United States critically needs the mineral products to sustain economic and strategic security. The above cited portions of S–1830 and Amendment #112 are in the best interest of neither the state or federal government.

Sincerely,

CLYDE E. WETHERELL,
Chairman, Exploration Committee.

AMERICAN MINING CONGRESS,
August 14, 1969.

Re: S. 1830.

Hon. HENRY M. JACKSON,
Chairman, Committee on Interior and Insular Affairs,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: The American Mining Congress is concerned with certain provisions of S. 1830, which we understand is under consideration by the State Interior Committee. As we understand it, this bill reflects the recommendations of the Federal Field Committee for Developmnt Planning in Alaska. Section 12(d) of S. 1830 would provide for a royalty on locatable minerals. This should not be the subject of legislation applying only to one of the fifty states, and, in any event, should be rejected because of its damaging effect on domestic hard minerals production. Unlike many of the leasabel minerals, such as oil and gas, hard rock minerals today are being recovered from widely dispersed bulk low grade deposits. The very nature of these deposits results in a low margin of profit to the operators. The imposition of a royalty would impose an additional fixed cost which would render many deposits uneconomic to mine. To impose a royalty on locatable minerals would significantly reduce ore reserves by affecting the cutoff point beyond which minerals could not be extracted at a profit. Thus, valuable minerals would remain in the ground at a time when they are desperately needed.

The obvious intent of the Federal Field Committee's proposal is to maximize revenues. If such a proposal were adopted, however, the practical result would be just the opposite, since it would render mineral production in Alaska uneconomic.

At the request of the Administration, Amendment #112 was introduced on August 4, in the nature of a substitute to S. 1830.

The American Mining Congress is concerned with provisions of this amendment which would, in effect, render the mining laws inoperative in practically all of Alaska for the next twenty-two years. Section 8 would withdraw *"until June 30, 1991, all public lands in the State of Alaska . . . from all forms of appropriation under the public land laws . . . including the mining laws."*

Although the just and fair settlement of Alaskan native claims is a worthy purpose of legislation, such a goal can surely be achieved without stultifying mining activity in the State and thus repressing vitally needed economic growth for almost a quarter of a century. Such a prohibition on mining in Alaska at a time when the United States faces the very real possibility of critical mineral shortages is clearly adverse to the national interest.

Such action would also seriously inhibit the work of the Public Land Law Review Commission which was established by Congress for the express purpose of reviewing the public land laws and to report to the President and the Congress recommended actions which should be taken to assure that the public lands of the United States shall be (a) retained and managed, or (b) disposed of, all in a manner to provide the maximum benefit for the general public. Some 740.7 million acres of lands fall within the scope of the Commission study. Of this

total, 364.6 million acres, almost half of the acreage under Commission review, are in Alaska.

Section 11 of the amendment states that:

"Deposits of all minerals included under the mineral leasing laws, including but not limited to, coal, phosphate, sodium, potassium, oil, oil shale, or gas located in all public lands in Alaska shall be subject to disposition by the Secretary under the terms of this Act. After the effective date of this Act, the Secretary is authorized to dispose of such deposits only by competitive bidding, but otherwise under the provisions of the applicable mineral leasing law. He shall prescribe by regulation the procedures to be used for competitive bidding. The term "mineral leasing laws" as used in this section means only the Mineral Leasing Act of February 25, 1920, as amended and supplemented (30 U.S.C. 181–283), and the Mineral Leasing Act for Acquired Lands (30 U.S.C. 351–359).

The disposition of leasable minerals "*only by competitive bidding*" constitutes a fundamental change in the Mineral Leasing Act. Such a practice would discourage development of mineral resources and discriminate against the small miner. The American Mining Congress is already on record as favoring the amendment of the mineral leasing laws in order to establish legislative guidelines that will require classification of lands for issuance of prospecting permits except where workability and mineability of a valuable mineral deposit is known.

This subject is also one of the chief problems before the Public Land Law Review Commission. The Commission should have the opportunity to complete its study and formulate its recommendations before a fundamental change in the Mineral Leasing Act is accomplished by statutorily exempting a major portion of public lands under the Act's purview.

Sincerely,

W. HOWARD GRAY,
Chairman, AMC Public Lands Committee.

INDEPENDENT PETROLEUM ASSOCIATION OF AMERICA,
Washington, D.C. August 13, 1969.

Hon. HENRY M. JACKSON,
Chairman, Senate Committee on Interior and Insular Affairs,
Washington, D.C.

DEAR MR. CHAIRMAN: We understand that Senate Bill 1830, regarding Alaska natives' claims, introduced by you and other Senators on April 15, is before your Committee for consideration as well as Amendment 112, offered by you and Senator Allot by request on August 4 in the nature of a substitute to S. 1830. We note that this amendment, No. 112, contains the following language:

"Mineral Leasing Act—Sec. 11. Deposits of all minerals included under the mineral leasing laws, including but not limited to, coal, phosphate, sodium, potassium, oil, oil shale, or gas located in all public lands in Alaska shall be subject to disposition by the Secretary under the terms of this Act. After the effective date of this Act, the Secretary is authorized to dispose of such deposits only by competitive bidding, but otherwise under the provisions of the applicable mineral leasing law. He shall prescribe by regulation the procedures to be used for competitive bidding."

If this Section were to be adopted, it would be in conflict with a longstanding basic policy of the Federal Government which is set forth in the present statute (Sec. 226, Title 30, U.S. Code) and, among other things, provides for non-competitive leasing of oil and gas leases which are not "within any known geologic structure of a producing oil or gas field."

Our Association has historically supported the non-competitive bidding policy and believes that the long experience under this policy, evidenced by the widespread development of oil and gas on the public lands, demonstrates most persuasively its wisdom. This matter was reviewed by the Association at its Midyear Meeting on May 9–10, 1966, at which time the following resolution was adopted by its directors:

"Following a thorough discussion your Committee voted to recommend that the Independent Petroleum Association of America continue its historical policy concerning non-competitive bidding and vigorously oppose any change in the existing statutory law which provides for non-competitive bidding for oil and gas leases on non-oil structure lands on the public domain."

Accordingly, it is recommended and urged that the words "only by competitive bidding, but otherwise" on lines 13 and 14 on page 36 of the bill be deleted.

It is requested that this letter be made a part of the hearing record on this proposed legislation.

Respectfully,

L. DAN JONES.

WASHINGTON, D.C., *July 25, 1969.*

Hon. HENRY M. JACKSON,
Chairman, Interior and Insular Affairs Committee,
U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: Some good friends of mine, Mr. and Mrs. Alan Antweil and Mr. Morris Antweil of Hobbs, New Mexico, and El Paso, Texas, respectively, who have substantial interests in Alaska, have asked me to be helpful to them in connection with the pending Native Claims Bill, S. 1830. The Antweils first became interested in Cook Inlet of Alaska during the early 60's, acquiring leases in that area and joined in various exploratory activities in that basin. Subsequently, and in 1965, they and their land and geological staff began preliminary work on the North Slope of Alska. By January of 1968 the assembled data justified a belief that the North Slope had excellent possibilities for future oil production, and a beginning was made in acquiring leases of the Federal acreage available for leasing. More than two-thirds was open, and while the Native Claims "freeze" was in effect, applications for leases were being accepted and a priority given to the applicants, with the understanding that leases would be issued to the first applicant upon settlement of the Native Claims. Operating under this understanding, the Antweils, during the winter, spring, and summer of 1968, filed applications on some 400,000 acres on the North Slope at an expenditure of $200,000, plus additional expenses.

Following the Prudhoe Bay discovery on July 21, 1968, the Antweils began applying for leases under the same priority system in the Yukon Flats, Copper River, and Britsol Bay Basins at a cost of over $200,000 in rentals and expenses. At about this same time, the Antweils sold their priority in the North Slope leases, retaining a small interest, under the obvious belief that there would be no problems in issuance after settlement of the Native Claims. Quite obviously my clients believe that a saving provision should be placed in S. 1830, protecting the prior rights which the Antweils and many other have acquired at great cost.

I have been shown Mr. Max Barash's letter to you of June 25, 1969, and in behalf of my clients state that they are in complete accord with the position which he takes for the independent operators which he represents. In the event further hearings are to be held, the Antweils very much desire to be heard.

Sincerely,

FRED KORTH.

ANCHORAGE, ALASKA, *June 20, 1969.*

Hon. MIKE GRAVEL,
Senator, State of Alaska,
Senate Office Building,
Washington, D.C.

Dear MIKE: Your letter of June 2 is a real encouragement and is fully appreciated. Your offer to plead the cause of the villages invloved in the Clarence Rhode Wildlife Range Expansion is especially appreciated. In the meantime permit me to comment on the draft of your letter for Senator Jackson.

Secretary Udall's action involved more land than just expansion of the Clarence Rhodes Wildlife Range. In the Clarence Rhodes action 1,017,000 acres were involved, not just the 1,286 acres referred to in the letter draft. The Goodnews Bay Wildlife Range establishment added 265,000 more plus the actions adding to the Mt. McKinley National Park and other areas in Alaska. I have not personally catalogued the total exact impact because the scope of the action went beyond the interest of my immediate clients.

Secretary Udall's action is first considered illegal because it amounts to a taking of land rightfully belonging to the natives in aboriginal title and second because Secretary Udall failed to personally honor his word to keep things "in status quo" pending a settlement of the Alaska Native Land Claims. The result is that the federal government one more time has failed to keep faith with

Alaska's native people and I can assure you that feelings on our Bering Sea coast run quite high.

The Executive Order establishing the Clarence Rhodes Wildlife Range Expansion and the Goodnews Bay Refuge, specifically contains a provision that the natives may continue *subsistent* pursuits such as hunting, fishing, and trapping. It also excepted *native* townsites. Immediate questions are raised: does this mean that the non-profit Development Corporation of the United Villages, as a native owned corporation which is organized under the laws of the State with a non-native character? Is the economic development program embarked on by the tical federal or state aid programs for Economic Development because of its non-native character Is the economic development program embarked on by the United Villages automatically set aside because it contains improvements which are not necessarily associated with a subsistance way of life (meaning roads, trenching the land with electric power cables, development of potential water power sites, cultivating the land, establishing domestic animal use, use of the land at their pleasure, construction of public works, development of private industry etc.)?

Most economic development activities especially those involved in the development of private enterprise require the availability to private title to the land. The words "native townsite" in the Executive Order, failed to recognize the fact that none of the five United Villages have any established townsites in existance, much less something called a "native townsite."

The inference of the whole set of exceptions is that everything must be native in character leading to further questions: what is the Catholic Church It has had established facilities on the Island for more than 70 years! The church was anticipating completion of BLM surveys and conveyance of patent under the standard BLM townsite provisions. Is the Church considered a native organization?

When the Executive Orders were signed, Eggleston Towing Company was in the act of establishing a bulk plant facility at Toksook Bay at the invitation of the United Villages, and certainly with their cooperation, since discovery of the ski-doo has created extreme shortages of gasoline and a lack of facilities for its storage and handling. A satisfactory arrangement has been made between Eggleston and the United Villages for the solution of that problem. Eggleston is definitely not a native organization. How can he get land rights for the establishment of his facility?

In the case of the reindeer and Musk Ox development, we received letters containing specific exception in that case from Secretary Udall. But this is tied to reindeer and Musk Ox, where do we stand with the possible introduction of other animals for domestic purposes? Is the establishment of fur farms considered a survival pursuit? How can a non-native obtain title to a piece of land in order to obtain ordinary mortgage capability for financing a house if he is a teacher for example, or investment in commercial enterprise? Does the language of the Executive Order preclude villages from incorporation under the Municipal Code of Alaska? Does incorporation under the Alaska Municipal Code qualify as "a native townsite"? These questions are related to some of the questions you have raised in your letter concerning incorporation as cities, boroughs or relocation to new sites within the reserve. Your questions are quite valid and of basic importance to any planning program for development. Your other questions concerning mineral leases and state selection are also excellent and we are intensely interested in the reply.

I doubt if the Alaska Fish and Game Department or the U.S. Bureau of Commercial Fisheries will state that the creation of the Newingham (Goodnews Bay) Refuge is unsound conservation policy. The native himself is as much interested in conservation as anyone, but not to the extent of relegating himself to the position of a museum piece simply for conservation's sake. His point of view is that the land is his, what is in it and what is on it. Any outsider who intrudes by taking the land away from him is guilty of stealing and this includes the United States Government, especially so after having received a promise by that same government, that things would be held in status quo until such times as his rights of ownership are confirmed and compensation has been given for lands already taken.

The galling part of the whole action is that the Secretary's action was taken without any consultation with the people whatsoever and in spite of their vigorous objection well in advance of the signature of the Executive Order. Only afterwards has anyone from the government ever visited the village to try to explain and mollify the feelings of the residents.

In addition to the problems of the five villages of the United Villages, the problems of Mekoryuk and the two cities of Chevak and Hooper Bay need addition and special consideration.

Mekoryuk as you know is saddled with not one but two or three overlapping land restrictions. There is also the history of certain government employees seeing fit to threaten to move the people off the Island if they went so far as to try to establish their legal existence and incorporate as a city under Alaska Law.

There is a well established fact of history that the Nunivak people have been there long before the Russians, before the United States, and before any of the Government Wildlife Range orders. They have a very energetic plan for improvement of their own economic situation. But like the Nelson Islanders they start with a need for confirmation of their right and title to ownership of the land.

The City of Chevak is caught with the Clarence Rhodes Wildlife Range Expansion completely swallowing them up as was the experience of the Village of Toksook Bay. Since the exception is "a native townsite" where does that leave the City of Chevak? Since the city boundaries encompass land that is almost exclusively public domain, how does the city gain title free of encumbrance, either as a municipal government or as individual private citizens? What rights also do they have to go beyond their city boundaries for necessary improvements to remove them from a survival way of life?

Hooper Bay like Tununak finds itself completely surrounded with the Sea on one side and the Clarence Rhodes Wildlife Range on the other, thus insuring its perpetual isolation and substantially reducing its capacity for enlargement of its economic base.

It is well known that extensive oil and gas exploration activities are planned for the summer of 1969 in the Bering Sea area. The people are already encountering personnel of the oil companies involved in these explorations. It has also been discovered that the entire area surrounding the mouth of the Black River and down river of the Yukon below Mountain Village plus scattered areas within the Clarence Rhodes Wildlife Range itself were blanketed with offers for oil and gas leases. When the State of Alaska offered the few acres released by the Association of Village Council Presidents for the Bethel Native Housing Program for competitive oil and gas lease bidding, anger at this further invasion of native rights reached a climax.

My warning is that the situation on the Tundra is explosive and that the Alaskan Eskimo who has a high reputation for peaceful existence, is only slightly short of violence. My advice is that the federal government set its House in order on a crash program basis. The starting point would be confirmation that the native has now and has always had aboriginal title to their land and that it approach the job of settling the Native Land Claims question by recognizing the landlordship of the Alaskan native people, approaching things on an ordinary straight across the board, buyer-seller relationship.

This is in harmony with the rules of conduct for both the Eskimo culture and ours. The rules of both cultures have the object of fair play. The United States Government as the representative of our culture, has yet to demonstrate an intention to live up to the object of fair play exemplified by our system of law. From the native point of view he stands on his land holding it in fee simple absolute, and according to the rules of his culture, has generously offered to share it and its resources for a certain price. The native has offered an elaborate relinquishment of his land and land rights. Why can't we respond in an ordinary way and quickly conclude a deal?

Very truly yours,

PAUL T. DIXON,
Executor, United Villages of Nelson Island.

PAUL T. DIXON & ASSOCIATES,
MANAGEMENT CONSULTANTS,
Anchorage, Alaska, August 20, 1969.

Hon. MIKE GRAVEL,
Senator, State of Alaska,
Senate Office Building,
Washington, D.C.

DEAR MIKE: In response to your request, I enclose copies of two letters received from the Department of Interior. One is dated April 15, 1969 addressed to Phillip Guy, who transmitted formally, copies of the Association of Village

Council President's Resolution No. 69–2 and 69–3 requesting conveyance of title to the lands contained in their Native Land Claim, and objecting to actions taken by any one concerning their land without their knowledge and consent. The letter of reply was signed by Commissioner Bennett.

The second letter was dated May 6, 1969 again addressed to Phillip Guy and was signed by Acting Commissioner T. W. Taylor. It refers to a request of the old Village Council of Mountain Village, and more recently the City Council of Mountain Village, for the removal of Executive Order No. 2757, dated November 22, 1917.

Mr. Taylor's response leaves something to be desired. Italicized words in his letter are my emphasis. One of his surprises is that Executive Order No. 2757 is "merely an Administrative Reserve". If this is the case, then it would appear in order for "merely" an Executive Order to likewise remove such "an Administrative Reserve", since it is otherwise an insignificant thing and was intended to encompass a temporary need. This concept is amplified by Mr. Taylor's following paragraph which explains that the purpose of the Reserve was for use by the Bureau of Education as a site for administration facilities and for use by the Natives.

It is well-known on the Tundra that Administrative facilities were established at Mountain Village at one time, but that they were later transferred to Bethel because of unstable building foundations and other practical problems at Mountain Village. Therefore, the Administrative Facility use has long since departed from the needs of the Department of the Interior. In its place, there remains only the BIA School.

"Use by the Native" is an easily recognized catch-all phrase usually placed in official documents to overlap an original more basic purpose, should some question arise in the future. It would appear that this understanding is correct when Mr. Taylor states that the purpose of that phraseology "was a protective measure, designed to preclude third parties from establishing rights in the area adverse to the interests of the Natives." His statement is correct and in 1917 there may have been honest justification for adapting this paternalistic attitude. Mr. Taylor's further statement is also correct that Native people living within the area are not deprived of their rights to be a self-governing political group, but we question the reality of a statement that the Reservation does not affect the status of individuals in the existing society.

In 1967 when the Village Council first requested removal of the Reserve, one of their major reasons was to procure private title to land so that individuals could develop mortgageable property.

Following Mr. Taylor's reasoning, the Village became a City of the Fourth Class, establishing its legal identity and boundary. The Bureau of Land Management has proceeded toward development of a townsite survey and to our knowledge is ready to convey patent to a Townsite Trustee and complete the process of converting the land into private ownership.

The Bureau of Land Management is stopped by (1) The Executive Order, and (2) the AVCP Native Land Claim. The Association of Village Council Presidents is prepared to issue a Quitclaim deed to the City of Mountain Village in sympathy with the Mountain Village City Council's request and its reasons therefore.

In the spring of 1969, the nearby City of St. Mary's managed to develop a useful Housing Program through the facilities of the Farm Home Administration. Understandably, certain citizens of Mountain Village also wanted to take part in the program, since so far they have been by-passed by the Bartlett Housing Program and other efforts of ASHA. The Farm Home Administration is not legally able to do business with the people of Mountain Village unless the people are able to develop mortgageable title to their land. Thus, there is in this instance a good example of how the individuals in Mountain Village existing society are truly effected by the current status.

Mr. Taylor states "Village Occupants may not obtain title". This is true and this is precisely the objection the people have to their current status.

Mr. Taylor's further statements concerning the exercise of right, under the current status is correct, but his words only serve to demonstrate still further the solid fact that the current status is a definite impediment. Whereas the adjacent city of St. Mary's is incorporated under State Law, as Mountain Village did also incorporate, St. Mary's is able to own and control and dispose of its lands as it chooses because legal vehicles available to St. Mary's has provided them with this opportunity. Mountain Village on the other hand is directly impeded by the status of it's lands.

The native townsite act and other legislation leaving the Bureau of Indian Affairs in true control of lands and townsites or for that matter, the Native Allotment System, is precisely what the people of Mountain Village most strenuously object to. Their desire is to have the rights of free citizens, to be able to acquire land and to dispose of it at their pleasure. This certainly cannot be done under any terms of the Acts mentioned in Mr. Taylor's letter, nor can it possibly be done under the status of Executive Order No. 2757.

In the name of Mountain Village, we again request cancellation of Executive Order No. 2757.

Very truly yours,

PAUL T. DIXON.

U.S. DEPARTMENT OF THE INTERIOR,
BUREAU OF INDIAN AFFAIRS,
Washington, D.C., April 15, 1969.

Mr. PHILLIP GUY,
Center Director, Rural Alaska Community Action Program, Inc., Bethel, Alaska.

DEAR MR. GUY: Your memorandum of February 12 to the President enclosing copies of two resolutions adopted during January 1969 by the Association of Village Council Presidents has been referred here for reply.

Resolutions Nos. 2 and 3 adopted by the Association relate to lands included in the area claimed by the Association and request that the Association be informed of any proposed action affecting such lands and given an opportunity to consider the proposal, and that fee title to such lands be transferred to the Association.

We appreciate the interest of the Natives and their desire to receive notice of any proposed action affecting lands within the claims area and an opportunity to consider the proposal and be heard before final action is taken in the matter. Representatives of the Bureau of Land Management and this Bureau have developed procedures designed to keep the interested Natives informed of any proposed action affecting the lands claimed by them. We are exercising utmost care in trying to convey to the Natives and Native organizations information regarding all of the actions which come to our attention which might affect their interests and property and will continue the practice.

While we would like to be able to comply with the requests of the Association with respect to the title to their land claim, there is no authority which would permit the Secretary of the Interior to convey title to the area as requested in Resolution No. 3. The Act of May 17, 1884 (23 Stat. 24), providing a civil government for Alaska provides in part that "* * * the Indians * * * shall not be disturbed in the possession of any lands actually in their use and occupation or now claimed by them but the terms under which such persons may acquire title to such lands is reserved for future legislation by Congress: * * *" Subsequent to 1884 Congress has enacted the Act of May 17, 1906 (34 Stat. 197), authorizing the granting of allotments to individual Natives and the Act of May 25, 1926 (44 Stat. 629), authorizing the issuance of deeds to Natives for lands within townsites, but has not enacted any legislation authorizing the granting of title to any of the public lands to Native organizations based upon aboriginal use and occupancy.

Our inability to satisfy the wishes of the Association is regretted.

Sincerely yours,

ROBERT L. BENNETT, *Commissioner.*

U.S. DEPARTMENT OF THE INTERIOR,
BUREAU OF INDIAN AFFAIRS,
Washington, D.C., May 6, 1969.

Mr. PHILLIP GUY,
Center Director,
Rural Alaska Community Action Program, Inc.,
Bethel, Alaska.

DEAR MR. GUY: This refers to your communication of February 12, to President Nixon, a copy of which was sent to Secretary Hickel, enclosing Resolution No. 1, adopted in January, 1969, by the Association of the Village Council Presidents.

The resolution requests the dissolution of the "reservation" at Mountain Village. It may interest you to know that *the lands withdraw at Mountain Village*

by Executive Order Numbered 2757, dated November 22, 1917, do not constitute an Indian reservation under Federal law; they are merely an administrative reserve.

The Executive Order withdrew from disposal and reserved approximately two square smiles of public lands for the use of the U.S. Bureau of Education and of Natives of Alaska of indigenous race under the care of the Bureau. The lands comprising this reserve were withdrawn and reserved for two purposes, for use by the Bureau of Education as a site for administrative facilities and for use by the Natives. It was a protective measure, designed to preclude third parties from establishing rights in the area adverse to the interests of the Natives. The fact that Native people live within the area does not deprive them of their rights to be a self-governing political group and should not affect the status of the individuals in the existing society.

While it is true that *the village occupants may not obtain title* to the lands they are occupying and using during the period the reserve is in existence, there does not appear to be any validity to the statement that "Whereas the right of the village to control, develop and dispose of its lands as it chooses, is seriously infringed." Neither the 1891 Act authorizing the creation of townsites nor the 1926 Native Townsite Act provide that a townsite created thereunder will vest in the village or city the right to control, develop and dispose of lands as it chooses.

The Department of the Interior has adopted a policy of reviewing withdrawals from time to time to determine whether they should be modified. This policy will be followed in this instance, particularly so as the Natives have requested dissolution of the reserve.

Whether or not the order creating the reserve is revoked may have little, if any, import upon the status or rights of the Natives. At the present time all unreserved public lands in Alaska are withdrawn from entry by Public Land Order 4582 of January 17, 1969, which provides that the withdrawal and reservation created by that order shall expire December 31, 1970. This order was designed to protect the rights of the Natives which were in effect on the date of the order.

Furthermore, during the 90th Congress there were bills introduced to settle the Alaska Native land claims, but none was enacted. We hope that legislation on this subject will be enacted in the 91st Congress.

We have a continuing interest in the Natives and the protection of their rights, and appreciate the time you have taken to bring this matter to our attention.

Sincerely yours,

THEODORE W. TAYLOR,
Deputy Commissioner.

NATIONAL WILDLIFE FEDERATION,
Washington, D.C., August 8, 1969.

Sen. HENRY M. JACKSON,
Chairman, Senate Committee on Interior and Insular Affairs,
Washington, D.C.

DEAR MR. CHAIRMAN: We welcome and appreciate the invitation and opportunity of supplementing our Statement of April 29, 1969, relating to S. 1830 ("Alaska Native Claims Settlement Act of 1969") with comments about the draft substitute developed by the Department of the Interior.

We shall make a few additional comments about it and, for purposes of identification, will refer to it by the House number, H.R. 13142.

First, for purposes of completing the record, I am attaching additional comments (dated May 15, 1969) by Mr. A. W. (Bud) Boddy, of the Alaska Sportsmen's Council, on S. 1830.

Second, also to supplement information previously provided the Committee, I should like to attach a copy of a letter of July 17, 1969, which Mr. Boddy directed to the Secretary of the Interior.

Third, Mr. Chairman, most of the attitudes that we expressed in our earlier statement of April 29, 1969, apply to the new Interior Department draft, H.R. 13142. We think a grant of 46,080 acres to these Native villages is far too much land and this amount undoubtedly is more than they would receive from the Court of Claims. And, we cannot agree that $500 million is a fair and equitable monetary amount for settlement of their claims. This figure apparently is based, at least to some degree, on the assumption that the aboriginal claims are recognized for the entire State. In several places in the bill, it appears that selection rights of the State of Alaska under the Statehood Act, as amended, may be

adversely affected. And, we think that suitable amendments are needed to prevent such unilateral diminishment of Alaska's land selection rights.

Specifically, we suggest the addition of a new definition: "Subsistence" means the subsistence taking of fish and game under Alaska State law by persons of certain minimum incomes and without regard to racial considerations.

We wholeheartedly agree with the declaration in section 4 that this Act should be regarded as a full and final settlement and extinguishment of any and all claims against the U.S. based upon aboriginal right, title, use, or occupancy of land in Alaska. However, we think this can be strengthened by adding the following after "land" in line 10: "including any aboriginal hunting or fishing rights that may exist."

We are informed that there are 12 townsites within national wildlife refuges and eight more are nearby and would affect the refuges. We understand there are ten villages within national forests. For these reasons, we oppose any grants beyond those what the villages reasonably need.

This legislation can have a significant impact on lands in the National Wildlife Refuge System. In addition to the active villages within the refuges or nearby, there are more than 33 historic sites. Some of these are used seasonally and could be reoccupied and claimed for withdrawal by groups of 25 or more natives. Thus, overall, from 275,000 to more than 1,200,000 acres could be taken from the system under S. 2380 and double that amount under the Interior Department proposal.

Many people believe that lands of the National Park and National Wildlife Refuge Systems should be excluded from provisions of the bill. Refuge lands are administered in such a way as to be completely compatible with subsistence needs and requirements of the Natives. This type of pleasant relationship between Native peoples and Refuge System personnel is well recognized. With some villages this relationship goes back to 1913, with respect to the Aleutian Island Refuge. Full recognition of Native subsistence needs go back to the establishment of the Nunivak Reservation and in orders establishing the Arctic and Izemb ek Ranges as well as the Clarence Rhode Range. If these lands are patented through processes outlined in the bills, there is no assurance that they will not be exploited for purposes inimical to subsistence activities.

To conclude, we were dismayed to hear Secretary Hickel testify in the House to the effect that he was "trying to do what is best for the Natives." Certainly, these peoples need and deserve consideration, but so do the other citizens of Alaska and the taxpayers of the United States. Many are beginning to wonder when some thought is going to be given to the welfare of the majority.

Thank you again for the opportunity of making these observations.

Sincerely,

LOUIS S. CLAPPER,
Conservation Director.

[Enclosures]

ALASKA SPORTSMEN'S COUNCIL,
Juneau, Alaska, May 15, 1969.

Hon. HENRY M. JACKSON,
Chairman, Senate Interior and Insular Affairs Committee,
Washington, D.C.

DEAR SENATOR JACKSON: We wish to make the following additional comments on S. 1830. This supplements our April 24, 1969, letter.

Definitions.—We suggest "Local government" be defined. We suggest "Historic occupation & use" be defined.

"Public lands" should not include current existing National Parks, Monuments, Forests, Refuges. (It is noted under Secretary Train's April 18, 1969 comments does not refer to "National Monuments." Glacier Bay, Katmai & Sitka Monuments in Alaska include large acreage.)

We suggest the use of "Administrative Sites", defining same & eliminate the vague "used in connection with the administration of any Federal installation."

Section 8(a)(2) page 25 line 16.—The words "equal to" are vague. Why not use simply "not to exceed 23,040 acres."

We believe this acreage generally is excessive except for a few villages. The amount of acreage should relate to numbers of natives, the resources on the land, and the degree of dependence on those resources.

Section 8(3)(c) lines 22–25.—This appears to be an open ended provision permitting unilateral Secretarial action which could be adverse to the natives' interest.

ALASKA SPORTSMEN'S COUNCIL,
Juneau, Alaska, July 17, 1969.

Re Indian Land Claims and the Future of Alaska.

Hon. WALTER J. HICKEL,
Secretary of the Interior,
Washington, D.C.

DEAR MR. SECRETARY: Representing sportsmen's organizations throughout the State of Alaska, the Alaska Sportsmen's Council has for several years been involved in the study of various Indian Land Claim bills which generally would award up to 40 million acres of land exclusively to Indians, Eskimos and Aleuts of Alaska. These awards would stretch in helter-skelter fashion across the face of Alaska combining to form an area roughly the size of the State of Washington, an area larger than thirty of the individual states of the Union.

Public comment and discussion of the pros and cons of the various proposals have been singularly lacking in Alaska no doubt because of the political ramifications of possibly alienating twenty percent of the voters. (One out of five people in Alaska is one-fourth or more Indian, Eskimo or Aleut.)

Section 10(d) (3).—The acreage should be specified, perhaps 5 acres per person in units of 40 acre tracts. Whatever limit is imposed in (3) it should be consistent with (1) & (2) to avoid unnecessary Commission deliberation and decision.

Section 10(i).—We do not believe that public lands within the withdrawals under this act, but previously included in national forests, parks, monuments, refuges, defenses and other, should necessarily be sold and thus create the potential for conflicting uses. We also believe this section conflicts with Section 8(d) on disposition of lands.

Section 11.—This appears to be in conflict with Section 8 on lands already withdrawn for federal purposes.

Section 10(k) line 11–14.—Revenues from surface resources on federal withdrawals is provided for under existing statutes which returns a share to local governments for school and road purposes. This conflict should be clarified.

Section 12(a) (2) & Section 12(e).—Same comment as 10(k) above.

Section 13.—We wish to reiterate our objection to this section and we support Under Secretary Train's April 18 comments on this section.

Your continued support for this legislation is greatly appreciated. We are limiting our comments to natural resources problems and gratefully acknowledge the many good features of the original draft of SB1830.

Sincerely,

A. W. "BUD" BODDY,
Executive Director.

By criticizing the concept of most of the bills that have been submitted, we do not wish to be understood as opposed to natives, to their legitimate claims or to a complete and fully adequate resolution of the problem; nor are we opposed to native villages and cities acquiring title to land in actual use or occupancy by them. We have been on record as opposed to the *magnitude* of the land grants that have been under consideration and feel strongly that the Federal government's obligation in this area should be discharged primarily by means of Federal dollars. The land grant provisions should be minimized, in our opinion.

Why, it may be asked, do the Alaska sportsmen wish to place emphasis on money rather than on land?

1. *The reservation concept explored.* First of all, the creation of large areas of land based solely on ancestral derivation can become a divisive influence among Alaskans. Huge land grants to Indian corporations will create something closely akin to old fashioned Indian reservations. These will not have all of the incidents of the classic reservation, but they will have the essential features: *a large and clearly defined area occupied by Indians.* It is difficult to avoid the conclusion that most Indians within such an area will likely remain there in view of economic advantages in doing so. It is doubtful, for example, that heavy taxes will ever come to these areas. In the classic Indian reservations created in the last century, Indians were also "herded" onto reservations and kept there under force of law. Here the force would be different, but the effect would be much the same. Is this progress or is this a step backward in time about 100 years? Indian claims in the United States have in modern times been settled judicially under the Indian Claims Commission and through the courts by means of monetary compensation.

The old fashion Indian reservations created in the last century have been distinct failures from the social standpoint. Alaskan Indians have stated time and again that they do not want to become reservation Indians. Although the current legislation does not create classical Indian reservations, it is a step in that direction and a departure from the more modern trend of drawing the native into the mainstream of American society and satisfying his claims by payment of money.

2. *Private ownership of our wildlife resources?* Article VIII, Sec. 3 of Alaska's constitution, contains a single and powerful sentence:

"Wherever occuring in their natural state, fish, wildlife, and waters are reserved to the people for common use."

This blanket provision extends throughout the State of Alaska and includes the vast area of public land owned by the United States. Thus, are the fish, wild game and waters constitutionally protected for the benefit of all. The people of Alaska and of the United States have, by reason of these vast public lands in Alaska, a great and precious resource available to them now and in the future. However, when the Federal government places 40 million acres of this public land into private ownership, it will destroy a large part and perhaps the most valuable part of this great National heritage which the constitution sought to protect. The legislation that has been submitted to the Congress for settlement of the Indian land claims would place much of the most valuable recreational land into private ownership. While we will all defend the principle of the right to keep and own private property in reasonable amounts, it should be borne in mind by all who have the responsibility to consider the Indian land claims legislation that we are here discussing probably the largest award of land into private ownership ever made. It is larger by far than the areas of most states of the Union. One has only to look at the problems of the East Coast of the United States where almost every square foot of available land has been taken up into private ownership leaving nothing for public recreational use to see that wisdom and foresight are absolutely essential if we are to preserve such areas for public use and enjoyment. Is it part of wisdom or foresight to award 40 million acres of mostly virgin land to only 50,000 people? That is over 800 acres for every native in Alaska. This includes babies, children, old men, the poor, the middle class and also the wealthy. In view of the average amount of land held by most Americans, is that fair?

3. *The writing is on the wall.* We are concerned as conservationists and sportsmen that the existing equality in the use of natural resources of Alaska may soon be destroyed. We are disturbed and alarmed over the prospect of having hunting and fishing rights terminated or greatly curtailed on the 40 million acres of land which all Alaskans have equally shared in the past. The action of the village of Tetlin near Tok Junction taken only last year points up the reason for our concern. Tetlin, a Federal withdrawal for the Tetlin Indians, has by ordinance made it unlawful for any person not a member of the village to hunt on the Tetlin Reserve. A fee must be paid to the village of Tetlin for the privilege of taking black bear, sheep, moose, caribou, and brown bear. These fees are in addition to State licenses and tags. Interestingly, the Tetlins have reserved exclusively to themselves the right to trap on this Federal land. Thus, the wildlife "reserved to the people for common use" are already being fenced in and used by private holders to produce revenues for private purposes.

Without comment as to the possible illegality of the village action, which is natural and understandable if not approved, this example is important in what it portends for the future. Such action on 40 million acres of land soon to be held by natives in fee simple title will probably be legal. After all, hunting on private land without permission constitutes trespass. Therefore, would it not be lawful to set up a schedule of fees for permits to hunt on such private land? Even though it is lawful, we doubt that third and fourth generation Alaskans who have hunted these areas under Territorial and State laws for years will easily overcome their frustration upon finding large areas closed by private owners who will demand special fees for the right to take game. Indeed, the game has always been considered a trust for all of the people. The fact that the private owners will all just happen to be natives is something the social planners and civil rights conscious may wish to ponder.

These are a few of our objections to the very concept of settling the claims by means of huge land grants. We have recommended in the past to Senator Henry M. Jackson and his committee that whatever is fair in terms of money be paid with land grants to the village sites as well. The amount of cost in federal dollars is unknown at this time. If it costs $500,000,000 or a billion dollars to settle this matter, we think it would be money well spent. In no event, however, should State

revenues, State oil royalties or any other State funds be utilized in whole or in part to satisfy the Federal government's obligation here. No other State has done this and Alaska cannot participate under its constitution which prohibits use of public funds for any particular race.

We would welcome further comment from our State senators and representatives and other leaders throughout Alaska as this matter progresses toward its ultimate conclusion. The current lack of comment may well be interpreted in Washington as consent to the various proposals. This is a problem that won't go away. Some method of reaching a settlement must be found for it is a settlement long overdue our native citizens. The controversy is gradually but surely eroding the foundations of our society. The ultimate goal should always be to promote and eventually achieve not only legal and social equality but also economic equality to the extent possible. The settlement must satisfy, once and for all, all claims to aboriginal rights and in its place create truly equal rights among all citizens of this State.

Very truly yours,

A. W. "Bud" Boddy,
Executive Secretary.

Fairbanks, Alaska, *September, 10, 1969.*

Senator Henry M. Jackson,
Chairman, Senate Interior and Insular Affairs Committee,
U.S. Senate, Washington, D.C.

Dear Senator Jackson: The purpose of this letter is to advise your committee of the views of the Tanana Valley Sportsmen's Association of Fairbanks, Alaska, regarding the Native land claims issue. The Tanana Valley Sportsmen's Association believes that the land claims bill should recognize three basic objectives: (1) the continued free access to all public lands for hunting, fishing and recreational use; (2) management of fish and game resources by one agency, preferably the Alaska Department of Fish and Game; and (3) retention in the public domain of all lands that have outstanding wildlife, recreational and scenic values.

The basic concern of Alaskan sportsmen is that lands we have used for recreational and subsistence purposes will come under the Native land claims and be denied to our use in the future—or will come under restrictions that would, in effect, deny us free use of the lands. The amount of land that eventually passes into private ownership as a result of the land claims may be small in comparison to the total contained within the public domain. However, the land areas accessible by highway, river or air with significant game populations or surrounding waterways with significant fish populations are also small. Thus, relatively small land selections by Native groups, if strategically selected, could effectively deny other members of Alaska's population use of these renewable resources. We therefore feel that lands selected by Native groups should be restricted to compact areas surrounding existing villages, homesites and areas surrounding established seasonal fishing and hunting camps.

The Tanana Valley Sportsmen's Association recognizes that those who depend on the fish and game resources for subsistence should have priority use of these resources; however, such privileges should not be accorded on the basis of race. We also feel that the State of Alaska is in the best position to regulate the use of these resources for both subsistence and sport. Alaska already has a permit system for the subsistence use of our salmon; the individual catch is based upon need. In addition, the Commissioner of Fish and Game has the power to set emergency regulations and has ready access to the advice and counsel of some of the most competent fish and game biologists in the nation. We feel that Section 13 of S. 1830 is a step in the wrong direction because it grants special privileges on the basis of race, and it divides management of our fish and game resources between the Secretary of the Interior and the Alaska Department of Fish and Game. Also, the Secretary is further removed from the advice of biologists in the field.

One of the chief attractions of Alaska is that so much of its land is in the public domain. Land in the public domain serves the spiritual, recreational and subsistence needs of many, whereas land in private hands serves only the owner. Land that passes to Native groups as a result of the land claims settlement irrevocably leaves the public domain. The Natives have traditionally been wise stewards of their lands; but once they obtain legal title, they are free to sell the land to third parties who may not share their values. The Tanana Valley Sportsmen's Association therefore urges exclusion from the land claims settlement of

lands which are now in, or have values that make them suitable for inclusion in, wildlife management or refuge areas, wilderness areas or parks. As a corollary to this, the appropriate federal or state resource management agencies should conduct an immediate survey of public lands in order to identify such lands which should be excluded from Native selection.

The value of Alaska's lands to Natives and non-natives cannot be measured in today's marketplace. The needs of Natives and non-natives need not conflict. We believe that a bill can be written that will serve the best interests of Natives and non-natives—but more important, to serve the interests of our children and the generations yet unborn.

We sincerely hope that the comments contained in this letter will be useful in your deliberations on this most important issue.

Sincerely,

DANIEL W. SWIFT,
For the Tanana Valley Sportsmen's Association.

THEODORE J. ALMASY,
McGrath, Alaska, August 2, 1969.

Subject: Alaska Native Land Claims Bill; Statement for record in hearings on this bill.

Senator HENRY M. JACKSON,
U.S. Senate,
Washington, D.C.

HONORABLE SIR: I am a permanent Alaskan. A World War II veteran who has lived with and among Alaska's native people in remote areas of Alaska for nearly a quarter of a century, twenty-five years. The Alaska Native Land Claims issue is a major topic among permanent Alaskans, both natives and non-natives alike. The following is the consensus of opinion of most non-natives, and conceded to by most knowledgeable natives as well.

This issue may well be the greatest perpetrated swindle in U.S. history. It is the product of a few whitemen, or a conspiracy of whitemen and so-called native leaders to defraud the public, subjugate the native people, and set themselves up in control of a lucrative dynasty. It is further believed that the political collusion is due entirely to coercion out of fear.

Federal law dictates that you cannot pass legal legislation that in any way discriminates because of race, color, creed or sex—between or among U.S. Citizens. The day that the United States took physical possession of Alaska and raised the Flag over Sitka—all Alaskan natives were granted U.S. Citizenship, and there are today probably no Alaskan natives who were not born U.S. Citizen. It is some irony that the Federal Government is just now bringing suit against both state and local governments for refusing to desegregate, and you are introducing legislation proposing to segregate races in Alaska—the state which has been the model of integration. The native population is being assimilated, as it should be, into a homogenous society in an orderly manner, until today less than ten percent of the native population can be classed as full bloods, and these among the older generations. Segregation is something that we cannot permit. The opinion is that segregation will lead to civil war within five years and complete annihilation of the native people. Your bill holds the key to unity or tragedy.

There are also thousands of non-natives scattered throughout these remote areas who are not going to stand idly by and permit their rights nor the results of years of pioneering and hardships to be taken away from them short of an extremely lucrative settlement. You start to kick Alaska's pioneers in the teeth, and you will find that you are dealing with men of both guts and principle. The results will be most expensive. Not only are non-natives scattered all over Alaska, but many of the villages were founded by non-native pioneers as trading posts, missions, transportation centers, canneries, mining camps and etc. It is impossible to make communal land grants either on an equitable basis, or without depriving all concerned (all 200 million U.S. Citizens) of their individual rights.

We Alaskans do not believe that there is any basis for the native claims, and furthermore you are attempting a political settlement because you know that their claims would not stand up in court. It is an historic fact that the United States with the purchase of Alaska delivered Alaska's native people from bondage and slavery, and granted them U.S. Citizenship along with many special privileges through the years not accorded the average citizen including free medical,

dental and hospital care with transportation and travel expenses paid, free educational opportunities from 1st grade through vocational school or college at complete government expense, grants by Act of Congress for the current Alaska Native Housing program, current grants to move any native person or family from this poverty stricken area to any area in the U.S. of the native's choice where employment is available along with vocational training and all expenses paid until the party becomes self sufficient, hunting, fishing and trapping licenses for 25¢ that cost the rest of us $15.00, and numerous other benefits, including a special grant of 160 acres of land of the native's choice for each native in addition to the hundreds of acres that each U.S. Citizen is permitted to claim by utilizing his rights under the public land laws currently suspended by the land freeze.

The United States paid $7,000,000.00 for Alaska plus $200,000.00 in addition for title guarantee against just such claims as these. If the United States had not purchased Alaska our native people would today be slaves of communism—if any survived the persecution that they were submitted to.

While U.S. title to Alaska might have been disputed during Territorial status, Statehood acquired by popular vote of Alaska's resident population granted the United States permanent title. Statehood would have been defeated except for the nearly unanimous favorable vote of the native people. It was the native vote that guaranteed U.S. title to Alaska. It is possible that the natives might have been able to file a legal claim even after the advent of Statehood; however, unless specifically exempted by special legislation prior to the date of expiration, the statute of limitations expires in seven years except in criminal cases. Thus the statute of limitations expired upon the natives' rights to file suit on their claims seven years from the day Alaska was declared a State.

It is the land title to these huge reserves to be owned on a collective basis that are being proposed to which we are in 100% opposition. Not only are such grants inequitable and unjust, but completely unnecessary. Alaska's natives are currently entitled to all of the land that they are asking for if they are simply permitted to exercise their rights as both natives and U.S. Citizens under the public land laws pertaining to the rights of individuals and currently suspended by the land freeze. It is the natives' culture based upon communal ownership which creates a complete lack of the ambition necessary to motivate the individual to take advantage of the opportunities open to him to improve his way of life. Reservations with communal ownership will only serve to perpetuate the conditions that exist, and proof of this is in your own back yard at home. Now that the natives are aware of the value of land, it is only required that the land freeze be lifted at least on the rights of individual citizens and permt claims to be filed. A townsite survey can be requested for any unsurveyed village, and the land in the immediate vicinity of the village remain frozen until the survey is completed. This would permit natives and non-natives alike to obtain title to lands in the villages which they occupy without discrimination. Permitting individual claims and ownership by all private citizens is the only equitable solution to the land title problem, and the only one we Alaskans will buy.

These remote areas of Alaska are poverty stricken, but racial segregation, penning the native people up on huge reservations closed to the public, and pumping funds into the villages is far from an answer to economic development of the region, and might well be the reverse. You will end up with a situation where you will have one economy for the natives and another for the remainder of the population, with the native economy requiring for the most part perpetual financing. If you are going to go this route why not just grant each native family five (5) acres of land, build them a home, give them a guaranteed annual income of say $10,000.00 for life with the same guarantee for their posterity. That is after all what their demands amount to, and it would leave the country open to development as it was prior to this controversy.

The impression given the public is that Alaska's natives have been badly mistreated by the U.S. Government. The figures that I had indicate that the Bureau of Indian Affairs alone spent some $17,000,000 on Alaska's 50,000 natives in fiscal year 1969, and requested some $20,000,000 for fiscal 1970. With this ever increasing perpetual drain it is easy to see why the government might want to agree to a final settlement and close down the BIA in Alaska.

We Alaskans refuse to go for any legislation that will create racial segregation, or native reservations—or, that will grant a perpetual royalty to the natives on all mineral wealth—most of which may be as yet undiscovered. Unless the natives agree to an equitable compromise solution that we can all live with—we non-native Alaskans have no choice but to throw the matter into court.

It is to be kept in mind that we are all U.S. Citizens. We all live here together, and we are all effected by the same basic economic problems and conditions. We are presently all in poverty together. We cannot develop a sound economy unless we all prosper together. Thus while we non-natives might not object to a strictly fixed monetary settlement to be paid to Alaskas natives just to settle this claims issue whether or not it has any legal basis—the overall settlement program will have to be set up to provide a basis for development of an area-wide economy, and include us all. The greatest obstacle to development in these remote areas is the cost of living and doing business, and we are all equally effected. The costs are greater in some areas and less in others, but on an average 50¢ out of every $1.00 spent in Alaska is lost in freight costs. The government recognizes this and federal employees are granted a 25% tax free cost of living allowance plus sufficient fringe benefits to amount to at least another 25%. This is actually a form of discrimination. A straight across the board 50% tax free cost-of-living federal income tax deduction for all resident Alaskans would greatly improve incentive for private economic development without additional costly government programs and appropriations.

We non-natives will only agree to a settlement out of court if the land freeze as it pertains to the rights of individuals is lifted immediately and we are compensated for the time lost during the entire period of the land freeze. This should apply to all resident Alaskans, natives and non-natives alike.

We would propose the following inclusions into any settlement as being provisions that we could all live with:

(1) A monetary fund to provide long term low interest loans to individuals and co-operative economic ventures in all remote areas of Alaska.

(2) Complete funding of the Alaska Native Housing program.

(3) A 50% across the board federal income tax tax free cost-of-living deduction for all resident Alaskans.

(4) An immediate lifting of the land freeze upon the rights of individuals to file claims upon unappropriated public domain under the land laws effective in Alaska at the time the land freeze was first effected. The freeze might remain effective over no more than a one mile square area encompassing any village (defined as having regular mail service and a U.S. Post Office) in which a townsite survey has not been made, and remain in effect until a survey has been made, but no more than three (3) years.

(5) Retain the land freeze on state and federal land selections for at least one (1) year from the date upon which the freeze upon the rights of individuals is lifted to permit individuals to make selections.

(6) Permit a time deduction of an amount of time equal to the total amount of time the land freeze is effective to be deducted from time requirements in proving up on a claim.

(7) Permit the performance requirement of each type of land claim to be reduced by a percentage equal to the total time the land freeze is effective divided by the time requirement for each specific type claim. The same manner in which deductions are made from the homestead requirements for veterans service.

(8) Provide that the public land laws as they pertained to Alaska prior to the land freeze shall remain effective beyond the effective date of any effective date of legislative revisions resulting from the current Public Land Law Review Commission an amount of time equal to the land freeze.

(9) The government shall aid the native people in filing land claims under the public land laws of Alaska as U.S. citizens, and on an individual basis, and when the lands are proved up on the government shall provide patent at no cost to the native people. The government shall also issue patent to the 160 acre Alaska Native Allottment grant. No extra land claims shall be devised, and only patents for individual ownership shall be issued.

(10) A strictly monetary settlement of a specific amount of money shall be agreed upon as a complete settlement of the claims issue. Such settlement shall not contain any perpetual payments of any kind. It may be paid in payments over a period of years, but the amount agreed upon shall be specific and final.

(11) After the Alaska natives have been permitted time to file their individual land claims, and final payment has been made of the monetary settlement —the Bureal of Indian Affairs in Alaska shall close, the natives of Alaska shall be treated in the same manner as any other U.S. Citizen without any special privileges not accorded other Alaskans.

Sincerely yours,

THEODORE J. ALMASY.

HENDRICKSON AND ROWLAND,
ATTORNEYS AT LAW,
Anchorage, Alaska, August 18, 1969.

Senator TED STEVENS:
Old Senate Office Building,
Washington, D.C.

DEAR SENATOR STEVENS: This letter concerns a certain paragraph of S. 1830 which I feel may cause a little bit of trouble should that bill or something very close to it pass the Senate this term. I refer to page 9 of that bill where at line 4 it is stated that a decision issued by the Commission (Alaska Native Commission) shall be subject to judicial review by the United States District Court in Alaska for the division in which the petitioner resides or the land in question is located. The problem with the language would seem to come at the bottom of the page.

"The Court may affirm, vacate, or modify any decision or may remand the proceeding to the Commission for such further action as it directs. The judgment of the Court shall be subject to review by the United States Court of Appeals for the circuit in which the petitioner is located and by the Supreme Court of the United States upon certiorari or certifications as provided in Section 1254, Title 28, United States Code."

The problem I see is that the petitioner may be located in Florida whereas the Commission is located in Alaska. The original portion of the Appeals procedure states that the matter can be reviewed by the District Court in Alaska. If this is true and the language at the bottom of page 9 is taken literally, it would mean that the decisions of the District Court in Alaska would be appealable to any circuit. Quite frankly, I think this would breed a lot of trouble. It would mean that courts that have never heard a case concerning Indian law might well be deciding them on appeal. Also the court system of the United States would be faced again with the old problem of conflicts between the circuits.

I believe the intent of the law would be to have the 9th circuit review decisions of the District Court in Alaska. Thus I would suggest the following language change beginning at line 21 of page 9:

"The judgment of the Court shall be subject to review by the Court of Appeals of the ninth circuit, or any successor court which shall or may review the decisions of the United States District Court for Alaska, and by the Supreme Court of the United States upon certiorari or certifications as provided in Section 1254, Title 28, United States Code."

I do not mean that this is the only language that could be used, but I do suggest that language along similar lines would make the appeal process less complicated and less likely to cause problems within the judiciary, and of course provide greater continuity in the law.

Kindest personal regards,

JOHN W. HENDRICKSON.

AUGUST 4, 1969.

Hon. HENRY M. JACKSON,
U.S. Senate,
Washington, D.C.

DEAR SCOOP: Al Ketzler, a member of the AFN Steering Committee and President of the Tanana Chiefs Association, has written an exceptionally articulate letter to the Editor of the NEW REPUBLIC relating to Alaska Native land claims.

I respectfully request that a copy of his letter be included in the record of the hearings on Native claims.

With best wishes,

Cordially,

TED STEVENS, *U.S. Senator.*

JULY 2, 1969.

EDITOR, NEW REPUBLIC,
1244 19th Street, NW.,
Washington, D.C.

DEAR EDITOR: As President of the Tanana Chiefs and a member of the Board of the Alaska Federation of Natives, I thank you for Daniel Henniger's "Alaska: Share the Oil" in the June 28, 1969 issue. We hope that the conscience of the nation

will be aroused by our struggle to keep our land. As long as it was thought worthless our possession was undistributed, now that it is seen to be valuable our rights are in danger. We look to all Americans, both liberal and conservative, for support in our struggle for our land, for both human rights and property rights are involved.

Here I want to correct Mr. Henninger: we have not lost our land, ours by law, and will not lose it until Congress expropriates ("extinguishes" is the polite legalese). And we filed our claims long before the oil strikes. Many claims were filed before 1940. And it is generally conceded that our title has not been "extinguished." The danger is that the Supreme Court held, in 1955 by a 6–3 decision, that upon expropriation the natives are not entitled to just compensation under the due process clause, but only what Congress chooses to pay.

The Alaska Federation of Natives recognizes that a full measure of justice cannot be expected, but we ask that we be allowed to retain 40 million acres (about 11% of Alaska), retain a 2% interest in the minerals of our land in the form of a royalty, and be paid $500 million as compensation for lands being expropriated. Since the Wall Street Journal has predicted that the State may receive a billion or more in oil lease bonuses in September from leasing our land, few would deny that we are being "reasonable". But to those who view this problem as one of alleviating poverty, and not involving property rights, our demand for some $10,000 and 800 acres per capita seems unreasonable, even outrageous. So we were disappointed to see Mr. Henniger overlook our legal rights to our land, for it is the keystone to a fair, generous, and just settlement of our land claims.

Factually, Mr. Henniger erred in stating that Senator Jackson's bill would appropriate $100 million a year for 10 years plus 10% of federal and state revenue from mineral leases. Rather it is 10% but not more than 100 million a year for 10 years, and with no minimum. In fairness to Secretary Hickel, a fixed sum of $500 million does eliminate a substantial risk and we have accepted this figure, but asked that it be paid over a shorter period than 20 years, and that interest be paid on the unpaid balance.

The major areas of dispute turn on the concept of revenue sharing—our desire to retain an interest in the fruits of our land—and the amount of land we wish to retain. The Administration has doubled the land provided in the Jackson bill, but to no more than 10 million acres, or 3% of Alaska. Compare this to the state's grant of 103 million acres, of which 18 million have been selected. Yet most native villages would gladly trade off all compensation for paper title to their own lands. If we must give up the great majority of our land, can we not retain at least 11% and a small continuing interest in the balance?

Native leaders in Alaska have given great attention to the structure of the settlement, the means of administering the land and money. Indeed the concept of the development corporation is ours, though we would divide the land and money among three levels of business corporations, local, regional, and statewide, in keeping with the pluralism of American society and economy. We object to vesting all of the money in single gigantic corporation, which would rank well up on Fortune's list of 500, and in which individual native shareholders would have as much power as the average small shareholder of General Motors. But we do need to use modern business forms to use our land and the compensation in a modern economy. We have owned most of Alaska from time immemorial, but as wards of a paternalistic Federal Bureau for over a hundred years we have been effectively denied the legal tools needed to deal with our land as landowners in a capitalist economy. While we appreciate and will continue to need government programs, especially in health and education, we want an end to wardship and government restrictions.

We see in the land settlement a means to this end, a means of ending poverty among our people, a means of taking our rightful place in Alaskan society, and a means of proving to the world that America will do justice to the last of its aboriginal peoples still occupying their historic lands as the Alaskan oil rush forces development of America's last frontier.

Sincerely,

ALFRED KETZLER,
President, Tanana Chiefs, Nenana, Alaska.

STATEMENT OF D. L. SIMASKO, ANCHORAGE, ALASKA

Thank you for the opportunity to present this written testimony in regard to S. 1830, the "Alaska Native Claims Settlement Act of 1969."

A few pertinent facts regarding my personal and professional qualifications are in order prior to presenting my testimony.

I have been a citizen of the State of Alaska for the past ten years. I am married, the father of four sons who have been raised and educated in Alaska. Alaska is and, hopefully, always will remain our permanent home.

At present I am a petroleum land management consultant with offices in Anchorage, Alaska. I have been engaged in this activity since November 1963. I act as a consultant to the petroleum industry in matters of acquisition, management, and disposition of petroleum lands and negotiations of exploration and drilling ventures. I number among my clients most of the major oil companies, independent oil companies of varying sizes, and individual oil operators. Prior to engaging in my current activities, I was employed in varying capacities in the Land Department of Pan American Petroleum Corporation, the producing and exploration subsidiary of Standard Oil Company of Indiana. I was employed by Pan American Petroleum Corporation from January 1955, to November 1963. My experiences in the oil industry during these past fourteen and one-half years have given me a unique and possibly privileged position from which to observe all segments of a very complicated industry.

The native land claims problem is undoubtedly the single, most important problem facing the State of Alaska today. I am concerned with it on a daily basis, both as a sensitive citizen of our state, and as a businessman involved in the exploration, development, and wise use of our natural resources. A just, equitable, and expeditious solution to this problem is imperative.

Although I agree with most of the provisions contained in S. 1830, I do object to the proposed means of funding the compensation to be paid as a settlement of aboriginal claims. There is little question that the claims that Alaska natives have are claims against the Federal Government of the United States and that the cost of any settlement must be borne by the Federal Government. As proposed, with one exception, monies to be derived from Naval Petroleum Reserve No. 4, the State of Alaska is paying the Federal Government's debt. Section 12(f) of the proposed bill provides that for a period of 10 years the State of Alaska would be required to pay into the native compensation fund 10 percent of the revenues collected by the state from lands patented to the state after December 31, 1968. The bill also provides that 10 percent of the funds obtained by the Federal Government from bonuses, rentals, and royalties on Federal lands in the State of Alaska will be paid into the native compensation fund. These monies, under provisions contained in the Statehood Act, would otherwise accrue to the State of Alaska for the benefit of all her citizens. If the matter of compensation is truly a Federal responsibility, it would appear that very little of the financial burden is being carried by the Federal Government, since moneys paid into the native compensation fund would otherwise accrue to the State of Alaska.

Section 12 of S. 1830, as proposed, includes changes in existing statutes which are sufficient in scope to be subjects of separate legislation and not included in this bill. I have particular reference to the changing of the Mineral Leasing Act of 1920 to provide that all Federal lands in the State of Alaska will be leased by competitive bidding, and changing the mining claims statutes to provide for the declaration of null and void all claims in Alaska not recorded within one year after the effective date of S. 1830, and the imposition of a royalty of five percent on production of minerals from mining claims.

For the past two years the Public Land Law Review Commission has been in existence and has made a tremendous expenditure in time, energy, and money taking testimony from all people, industries, and governmental agencies having any connection with public lands of the United States. The purpose of this effort is to review thoroughly the needs of the people of the United States insofar as the administration of their public lands are concerned and to recommend to Congress legislation to upgrade the many obsolete public land laws currently in effect.

If the Mineral Leasing Act is to be changed, it is strongly recommended that such changes await the results and recommendations of the Public Land Law Review Commission. In accordance with a news release dated July 15, 1969, the Bureau of Land Management stated "The BLM is custodian and manager of 453 million acres of Public Domain, including 278 million acres in Alaska and 175 million acres located mainly in the 10 western states." Federal acreage in Alaska amounts to 61.12 percent of the total Federal acreage in the United States. It does not appear logical to change leasing regulations on a majority of the Public Domain when recommendations for change on all of the Public Domain are forth-

coming. The retention of this provision in S. 1830 would negate all of the learned effort of the Public Land Law Review Commission.

I would offer the following suggestion as a means of overcoming my objections as stated above with respect to funding this bill.

There is little question but that Naval Petroleum Reserve No. 4 enjoys a unique status and by no stretch of the imagination could be construed to be public domain lands under the scope of the Mineral Leasing Act of 1920. The value of the Naval Petroleum Reserve is estimated to be many times the proposed monetary compensation to Alaska natives. I feel certain that an overwhelming majority of persons will agree that the concept of a Naval Petroleum Reserve for military purposes under present circumstances is as obsolete as a horse cavalry. I would therefore suggest that Naval Petroleum Reserve No. 4 be terminated and that the lands contained therein be leased by competitive sealed bid in the following manner. The Naval Petroleum Reserve would be divided into 10 segments as equal geologically and geographically as can be determined by the United States Geological Survey. One of the 10 parcels would be offered for competitive sealed bidding each year for a period of 10 years. The oil industry would be advised well in advance the order in which these parcels would be posted for sale so that they could conduct whatever exploratory activity is necessary for them to obtain information to be used in bidding. The revenue derived from bonuses, rentals, and royalties would be divided as follows:

(a) 10 percent to the Treasury of the United States to cover administrative costs.

(b) 90 percent to the native compensation fund until such time as the entire settlement is paid into the fund, or 10 years elapse, whichever first occurs.

(c) Thereafter, all funds paid into the Treasury of the United States for the benefit of all its citizens.

If this solution is attempted, the debt to the natives will truly be paid by the Federal Government. It will not take from the State of Alaska funds which would otherwise accrue to it. It will not require the State of Alaska to make extraordinary contributions to the native land claims settlement. It would allow for the orderly exploration and development of Naval Petroleum Reserve No. 4.

I am indeed sorry that circumstances beyond my control prevent my appearance in person before this Committee to discuss this matter further or answer any questions. Be assured, however, that I would be pleased to discuss further, either personally or in correspondence, any of the matters contained in my above testimony. I thank you for taking the time to consider my comments.

G. W. ANDERSON,
Salt Lake City, Utah, August 21, 1969.

Hon. WALLACE F. BENNETT,
U.S. Senate,
Washington, D.C.

DEAR SENATOR BENNETT: I have been advised that Senate Bill 1830, regarding Alaska natives' claims, introduced by Senator Jackson and other Senators on April 15, is before the Interior Committee for consideration as well as is Amendment 112, offered by Senator Jackson and Senator Allott by request on August 4 in the nature of a substitute to S. 1830. We note that this Amendment, Number 112, contains the following language:

"Mineral Leasing Act—Sec. 11. Deposits of all minerals included under the mineral leasing laws, including but not limited to, coal, phosphate, sodium, potassium, oil, oil shale, or gas located in all public lands in Alaska shall be subject to disposition by the Secretary under the terms of this Act. After the effective date of this Act, the Secretary is authorized to dispose of such deposits ony by competitive bidding, but otherwise under the provisions of the applicable mineral leasing law. He shall prescribe by regulation the procedures to be used for competitive bidding."

If this amendment were to be adopted, it would immediately serve to close out practically all independent oil and gas operators from exploring in the state of Alaska. It has always been my understanding that the basic policy of the Federal Government as set forth in the Mineral Leasing Act is to open up all federal lands which are not located within a known geologic structure for non-competitive leasing by the first qualified applicant. Although tremendous reserves of oil and gas probably underlie a portion of the north coast of Alaska, this new state is so

large in area, so unexplored, and lies so far north that the costs of exploration and development are so extremely high that it seems reasonable that the Federal Government should make every attempt to interest as many prospectors as possible in exploring Alaska for its natural resources. The widespread development of oil and gas on public lands is a direct result of the longstanding legislation permitting non-competitive leasing of public lands. At least seventy per cent of the discoveries of oil and gas in public lands can be credited to the efforts of independent operators.

At the present time, numerous Offers to Lease for Oil and Gas have been filed for lands within the state of Alaska. These offers were filed in good faith with the expectation that leases would be issued pursuant to the offers. In a number of instances, a great deal of geophysical and geological work has been done in the area where these offers are located. It would seem extremely unfair to wipe out with the stroke of a pen all rights of these offerors.

I trust that you will agree with my views in this matter, and that you will see fit to use your best efforts to eliminate the provision relating to competitive bidding which is presently included in this proposed bill and in the proposed amendment.

Respectfully,

G. W. ANDERSON.

Senator METCALF. That concludes the hearing and so, on behalf of the chairman, I will declare the committee in recess subject to the call of the Chair.

(Whereupon, at 12:15 p.m., the committee adjourned subject to the call of the Chair.)

APPENDIX

The following draft bill was prepared by the Office of Legislative Counsel as a drafting service at the request of Senator Stevens. Senator Stevens has made the draft bill available to all parties involved for their use and assistance in arriving at a legislative settlement of the Alaska Native land claims problem.

[S. 1830, H.R. ——, 91st Congress, first sess.]

IN THE SENATE OF THE UNITED STATES

Referred to the Committee on ——————————
and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT

Intended to be proposed by Mr. STEVENS to S. 1830, a bill to provide for the settlement of certain land claims of Alaska natives, and for other purposes, viz:

Strike out all after the enacting clause and insert in lieu thereof the following:

That this Act may be cited as the "Alaska Native Claims Settlement Act of 1969."

DECLARATION OF POLICY

SEC. 2. (a) The Congress hereby recognizes, validates, and confirms the claims of natives and native villages based upon aboriginal occupancy and use of lands within the State of Alaska, and further finds and declares that there is an immediate need for a fair and just settlement of such claims and intends by this Act to provide——

(1) grants to native villages of certain lands in the State of Alaska;

(2) grants of land to certain individual natives;

(3) where it is within the power of the Federal Government, measures for the conservation of subsistence biotic resources and, where necessary, a priority for local subsistence in the utilization of these resources;

(4) a grant to native villages, Statewide corporation, and regional corporations in the amount of $500,000,000 for lands taken in the past by withdrawal for Federal purposes or by patent to the State or to other third parties; and

(5) a further grant to native villages, the Statewide Corporation, and regional corporations of certain mineral deposits and royalties.

(b) It is the intent of Congress to accomplish these aims rapidly, with certainty, and in conformity to the real economic and social needs of Alaska natives (1) without establishing any permanent racially defined institutions, rights, privileges, or obligations; (2) without creating a reservation system or lengthy wardship or trusteeship; and (3) without adding to the categories of property and institutions enjoying special tax privileges or to the legislation establishing special relationships between the United States Government and the State of Alaska.

(c) No provision of this Act is intended to replace or diminish any right, privilege, or obligation of Alaska natives as citizens of the United States or

of Alaska, nor to relieve, replace, or diminish any obligation of the United States or of the State of Alaska to protect and promote the rights or welfare of Alaska natives as citizens of the United States or of Alaska.

(d) In carrying out the provisions of this Act relating to grants to natives and native groups, such grants shall total, in the aggregate, 40,000,000 acres.

DEFINITIONS

SEC. 3. For the purposes of this Act, the term—

(a) "Secretary" means the Secretary of the Interior;

(b) "native" means any Alaska Indian, Eskimo, or Aleut of at least one-fourth degree Alaska Indian, Eskimo, or Aleut blood, or a combination thereof, excluding Tsimshian Indian blood, or a person of native ancestry who is regarded as native by the native group in which he claims enrollment and whose father or mother was regarded as native by a native group; and adoption of a native by a person who is not a native shall not affect his status as a native;

(c) "native group" means any tribe, band, clan, village, community, or association in Alaska which is composed of twenty-five or more natives and which is approved by the Secretary;

(d) "Commission" means the Alaska Native Commission establish by this Act;

(e) "public lands" means all Federal lands and interests therein situated in Alaska, except any lands used in connection with the administration of any Federal installation;

(f) "Statewide Corporation" means the Alaska Native Development Statewide Corporation authorized to be established pursuant to this Act and under the laws of the State of Alaska;

(g) "regional corporation" means a corporation authorized to be established pursuant to this Act and under the laws of the State of Alaska;

(h) "person" means any individual, firm, corporation, association, or partnership, and includes the State of Alaska;

(i) "fund" means the Alaska Native Compensation Fund established under the terms of this Act; and

(j) "native village" means any village referred to in paragraph (5) of section 101(a) of this Act.

SEC. 4. Public Land Order Numbered 4582, 34 Federal Register 1025, is hereby revoked.

TITLE I—LAND GRANTS

SEC. 101. (a)(1) For the purpose of making available the land required by this Act to be transferred to native villages and natives, in the amount of 40,000,000 acres, there is hereby withdrawn from all forms of appropriation under the public land laws, including the mining laws, but not the mineral leasing laws, all public lands in the State of Alaska (except lands withdrawn for national defense purposes) in each township as shown on current plats of survey or protraction diagrams of the Bureau of Land Management which enclose all or part of any native village referred to in paragraph (5) of this subsection.

(2) Within thirty days after the date of the enactment of this Act, the Secretary shall withdraw from all forms of appropriation under the public land laws, including the mining laws, but not the mineral leasing laws, such additional public lands in any township adjacent to the townships referred to in paragraph (1) of this subsection as may be necessary, together with the public lands withdrawn by paragraph (1) of this subsection, to provide the 40,000,000 acres required to be conveyed by this Act.

(3) The head of any Federal agency having jurisdiction over lands selected in accordance with the provisions of paragraph (2) of subsection (b) of this section, including lands that have been tentatively approved for selection by the State of Alaska, lands comprising national parks, national forests, National Wildlife Refuges, unimproved portions of military reservations, and animal and bird sanctuaries, shall, upon receiving an application filed in accordance with the provisions of this Act immediately take such action as may be necessary to make such land available for the conveyances authorized by this Act.

(4) All lands conveyed pursuant to this section shall, except to the extent otherwise provided in subsection (c) of this section, be contiguous (except as separated by bodies of water), and shall be in units of not less than 1280 acres.

(5) The native villages entitled to receive conveyances pursuant to this subsection are as follows:

(b)(1) From the lands withdrawn by paragraph (1) of subsection (a) of this section, the appropriate head of the Federal agency having jurisdiction over such lands on the date of the enactment of this Act shall convey, to each such village listed in paragraph (5) of such subsection, all right, title, and interest of the United States to lands comprising such village on the date of the enactment of this Act.

(2) In addition to the lands authorized to be conveyed pursuant to paragraph (1) of this subsection, each such village shall be entitled to select, from lands withdrawn pursuant to paragraph (2) of subsection (a) of this section or from lands tentatively approved for selection by the State of Alaska, lands comprising any national park, national forest, national wildlife refuge, unimproved portion of a military reservation, or animal or bird sanctuary, such additional amount of land as is necessary to make the total acreage conveyed to such village pursuant to this subsection an amount equal to four townships, but in no event less than 92,160 acres. Upon the receipt of an application filed by any such village containing a selection made pursuant to this paragraph, the head of the Federal agency having jurisdiction over the lands so selected shall convey, in accordance with the provisions of this Act, all right, title, and interest of the United States to such land to the applicant.

(c) In addition to the acreage authorized to be received by it pursuant to subsection (b) of this section, each native village having a population on the date of the enactment of this Act in excess of 184 natives entitled to benefits under this Act, shall be entitled to select additional such lands in the amount of 500 acres for each such native in excess of 184. Upon receipt of an application filed by any such village containing a selection made pursuant to this subsection, the head of the Federal agency having jurisdiction over the lands so selected shall convey, in accordance with the provisions of this Act, all right, title, and interest of the United States to such applicant. Lands conveyed pursuant to this subsection shall be limited to the so-called "claim area" of the regional association in which the village is located, as shown on the Bureau of Land Management's "Native Protest Map", but such lands need not be contiguous.

(d) Any conveyance made pursuant to this section shall be made only with respect to the surface of such lands so conveyed.

(e) After receipt by it of title to the surface of lands conveyed pursuant to this section, such village, at its option, shall have the right to convey such title to the regional corporation in whose geographic area such lands are located or, with the consent of such regional corporation, to the Statewide corporation. No title so conveyed to any such corporation shall thereafter be transferred to any party other than the United States or the State of Alaska. In any case in which a village does not exercise its option to convey its land to any such corporation, such village shall have the right to manage the surface of such lands.

SEC. 102. Any native village using or occupying, on the date of the enactment of this Act, lands comprising any Indian Reorganization Act Reserve, Executive Order Reserve, or Administrative Reserve, which has been set aside for Native use or for the administration of Native affairs, shall be entitled to elect, within one year following the date of the enactment of this Act, to receive, in lieu of benefits under section 101 of this title, a conveyance from the Secretary of all right, title, and interest of the United States to such lands in an amount equal to four townships, but in no event less than 92,160 acres. Upon written notification to the Secretary of an election by any such village to receive a conveyance pursuant to this section, the Secretary, if such election is made within such one-year period, shall convey to such village all right, title, and interest (including mineral) of the United States in and to such lands with respect to which such election is made in an amount equal to four townships, but in no event less than 92,169 acres. In the event such lands authorized to be so conveyed are less than 92,160 acres, the Secretary shall convey, from lands withdrawn pursuant to subsection (a) of section 101 of this title, such additional lands selected by such village as may be necessary to make the total amount conveyed to such village pursuant to this section an amount equal to 92,160 acres. Any village receiving a conveyance pursuant to this section shall have the same option and rights under subsection (e) of section 101 of this title as any village receiving a conveyance pursuant to section 101.

SEC. 103. The appropriate head of a Federal agency having jurisdiction over public lands withdrawn in accordance with section 101 of this Act shall convey to any native nineteen years of age or older, whose primary place of residence is

outside the limits of such withdrawn areas, all right, title, and interest of the United States to a tract of such land, not in excess of 1,601 acres. Such conveyance shall be made subject to a reservation in the United States for access or rights-of-way for public roads or utilities.

SEC. 104. In any case in which more than one applicant makes application under this title for the conveyance of the same public lands, the determination of which applicant shall receive the lands shall be made by the Commission, after public hearings.

SEC. 105. If the total conveyed pursuant to applications filed under this title does not equal the amount of 40,000,000 acres authorized to be conveyed pursuant thereto, title to an amount of acreage equal to the difference between such 40,000,000 acres authorized to be conveyed and the total amount so conveyed shall be conveyed to the regional corporations in such proportion as the Commission may determine.

SEC. 106. All right, title, and interest of the United States in and to all mineral deposits, including oil and gas, in those lands conveyed pursuant to this title, other than lands conveyed pursuant to section 102, together with the right to mine and remove the same, shall be conveyed, by the appropriate head of the Federal agency having jurisdiction over such minerals on the date of the enactment of this Act, to the regional corporation within whose geographic area such lands are situated. Fifty per centum of all revenues received by any such corporation resulting from such mineral deposits shall be placed in the fund for disposition in accordance with the provisions of title II of this Act.

TITLE II—COMPENSATION

SEC. 201. There is hereby established in the Treasury of the United States an Alaska Native Compensation Fund (referred to in this Act as the "fund") for the benefit of the natives and native villages of Alaska. All moneys deposited in the fund pursuant to this Act shall be available until expended. The Secretary of the Treasury is authorized to make payments from such fund, with the approval of the Commission, to any native, native village, or corporation in accordance with the provisions of this Act.

SEC. 202. (a) There is hereby authorized to be appropriated $500,000,000 to be paid into the fund as compensation for native rights in lands withdrawn by the United States and in lands selected by the State of Alaska under the Statehood Act of July 7, 1958 (72 Stat. 339), prior to the date of the enactment of this Act. The amount so authorized to be appropriated shall be paid into the fund in the following manner: $100,000,000 during the fiscal year commencing July 1, 1970, and the remainder to be paid to such fund in equal amounts in each of the succeeding eight fiscal years, together with interest in the amount of 4 per centum per annum.

(b) Moneys paid into the fund pursuant to subsection (a) of this section shall be paid by the Secretary of the Treasury in the following manner: 75 per centum to be paid to the native villages; 20 per centum to be paid to the regional corporations; and 5 per centum to the Statewide corporation. Such payments to native villages shall be made on the basis of the ratio that the number of natives in each village bears to the total population of all Natives authorized to receive benefits under this Act. Payments to each such regional corporation shall be made on the basis of the ratio that the total membership of such corporation bears to the total membership of all such regional corporations. Such payments to the Statewide corporation and regional corporations, together with other revenues available to any such corporation, may be expended, subject to the provisions of this Act, by such corporation, in accordance with an annual budget prepared by the corporation and approved by the Commission.

(c) Commencing with the fiscal year beginning July 1, 1970, and each fiscal year thereafter, there is authorized to be appropriated to the fund an amount equal to the aggregate amount received by the United States, during the fiscal year immediately preceding the fiscal year in which such payment is to be made, as royalties, bonuses, and other revenues from mineral resources, including oil and gas, on all public lands in Alaska, except those withdrawn and conveyed pursuant to this Act. Moneys paid into the fund pursuant to this subsection shall be paid by the Secretary of the Treasury in the following manner: 75 per centum to be paid to the native villages; 20 per centum to be paid to the regional corporations; and 5 per centum to the Statewide corporation. Such payments to native villages shall be made on the basis of the ratio that the number of natives in each native village bears to the total population of all natives authorized to

receive benefits under this Act. Payments to each such regional corporation shall be made on the basis of the ratio that the total membership of such corporation bears to the total membership of all such regional corporations.

(d) Moneys paid into the fund pursuant to section 106 of title I of this Act shall be divided among the regional corporations, other than the regional corporation paying such money into the fund, on the basis of the ratio that the total membership of such corporation bears to the total membership of all such regional corporations.

(e) Each native village, regional corporation, and the Statewide corporation receiving benefits pursuant to this title shall be authorized to expend, invest, or distribute such benefits to promote the advancement of the Native people in Alaska, subject to authorization by the appropriate governing body, and the approval of the Commission.

(f) No native village or corporation receiving funds pursuant to this title shall make, in any one calendar year, direct per capital distributions from such funds in excess of 20 per centum, in the aggregate, of such funds so received.

(g) In no case shall the Tlingit-Haida Indians (who were granted a judgment in the Court of Claims—Docket No. 47,900), or any other native group or village which had claims pending before the Indian Claims Commission and which claims were reduced to judgment prior to the date of the enactment of this Act, be entitled to participate or receive any benefits under this title until such time as the natives, other than those comprising the Tlingit-Haida Indians or any native village receiving any such judgment, as the case may be, have received benefits under this title in an amount equal to that received by the said Tlingit-Haida Indians or native village pursuant to such judgment, less attorney's fees and litigation expenses.

TITLE III—STATEWIDE CORPORATION ; REGIONAL CORPORATIONS

SEC. 301. (a) There is authorized to be established the Alaska Native Development Statewide Corporation as an Alaskan corporation initially enrolling all natives enrolled by regional corporations established pursuant to this Act. Such corporation will not be an agency or establishment of the United States Government. The corporation shall be subject to the provisions of this Act, for a period often years after its incorporation and to the extent consistent with this Act, to the laws of the State of Alaska applicable to corporations.

(b) The Commission shall appoint incorporators, one of which shall be the Chairman of the Commission, who shall serve as the initial board of directors until the native members of the board are elected. Such incorporators shall take whatever actions are necessary to establish the corporation, including the filing of articles of incorporations, as approved by the Commission. There is authorized to be paid from the fund the sum of $1,000,000 which shall serve as consideration for shares authorized to be issued under this section.

(c) The corporation shall have a board of directors consisting of eleven individuals who shall be natives and who shall be elected, one from each of the geographic areas covered on the date of the enactment of this Act by a regional association referred to in section 302(a)(2), by natives enrolled within a native village within the geographic region represented by such corporation. Natives shall be entitled to vote only for the director from the geographic regions within which such native is enrolled. Members of the board so elected shall serve for terms of four years or until their successors have been elected and qualified; except that of the members first elected, three shall serve for terms of one year, three for terms of two years, and three for terms of three years. Any vacancy shall be filled in the same manner as that provided for the member holding such office immediately prior to such vancancy. Any member elected to fill a vacancy shall serve only for the period of the unexpired term of the director whom he succeeds. The members who shall serve the short terms shall be determined by straws conducted by the Commission. Elections pursuant to this title shall be conducted in accordance with procedures set forth in the articles of incorporation or by-laws of the corporation.

(d) The corporation shall have a president, and such other officers as may be named and appointed by the board, at rates of compensation fixed by the board and serving at the pleasure of the board. No officer of the corporation shall receive any salary from any source other than the corporation during the period of his employment by the corporation. The president shall be responsible for carrying out the corporation's functions in a businesslike manner consistent with the provisions of this Act, the articles of incorporation, and the policies

of the board, and shall appoint such other employees as the board deems appropriate. Such employees shall be subject to standards and requirements similar to those applicable to Federal civilian employees, but shall not be regarded as Federal employees for any purpose.

(e) The corporation is authorized to have one million shares of common stock, without par value, and to issue and have outstanding shares of common stock equal to ten times the number of natives enrolled on the date of incorporation. Such stock shall carry voting rights and be eligible for dividends, except that such stock shall not be distributed to the natives for a period of ten years after incorporation but shall be held in trust by the board for each eligible native with the right of such native to receive dividends during this period and to exercise voting rights. Each native entitled to such stock shall have a life interest therein, and at his death, such stock shall vest in the corporation and may be reissued. Ten years afer the date of incorporation, ten shares of common stock shall be issued and distributed to each eligible native then alive and enrolled.

(f) The corporation shall, in accordance with such terms and conditions as the board may prescribe and consistent with this Act and for the benefit of the stockholders thereof, invest its funds; make dividend payments to the common stockholders at such times as the board of directors deems appropriate; provide for the lending of funds to individuals or organizations for the construction of homes and other purposes that would promote economic development of the natives; provide loans or grants to native groups, or regional or governing bodies or native corporations for the purpose of fostering the health and welfare of the people; provide loans for the education of individual natives; provide emergency or charitable grants and loans to individuals and communities in times of distress; sell, lease, or otherwise dispose of its lands; and promote the economic development of the native and the native groups to the greatest possible extent. The corporation shall establish such rules and procedures as it deems appropriate in carrying out the provisions of this subsection. For a period of ten years after incorporation the corporation shall not in any one fiscal year issue dividends or make any grants or unsecured loans the total amount of which equal more than one-half the sum of the corporation's profits and additions to its capital from the fund during the previous fiscal year. For a period of ten years after incorporation, its profits shall not be subject to Federal or State tax laws.

(g) The corporation shall be subject to audit by the General Accounting Office for a period of ten years after the date of incorporation. After final audit by the General Accounting Office and the filing of a summary financial report with the Congress, the limitations established under this section applicable to the corporation shall terminate and the corporation shall continue in business under the appropriate laws of the State of Alaska. For the ten years from and after the date of incorporation, the corporation shall be considered a public instrumentality eligible for grants and contracts for planning and development programs which will assist the natives and the native groups under any Federal law.

SEC. 302. (a) (1) Within each area in the State of Alaska covered on the date of enactment of this Act, by a regional association referred to in paragraph (2) of this subsection, there is authorized to be established a regional corporation which shall have the power to manage, in accordance with the provisions of this Act, the lands, moneys, and other interests made available to it pursuant to this Act, for the benefit of the natives enrolled in the native villages of the geographic region represented by such corporation. Each such corporation shall be established as an Alaskan corporation and shall not be an agency or establishment of the United States Government. Each such corporation shall be subject to the provisions of this Act for a period of ten years after its incorporation and to the extent consistent with this Act, to the laws of the State of Alaska applicable to corporations. The enrollment of each such corporation shall initially be the natives enrolled in the native villages of the geographic region represented by such corporation.

(2) As used in paragraph (1) of this subsection, the term "area" means any area which, on the date of the enactment of this Act, is covered by any one of the following regional associations:

(1) Arctic Slope Native Association (Barrow, Pt. Hope)

(2) Bering Straits Association (Kotzebue, Seward Peninsula, Unalakleet, St. Lawrence Island)

(3) Association of Village Council Presidents (Southwest Coast, all villages in the Bethel area, including all villages on the lower Yukon River and the Lower Kuskokwin River)

(4) Tanana Chief's Conference (Koyukuk, Middle and Upper Yukon Rivers, Upper Kuskokowin, Tanana River)

(5) Cook Inlet Association (Kenai, Tyonek, Eklutna, Iliamna)
(6) Bristol Bay Native Association (Dillingham, Upper Alaska Peninsula)
(7) Aleut League (Aleutian Islands, Pribilof Islands, and that part of the Alaskan Peninsula which is in the Aleut League)
(8) Chugach Native Association (Cordova, Tatitlek, Port Graham, English Bay, Valdes and Seward)
(9) Tlingit-Haida Central Council (Southeastern Alaska)
(10) Kodiak Area Native Association (All Villages on and around Kodiak Island)
(11) Copper River Native Association (Copper Center Glennallen, Chitina, Mentasta)

(b) Regional corporations authorized by this section shall be organized, as approved by the Commission, under the laws of the State of Alaska relating to corporations. The board of directors of each such regional corporation shall be elected by the enrolled native villages of the geographic region represented by such corporation on a basis to assure adequate representation of all such natives within such region. Each board shall consist of number of members, consistent with the laws of the State of Alaska, and members thereof elected in such manner as set forth in the articles of incorporation. The articles of incorporation of each such regional corporation must be approved by the Commission. The enrollment of each such corporation shall consist of the rolls of all of the native villages within the region of the corporation. There is authorized to be paid from the fund to each such corporation the sum of $1,000,000 which shall serve as consideration for shares authorized to be issued under this section.

(c) Each such corporation is authorized to have one million shares of common stock, without par value, and to issue and have outstanding shares of common stock equal to ten times the number of natives enrolled in the villages represented by such corporation on the date of incorporation. Such stock shall carry voting rights and be eligible for dividends, except that such stock shall not be distributed to the natives enrolled in such corporation for a period of ten years after incorporation but shall be held in trust by the board for each eligible native with the right of such native to receive dividends during this period and to exercise voting rights. Each native entitled to such stock shall have a life interest therein, and at his death, such stock shall vest in the corporation and may be reissued. Ten years after the date of incorporation, ten shares of common stock shall be issued and distributed to each eligible native then alive and enrolled.

(d) Each such corporation shall, in accordance with such terms and conditions as the board may prescribe and consistent with this Act and for the benefit of the stockholders thereof, invest its funds; make dividend payments to the common stockholders at such times as the board of directors deems appropriate; provide for the lending of funds to individuals or organizations for the construction of homes and other purposes that would promote economic development of the natives; provide loans or grants to native groups, or regional or governing bodies or native corporations for the purpose of fostering the health and welfare of the people; provide loans for the education of individual natives; provide emergency or charitable grants and loans to individuals and communities in times of distress; sell, lease, or otherwise dispose of its lands, subject to the provisions of this Act; and promote the economic development of the enrolled natives within the villages represented by such corporation to the greatest possible extent. Each such corporation shall establish such rules and procedures as it deems appropriate in carrying out the provisions of this subsection. For a period of ten years after incorporation the corporation shall not in any one fiscal year issue dividends or make any grants or unsecured loans the total amount of which equal more than one-half the sum of the corporation's profits and additions to its capital from the fund during the previous fiscal year. For a period of ten years after incorporation, its profits shall not be subject to Federal or State tax laws.

(e) Each such corporation shall be subject to audit by the General Accounting Office for a period of ten years after the date of incorporation. After final audit by the General Accounting Office and the filing of a summary financial report with the Congress, the limitations established under this section applicable to the corporation shall terminate and the corporation shall continue in business under the appropriate laws of the State of Alaska. For the ten years from and after the date of incorporation, each such corporation shall be considered a public instrumentality eligible for grants and contracts for planning and development programs which will assist the natives and the native groups under any Federal law.

(f) Each corporation established pursuant to this section shall have maximum flexibility and power to engage in any commercial or eleemosynary activity, either

individually or in groups. In order to make maximum use of their resources, such corporations shall have the power to merge, engage in joint ventures, employ common managerial services, or collectively take whatever actions are deemed appropriate by their respective boards of directors.

TITLE IV—MISCELLANEOUS

SEC. 401. The Secretary may permit the natives of Alaska to use for fifty years from the date of this Act exclusively for hunting, fishing, trapping, and berry-picking purposes any land in Alaska that is owned by the United States, in accordance with applicable State and Federal laws and regulations and with the concurrence of the head of the agency administering such land. And patents or leases hereafter issued for such lands pursuant to the Alaska Statehood Act, or the public land, mining, or mineral leasing laws, shall contain a reservation to the United States of the right to issue for hunting, fishing, trapping, and berry-picking purposes, permits for up to fifty years from the date of the enactment of this Act.

SEC. 402. Notwithstanding any other provision of law, for a period of ten years after the effective date of thiis Act, the Secretary of the Interior, upon petition by any individual residing in Alaska or by the Department of Fish and Game of the State of Alaska, shall, after a public hearing, and under such rules and regulations as he may prescribe, determine whether or not an emergency exists with respect to the depletion of subsistence biotic resources in any given area of the State and may thereupon delimit and declare that such area will be closed to entry for hunting, fishing, or trapping, except by residents of such area, subject to the provisions of any treaty concerning such resources. The closing authorized by this section shall not be for a period of more than three years, and may be extended by the Secretary after hearing, and a published finding that the emergency continues to exist. Any person knowingly hunting, fishing, or trapping in such area, except a resident thereof, may, upon conviction, be required to forfeit any gear, vehicle, boat, or aircraft used in connection with such violation, and shall, upon conviction, be subject to a fine of $1,000, or a year in prison, or both.

SEC. 403. In addition to the grants authorized by title I of this Act, the Secretary of the Interior shall issue patents without payment therefor to the surface of any public land located in Alaska which has been used by a native or native village for a period of more than three years prior to the effective date of this Act for the harvest of fish, wildlife, berries, fuel, or other products of the land. Such patents shall be issued——

(1) for five-acre tracts for each subsistence use campsite separated from the campsite of any other applicant;

(2) for forty-acre tracts where the campsites of several applicants are in such proximity to each other as to make it not feasible to patent individual five-acre campsites; or

(3) for larger tracts where individuals can establish, under such rules and regulations as the Commission may prescribe, historic occupancy and use of the larger tracts.

Pending the issuance of a patent for campsites under this subsection the Secretary is authorized to permit the use of such lands by such natives or native groups as campsites.

SEC. 404. Nothing in this Act shall affect the right of natives as citizens to acquire public lands of the United States under the Native Allotment Act of May 17, 1906 (34 Stat. 197), as amended (48 U.S.C. 357), or the provisions of other applicable statutes.

SEC. 405. The Secretary of the Interior is authorized to enter into a contract with the Alaskan Federation of Natives, Anchorage, Alaska, pursuant to which such Federation would undertake, in accordance with such regulations as the Commission may issue, and the provisions of this section, the enrollment of natives and villages entitled to benefits under this Act. Pursuant to any such contract, the Federation shall prepare an initial roll of natives, which shall be used for identifying those natives entitled to be shareholders in the Statewide corporation and regional corporations established pursuant to this Act, and those natives entitled to benefits under this Act, and a roster of native villages eligible for benefits under this Act. Such roll shall include any Alaska Indian, Eskimo, or Aleut of at least one-fourth degree Alaska Indian, Eskimo, or Aleut blood, or a combination thereof, excluding Tsimshian Indian blood, or a person of Native ancestry who is regarded as Native by the Native group in which he claims enrollment and whose father or mother was regarded as a Native by a Native

group. In no case shall adoption of a Native by a person who is not a Native affect his status as a Native and his right to be enrolled under this section.

The enrollment of each regional corporation shall consist of the rolls of all the native villages within the geographic region represented by such corporation. The enrollment of the Statewide corporation shall consist of the total of all of the rolls of the regional corporations. A final roll shall be prepared by the Alaska Federation of Natives as of December 31, 1978, and shall include all natives meeting the requirements for enrollment on such initial roll and who are living on such date. Any roll or roster established pursuant to this section must be approved by the Commission. Prior to final approval of such roll or roster, the Commission shall publish, in such manner as it finds practicable and effective, such roll or roster. Any applicant denied enrollment shall be notified in writing to that effect and such applicant and any other interested person shall be given an opportunity for a hearing by the Commission and judicial review as provided in subsection (i) of section 406 of this Act. With respect to the funds authorized to be paid under title II of this Act, the Secretary shall retain from such funds an amount determined by him sufficient to adjust the distribution authorized under that section if the final roll differs from the initial roll.

SEC. 406. (a) The Alaska Native Commission is hereby established. The Commission shall be in existence for a period of ten years after the effective date of this Act and shall be composed of five members, of whom not less than three shall be Alaska Natives, to be appointed by the President. The Chairman shall be appointed by and with the consent of the Senate. The Federal laws and regulations on conflicts of interest applicable to other Federal employees shall not be applicable to the members of the Commission.

(b) The terms of office of members of the Commission shall be five years, except that a vacancy caused by the death, resignation, or removal of a member prior to the expiration of the term for which he was appointed shall be filled only for the remainder of such unexpired term. A member of the Commission may be removed by the President only for inefficiency, neglect of duty, or malfeasance in office.

(c) The Chairman of the Commission shall receive compensation at a rate equal to that provided for in level V of the Executive Schedule and section 5316 of title 5, United States Code. The other four Commissioners, if not otherwise officers or employees of the United States, shall be entitled to receive compensation at a rate specified at the time of actual service for grade GS–18 in section 5332 of title 5, United States Code, including traveltime, and shall be allowed travel expenses when engaged in the performance of services for the Commission.

(d) The principal office of the Commission shall be in Alaska. Whenever the Commission deems that the convenience of the public or the parties may be promoted, or delay or expense may be minimized, or at the request of any party, it shall hold hearings or conduct other proceedings at any other place mutually agreed to by the Chairman of the Commission and the person involved in the hearing or proceeding. The Commission shall have an official seal which shall be judicially noticed and which shall be preserved in the custody of the secretary of the Commission.

(e) The Commission shall, without regard to the civil service laws, appoint and prescribe the duties of a secretary of the Commission and such legal counsel as it deems necessary. Subject to the civil service laws, the Commission shall appoint such other employees as it deems necessary in exercising its powers and duties. The compensation of all employees appointed by the Commission shall be fixed in accordance with chapter 53 of title 5, United States Code.

(f) For the purpose of carrying out its functions under this Act, three members of the Commission shall constitute a quorum and official action can be taken only on the affirmative vote of at least three members, but a special panel composed of one or more members upon order of the Commission shall conduct any hearing or other proceeding provided for in this Act and submit the transcript of such hearing or proceeding to the entire Commission for its action thereon. Such transcript shall be made available to the parties before any final action of the Commission. An opportunity to appear before the Commission shall be afforded any party prior to any final action affecting such party and the Commission may afford the party an opportunity to submit additional evidence as may be required for a full and true disclosure of the facts. Each official action of the Commission shall be entered of record and its hearings and records thereof shall be open to the public. The Commission is authorized to make such rules and regulations as it deems necessary for the orderly transaction of its proceedings, which shall provide for adequate notice of hearings or other proceedings to all parties. Any member of the

Commission may sign and issue subpenas for the attendance and testimony of witnesses and production of relevant papers, books, and documents and administer oaths. Witnesses summoned before the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. The Commission may order testimony to be taken by deposition in any proceedings before it and in any stage of such proceeding after reasonable notice is first given in writing by the party or his attorney of record which record shall state the name of the witness and the time and place of the taking of his deposition.

(g) Each decision made by the Commission shall show the date on which it was made and shall bear the signatures of the members of the Commission who concur therein and, upon issuance of a decision under this Act, the Commission shall cause a true copy thereof to be sent by certified mail to all parties and their attorneys of record. The Commission shall cause each decision to be entered on its official record together with any written opinion prepared by any members in support of, or dissenting from, any such decision.

(h) The Commission shall have the power to review the budgets of the native villages, Statewide corporation, and regional corporations, and shall perform such other duties as may be imposed by this Act.

(i) Any decision issued by the Commission under section shall be subject to judicial review by the United States district court in Alaska for the division in which the petitioner resides or the land in question is located upon the filing in such court within thirty days from the date of such decision of a petition by the person aggrieved by the decision praying that the action of the Commission be modified or set aside in whole or in part. A copy of the petition shall forthwith be sent by registered or certified mail to any other party to the proceeding and to the Commission, and thereupon the Commission shall certify and file in such court the record upon which such decision complained of was issued. The court shall hear such appeal on the record made before the Commission. The findings of the Commission, if supported by substantial evidence on the record considered as a whole, shall be conclusive. The court may affirm, vacate, or modify any decision or may remand the proceedings to the Commission for such further action as it directs. The judgment of the court shall be subject to review by the United States court of appeals for the circuit in which the petitioner is located and by the Supreme Court of the United States upon certiorari or certification as provided in section 1254, title 28, United States Code.

(j) The Commission shall terminate upon the expiration of ten years following the date of the enactment of this Act.

DECLARATION OF SETTLEMENT

SEC. 407. (a) The provisions of this Act shall be regarded as full and final settlement and extinguishment of any and all claims against the United States based upon aboriginal right, title, use, or occupancy of lands in Alaska by any native or native group or claims arising under the Act of May 17, 1884 (23 Stat. 24), or the Act of June 6, 1900 (31 Stat. 321), including claims pending before the Indian Claims Commission on the effective date of this Act.

(b) There are authorized to be appropriated to the Commission (established by this Act) such sums as may be necessary to pay all reasonable attorneys' fees and expenses actually incurred by any native or native group, as determined by such Commission, in connection with (1) any claims pending before the Indian Claims Commission on the date of enactment of this Act which are dismissed pursuant to this Act, or (2) the procurement of legislation pertaining to the settlement of land claims of the Alaskan Natives.

SEC. 408. There is authorized to be appropriated to the Secretary of the Interior such sums as may be necessary to carry out the functions and responsibilities imposed on him by this Act. Such sums shall remain available until expended.

SEC. 409. Except as specifically provided for in this Act, nothing herein shall be construed as repealing any other provision of Federal law applicable to Alaska. To the extent that there is a conflict between any provision of this Act and any other Federal laws applicable to Alaska, the provisions of this Act shall govern.

U.S. SENATE,
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
Washington, D.C., August 5, 1969.

MEMORANDUM

To: Members, Senate Interior Committee.
From: Minority Counsel.
Subject: Alaskan Native Land Claims.

Attached is an outline of the major provisions which have been stated regarding a settlement of the Alaska Native Land Claims. Both the position of the Federal Field Commission and the Department of the Interior are in the form of a bill, while the position of the Alaska Federation of Natives is in proposed form.

OUTLINE OF ALASKA NATIVE LAND CLAIMS

PROVISION	FEDERAL FIELD COMMISSION (S. 1830)	INTERIOR DEPARTMENT	ALASKA FEDERATION OF NATIVES (Position as of June 20, 1969)
1. Compensation for lands taken.	$100,000,000 (Sec 1 (a) (4))	$500,000,000 (Includes #2 below) (Sec 2 (a) (3))	$500,000,000 plus a perpetual over riding royalty of 2% of the revenue derived from the land. (To be paid as follows: 75% to the villages; 20% to the regional corporation; and 5% to the statewide corporation.)
2. Compensation for rights extinguished by this legislation.	Share in the revenue from all lands over a 10 year period with ceiling of $100,000,000 in any one year, as follows: 1) 10% of all leasable minerals; 2) 45% of all leasable minerals in Naval Petroleum Reserve #4; 3) 10% of all minerals from Outer Continental Shelf bordering Alaska; 4) 5% of all locatable minerals; 5) 10% of all revenues from sale or lease of all surface resources; 6) 10% of all revenues from sale or lease of minerals collected by State of Alaska. (Sec 1 (a) (5)) (Sec. 12)	$500,000,000 (Includes #1 above) (Sec 2 (a) (3))	Included in #1 above.
3. Land conveyance a.) Village	Surface estate only -23,040 acres per village (one township) (Sec. 10 (c) (2))	Surface and locatable minerals up to 46,080 acres per village (two townships) (Sec 10 (b))	(a). Surface estate of 92,160 acres (4 townships) to the villages. There is also a provision for an additional grant to the larger villages. Mineral estate to be granted to the regional corporations. Any revenue obtained from the mineral estate to be distributed as follows: 50% to the regional corporation in whose area the mineral is found, and 50% to be divided among all regional corporations.

PROVISION	FEDERAL FIELD COMMISSION (S. 1830)	INTERIOR DEPARTMENT	ALASKA FEDERATION OF NATIVES (Position as of June 10, 1969)
3. a,) continued			Any village could, and it is anticipated would, convey its surface estate to the regional or state corporation.
b.) Individual residing in village	land he is occupying at time of the survey (Sec. 10 (a))	same Sec. 10 (a))	
c.) Individual residing outside village	160 acres (Sec. 10 (f))	same (Sec. 10 (f))	Natives residing in urban areas to receive patent to the surface of 160 acres.
d.) Miscellaneous	any native or group of natives who have used, for a period of more than 3 years the harvest of products of the land: 1) 5 acres for each subsistence use campsite; 2) 40 acres for campsites in close proximity; or 3) larger tracts where individuals can show historic occupancy. (Sec. 10 (d)) 4) 2560 acres (Maximum) for reindeer husbandry. (Sec 10 (e))	Same, but National Park, Wildlife Refuge and National Forest lands excluded from Native selection. Same Same Limits size to a maximum of 60 acres (Sec 10 (d)) Same (Sec 10 (e))	Natives to receive same grants as provided in S. 1830 for the harvest of products of the land; but maybe located in National Parks, National Wildlife Refuges and National Forests. On all vacant public domain, free perpetual access to products required for subsistence
4. Native qualification	1/4 or more native blood; or individual recognized by a native group as a native (Sec 2 (b))	1/4 or more native blood; or any individual who the commission determines to be a native. (Sec 3 (b))	1/4 or more native blood; or individual recognized by native groups as native.

PROVISION	FEDERAL FIELD COMMISSION (S. 1830)	INTERIOR DEPARTMENT	ALASKA FEDERATION OF NATIVES (Position as of June 10, 1969)
5. Alaska Native Commission	Existence - 10 years Membership - 5, all to be appointed by President, Chairman to be appointed by and with the consent of the Senate. Laws dealing with conflicts of interest are not applicable. (Sec. 4 (a)) Term of office - 5 years (Se. 4 (b)) Compensation - Chairman - Level V Members - G. S. 18 (Sec 4 (c),) 3 members constitute quorum (Sec 4 (f)) No enumeration as in Department's bill	Existence - 20 years Membership - 3, all to be appointed by President; full-time federal employees; all appointed with advise and consent of the Senate. Laws dealing with conflicts of interest are applicable. (Sec 5 (a)) Term of office - 3 years (Sec. 5 (b) same (Sec 5 (c)) 2 members constitue quorum (Sec 5 (f)) Duties and responsibilities of the Commission (Sec 5 (i))	Existence - 10 years Membership - 5, all to be appointed by the President (at least 3 to be natives.) To be independent agency of the U. S.
6. Alaska Native Compensation Fund	Any money authorized to be appropriated under the Act is to be paid to the Fund and revenue sharing funds. (Sec 6)	No provision - compensation paid directly to corporation	No provision - compensation paid directly to corporation

PROVISION	FEDERAL FIELD COMMISSION (S. 1830)	INTERIOR DEPARTMENT	ALASKA FEDERATION OF NATIVES (Position as of June 10, 1969)
7. Alaska Native Development Corporation	Not an agency of U.S. Subject to Act for 10 years (Sec 7 (a))	Same, except to last 20 years. (Sec 7 (a))	A statewide corporation plus up to 12 regional corporations. Desire is to create strong regional corporations. Natives would be the stockholders and owners in both corporations.
	Incorporators- Commission to appoint, one of whom to be Chairman of Commission (Sec 7 (b))	Incorporators- Commission to appoint 5, one of which to be Chairman of the Commission (Sec 7 (b))	
	Fund to pay $1,000,000 to serve as consieration for shares issued by this section (Sec 7 (b))	Secretary to pay $1,000,000 as paid in capital. (Sec 7 (b))	
	Board of Directors- 9 individuals (4 to be appointed by President; 4 to be natives and elected by enrolled natives; Chairman of Commission). (Sec 7 (c))	Board of Directors- 9 individuals (5 appointed by President; 4 elected by stockholders) After 20 years the term of the 5 appointed will expire and stockholders will elect all. (Sec 7 (c))	
	Stock issued but not distributed to the natives for 10 years; held in trust by the Board for each eligible Native. During this period natives to recieve dividends and can exercise voting rights. (Sec 7 (d))	Stock to be issued as soon as native is listed on roll. Native can not alienate the stock. (Sec 7 (d))	
	Only natives living on date of distribution receives stock (10 years) (Sec 7 (e))	Native has full ownership of the stock but cannot sell or alienate (Sec 7 (e))	

PROVISION	FEDERAL FIELD COMMISSION (S. 1830)	INTERIOR DEPARTMENT	ALASKA FEDERATION OF NATIVES (Position as of June 10, 1969)
7. continued	Secretary of Treasury to pay to the corporation annually all the money in the fund (Not to exceed $100,000,000) payments are not taxable (Sec 7 (h)) Corporation's profits not taxable for 10 years (Sec 7 (f))	Secretary shall pay the authorized money to the corporation (Sec 7 (h)) Annual contribution is not taxable. (No mention of profits) (Sec 7 (f))	

1. Field Commission and the Interior Department both provide that a native residing in a village may patent the land he is residing on at the time of the survey. They also both provide that a native residing outside a village may patent 160 acres for his own personal use. Perhaps it would be desirable to provide similar treatment for villagers.

FEDERAL FIELD COMMITTEE,
FOR DEVELOPMENT PLANNING IN ALASKA,
Anchorage, Alaska, July 31, 1969.

Hon. HENRY M. JACKSON,
U.S. Senate,
Senate Office Building,
Washington, D.C.

DEAR SENATOR JACKSON: I am happy to enclose 25 copies of the latest "Estimates of Native Population in Villages, Towns, and Boroughs of Alaska," which has been compiled by the Federal Field Committee and the state Division of Planning and Research. As noted in the foreword, these are the best obtainable estimates and not the result of a census.

If you have need for additional copies, please let us know.

I look forward to working with you on the development problems of Alaska which are appropriate to Field Committee consideration.

Sincerely yours,

GEORGE SHARROCK, *Chairman.*

[Enclosures]

ESTIMATES OF NATIVE POPULATION IN VILLAGES, TOWNS, AND BOROUGHS OF ALASKA, JANUARY 1969

FOREWORD

In the preparation of this publication—which is essentially a directory of Eskimo, Indian, and Aleut villages and other places having Native populations—there are several problems. The first of these, as Professor George Rogers of the University of Alaska has pointed out, is that the matter of who is a "Native" is a highly subjective one and that it varies with the purpose of the determination and who is making the determination. A second problem is that of obtaining reasonably accurate data on population for nearly 200 places without taking a census, and, in obtaining such estimates, avoiding double counting of some persons such as students and transients. A third problem is that there is no uniform definition of what a "village" is—whether it must have, for instance, a minimum number of Native residents or a specified ratio of Natives to non-Natives.

Given these limitations, this directory's total of 55,350 Eskimos, Indians, and Aleuts residing in the state ought not to be viewed as authoritative or as superior to statistically derived totals, but more properly as an estimate that is of reasonable accuracy. Similarly, this directory's ally of 177 villages is correct only as the estimates are correct by size of place, and as the working definitions of a "village" as used here is understood: a place of 25 or more persons, half or more of whom are Natives. As a reminder that the populations here are estimates, all numbers have been rounded.

This directory includes two communities not listed in a similar publication prepared by the Federal Field Committee in 1967 and omits four that were included. The two additions are Igiugig and Ugashik—both of which were reported to be the homes of only a few families in 1967. The four deletions are Canyon Village, Candle, Hamilton, and Medfra—all four of which are now reported to be abandoned or the homes of fewer than five Natives.

One village, Chuathbaluk, that appears to be an addition to the directory is not an addition; Chuathbaluk is the name identified by its village council as the correct name for what has been called Little Russian Mission or Russian Mission, Kuskokwim.

Grateful acknowledgement is made to the Division of Planning and Research, Office of the Governor, State of Alaska, for its assistance in helping the Federal Field Committee obtain data through state agencies; and to the Department of Education; the Branch of Nursing, Division of Public Health, Department of Health and Welfare; the Department of Economic Development; the Alaska State Housing Authority; the Bureau of Indian Affairs, U.S. Department of the Interior; the Division of Indian Health, Public Health Service, U.S. Department of Health and Welfare; the Alaska Village Electric Cooperative, Inc.; and superintendents of borough school districts for providing data on Native populations.

Special thanks go to Prent Gazaway, Area Economist, Bureau of Indian Affairs, U.S. Department of the Interior; Ted Vieira, Chief, Program Analysis Branch, Office of Program Planning and Evaluation, Division of Indian Health, Public Health Service, U.S. Department of Health, Education, and Welfare; and to Steve Fitzgerald, Division of Planning and Research, Office of the Governor,

State of Alaska, for the careful review made of worksheets which were the basis of this directory. Any errors or omissions that occur, however, are my responsibility, not theirs.

ROBERT D. ARNOLD,
Planning Officer,
Federal Field Committee for Development Planning in Alaska.

ALPHABETICAL DIRECTORY

Place	PHSU	CD	BIA	Government	Fiscal year 1968 school	1967–68 school enrollment		Estimated 1969 population	
						Total	Native	Total	Native
Akhiok (See Kodiak Island Borough.)									
Akiachak	B	16	B	IRA	BIA	77	74	325	315
Akiak	B	16	B	IRA	BIA	57	55	175	170
Akutan	P	14	A	Traditional	S	19	19	100	90
Alakanuk	B	24	B	do	BIA	109	107	440	430
Aleknagik	KN	15	A	do	S	55	50	220	175
					P or D	35	29		
Allakaket (including Alatna).	T	18	F	do	S	45	42	170	160
Ambler	K	22	N	do	S	44	44	170	155
Anaktuvuk Pass	T	21	F	4C/traditional	S	35	35	115	110
Angoon	M	4	J	4C/IRA	S	142	138	440	430
Aniak	B	17	B	Tradtional	S	61	58	210	160
Annette	M	2	J		S	88	8	550	30
Anvik	B	17	B	Traditional	S	30	28	95	90
Arctic Village	T	20	F	do	BIA	24	24	80	75
Atka	P	14	A	IRA	S	33	33	100	95
Barrow and vicinity	BA	21	F	4C/traditional	BIA	622	597	2,050	1,800
Barter Island (Kaktovik).	BA	20	F	Traditional	BIA	41	37	160	150
Beaver	T	20	F	do	BIA	30	30	100	90
Belkofsky	P	14	A	do	S	17	17	50	50
Bethel	B	16	B	4C	S	701	608	2,000	1,750
Birch Creek	T	20	F	Traditional	BIA	20	20	45	40
Brevig Mission	K	23	N	do	BIA	39	39	115	110
Bristol Bay Borough	KN	15	A	2C	BSD	261	162	680	365
Naknek				2C	BSD	(1)	(1)	(310)	(200)
South Naknek				2C	BSD	(1)	(1)	(180)	(160)
Other places (including King Salmon).								(190)	(5)
Buckland	K	22	N	4C–IRA	BIA	32	32	90	85
Cantwell	T	18	F	Traditional	S	23	8	75	40
Chalkyitsik	T	20	F	do	BIA	25	25	95	90
Chefornak	B	16	B	do	BIA	50	50	155	145
Chevak	B	24	B	4C	BIA	144	141	420	410
Chignik	KN	14	A	Traditional	S	28	28	100	95
Chignik Lagoon	KN	14	A	do	S	24	24	70	65
Chignik Lake	KN	14	A	do	S	33	33	120	120
Chistochina	A	8	A	do	S	25	13	75	50
Chuathbaluk	B	17	B	do	S	22	22	120	115
Circle	T	20	F	do	S	19	15	60	50
Clarks Point	KN	15	A	do	S	35	35	90	85
Copper Center	A	8	A	do	S	17	7	150	110
Cordova	A	7	A	Home rule	CSD	516	151	1,500	450
Craig	M	1	J	2C–IRA	CSD	89	81	240	190
Crooked Creek	B	17	B	Traditional	S	27	25	85	80
Deering	K	22	N	IRA	BIA	26	26	95	90
Delta Junction	T	19	F	4C	S	330	20	990	50
Dillingham	KN	15	A	2C	CSD	285	255	1,000	850
					P or D	18	2		
Diomede (Inalik)	K	23	N	IRA	BIA	26	26	85	80
Dot Lake	T	19	F	Traditional	S	12	9	45	35
Eagle	T	20	F	1C/traditional	S	19	13	85	65
Eek	B	16	B	Traditional	BIA	55	55	190	185
Egegik	KN	15	A	do	S	59	51	180	150
Eklutna (See Greater Anchorage Borough.)									
Ekuk	KN	15	A	Traditional	S	11	11	40	35
Ekwok	KN	15	A	do	S	24	24	100	95
Elim	K	23	N	IRA	BIA	44	44	145	135
Emmonak (Kwiguk)	B	24	B	4C	BIA	120	118	440	430
English Bay (See Kenai Peninsula Borough.)									
False Pass	P	14	A		S	14	7	60	50
Fortuna Ledge (Marshall).	B	24	B	IRA	S	43	43	170	165
Fort Yukon	T	20	F	4C–IRA	S	160	152	550	480
Galena	T	18	F	Traditional	S	18	6	350	315
					BIA	120	100		

ALPHABETICAL DIRECTORY—Continued

Place	PHSU	CD	BIA	Government	Fiscal year 1968 school	1967–68 school enrollment		Estimated 1969 population	
						Total	Native	Total	Native
Gambell	K	23	N	4C–IRA	BIA	106	102	415	410
Gateway Borough	M			2C	BSD	2,704	664	10,900	1,900
Saxman	M	2	J	2C–IRA	BSD	(1)	(1)	(150)	(150)
Other places (including Ketchikan).					BSD	(1)	(1)	(10,750)	(1,750)
					P or D	31	4		
					P or D	95	8		
Georgetown	B	17	B	Traditional	S	14	14	40	35
Glenallen and vicinity	A	8	A		S	242	52	600	100
					P or D	142	61		
Golovin	K	23	N	Traditional	BIA	27	27	90	85
Goodnews Bay	KN	16	B	do	BIA	55	55	220	210
Grayling	B	17	B	IRA	BIA	46	43	150	135
Greater Anchorage Borough (including Anchorage).				2C	BSD	24,873	1,477	113,522	4,000
					P or D	24	1		
					P or D	39	0		
					P or D	34	5		
					P or D	46	0		
					P or D	262	5		
					P or D	25	0		
					P or D	112	0		
Eklutna	A	10	A	Traditional		(1)	(1)	(35)	(35)
Greater Juneau Borough (including Juneau and Douglas).	M	5	J	1C	BSD	3,635	667	12,900	1,850
					P or D	23	7		
					P or D	125	23		
Greater Sitka Borough (including Sitka, Mt. Edgecumbe).	M	4	J		BSD	1,790	664	7,550	1,900
					BIA	673	673		
					P or D	13	6		
Gulkana (Gukona School)	A	8	A	Traditional	S	40	19	100	95
Haines-Port Chilkoot	M	6	J		BSD	345	87	1,000	300
Holy Cross	B	17	B	Traditional	P or D	70	70	210	205
Hoonah	M	6	J	IC–IRA	CSD	285	255	910	850
Hooper Bay	B	24	B	4C/traditional	BIA	211	206	575	560
Hughes	T	18	F	Traditional	S	29	29	80	75
Huslia	T	18	F	do	S	40	40	165	155
Hydaburg	M	1	J	2C–IRA	CSD	54	53	235	195
Iuigig		15	A		S	11	11	30	30
Iliama (see Newhalen).									
Ivanof Bay	KN	14	A	Traditional	S	13	13	50	45
Kake	M	3	J	1C–IRA	CSD	176	163	150	500
Kaktovik (see Barter Island).									
Kalskag	B	17	B	Traditional	BIA	69	65	180	170
Kaltag	T	18	F	do	BIA	67	67	220	210
Karluk (see Kodiak Island Borough).									
Kasigluk	B	16	B	Traditional	BIA	81	81	265	260
Kenai Peninsula, Borough.	A	12	A	2C	BSD	3,886	422	11,000	1,550
					P or D	20	14		
					P or D	18	0		
English Bay				Traditional	BSD	(16)	(16)	(55)	(50)
Port Graham				do	BSD	(23)	(23)	(120)	(115)
Tyonek				IRA	BSD	(63)	(63)	(220)	(210)
Other places (including Homer, Ninilchik, Kenai, Seldovia, Seward, Soldotna, and Kasilof).									(1,175)
Kenny Lake	A	8	A		S	31	6	100	50
Kiiana	K	22	N	4C	BIA	94	91	265	255
King Cove	P	14	A	2C	CSD	62	59	300	280
Kipnuk	B	16	B	Traditional	BIA	90	90	310	305
Kivalina	K	22	N	IRA	BIA	50	50	175	170
Klawock	M	1	J	IC–IRA	CSD	64	62	215	210
Kukwan	M	6	J	IRA	BIA	23	21	95	90
Kobuk	K	22	N	Traditional	S	19	19	75	70
Kodiak Island Borough	A	13	A	2C	BSD	1,917	529	8,600	1,620
					P or D	97	1		
Akhiok (Alitak)				Traditional	BSD	(53)	(2)	(135)	(130)
Karluk				IRA	BSD	(24)	(2)	(105)	(100)
Kodiak				Home rule	BSD	(1,613)	(2)	(7,565)	(650)
Larsen Bay				Traditional	BSD	(27)	(2)	(105)	(95)
Old Harbor				4C	BSD	(83)	(2)	(260)	(245)
Ouzinkie				4C/traditional	BSD	(43)	(2)	(180)	(175)
Port Lions				4C/traditional	BSD	(74)	(2)	(250)	(225)

ALPHABETICAL DIRECTORY—Continued

Place	PHSU	CD	BIA	Government	Fiscal year 1968 school	1967–68 school enrollment		Estimated 1969 population	
						Total	Native	Total	Native
Koiganek	KN	15	A	Traditional	S	38	35	140	135
Kokhanok Bay	A	15	A	do	S	19	17	85	80
Kongiganak	B	16	B	do	S	[3] 55	[3] 55	175	170
Kotlik	B	24	B	do	BIA	66	65	255	245
Kotzebue	K	22	N	4C–IRA	BIA	562	520	1,875	1,750
Koyuk	K	23	N	IRA	BIA	44	44	160	155
Koyukuk	T	18	F	Traditional	S	44	44	155	150
Kwethluk	B	16	B	IRA	BIA	118	117	425	420
					P or D	37	36		
Kwigillingok	B	16	B	IRA	BIA	94	93	185	180
Larsen Bay (See Kodiak Island Borough.).									
Levelock	KN	15	A	Traditional	S	20	20	85	80
Lime Village (Hungry)	B	17	B					30	30
Lower Kalskag	B	17	B	Traditional	BIA	53	51	180	170
McGrath	A	17	B	do	S	89	48	260	135
Manley Hot Springs	T	18	F	do	S	18	16	50	35
Manokotak	KN	15	A	do	S	58	55	200	195
Marshall (See Fortuna Ledge.).									
Matanuska-Susitna Borough (including Palmer).	A	9	A	2C	BSD	1,611	93	6,210	270
					P or D	30	28		
					P or D	13	0		
					(YAA)	26	10		
Mekoryuk	B	16	B	IRA	BIA	98	98	290	280
Mentasta Lake	T	8	A		S	17	13	75	65
Metlakatla	M	2	J	Federal charter.	S	359	342	1,000	970
Meshik (See Port Heiden.)									
Minto	T	18	F	IRA	S	32	32	185	170
Mountain Village	B	24	B	4C/traditional	BIA	111	104	390	375
Naknek (See Bristol Bay Borough.)									
Napkiak	B	16	B	IRA	BIA	68	68	270	265
Napaskiak	B	16	B	Traditional	BIA	54	52	205	195
Nelson Lagoon	KN	14	A	do	S	[3] 10	[3] 10	50	45
Newhalen (including Iliamna).	A	15	A	do	S	33	30	130	105
Nenana	T	18	F	1C/Traditional	CSD	214	93	550	270
New Stuyahok	KN	15	A	Traditional	S	60	60	210	205
Newtok	B	16	B	do	BIA	49	48	125	120
Nightmute	B	16	B	do	BIA	43	43	120	115
Nikolai	A	17	B	do	S	27	26	100	85
Nikolski	P	14	A	IRA	S	10	10	65	60
Noatak	K	22	N	IRA	BIA	81	79	275	265
Nome	K	23	N	1C–IRA	CSD	748	585	2,800	1,950
					S	154	154		
Nondalton	A	15	A	Traditional	S	80	78	240	235
Noorvik	K	22	N	4C–IRA	BIA	140	138	455	450
Northeast Cape	K	23	N	Traditional	BIA	[3] 13	[3] 13	50	50
North Star Borough (including Fairbanks).	T	19	F		BSD	6,790	648	46,000	2,180
					P or D	19	3		
					P or D	251	1		
					P or D	116	1		
Northway	T	19	F	Traditional	S	81	46	245	180
Nulato	T	18	F	4C/Traditional	P or D	108	108	325	315
Nunapitchuk	B	16	B	IRA	BIA	131	131	400	390
Nunivak Island (See Mekoryuk.)									
Ohgsenakale (Portage Creek).	KN	15	A	Traditional	S	19	19	80	75
Old Harbor (See Kodiak Island Borough.)									
Oscarville	B	16	B	Traditional	BIA	20	19	60	55
Ouzinkie (See Kodiak Island Borough.)									
Paulof Harbor	P	14	A		S	15	15	50	50
Pedro Bay	A	15	A	Traditional	S	14	11	70	65
Perryville	KN	14	A	IRA	S	15	15	90	85
Petersburg	M	3	J	HR/IRA	CSD	657	136	1,950	400
Pilot Point	KN	15	A	Traditional	S	24	20	60	55
Pilot Station	B	24	B	do	BIA	84	84	285	280
Pitkas Point	B	24	B	do	S	9	9	70	70
Platinum	KN	16	B	do	S	18	16	60	55
Point Hope	K	22	N	4C–IRA	BIA	111	111	340	330

ALPHABETICAL DIRECTORY—Continued

Place	PHSU	CD	BIA	Government	Fiscal year 1968 school	1967–68 school enrollment		Estimated 1969 population	
						Total	Native	Total	Native
Port Chilkoot (See Haines-Port Chilkoot.)									
Port Graham (See Kenai Peninsula Borough.)									
Port Lions (See Kodiak Island Borough.)									
Port Heiden (Meshik)	KN	15	A	Traditional	S	20	17	70	65
Portage Creek (See Ohgsenakale.)									
Pribilof Islands (See St. George and St. Paul.)									
Quinhagak	B	16	B	IRA	BIA	70	67	320	315
Rampart	T	18	F	Traditional	S	11	11	40	35
Red Devil	T	17	B					30	25
Ruby	T	18	F	Traditional	S	37	35	135	105
Russian Mission, Kuskokwim (See Chuathbaluk.)									
Russian Mission, Yukon	B	24	B	do	S	29	26	135	130
St. George Island	P	14	A	do	S	54	54	175	170
St. Lawrence Island (See Gambell, Northeast Cape, Savoonga.)									
St. Mary's	B	24	B	2C–IRA	S	12	12	335	315
					P or D	238	238		
St. Michael	K	23	N	IRA	BIA	66	66	215	200
St. Paul Island	P	14	A	1C–IRA	S	108	105	435	410
Sand Point	P	14	A	4C	S	72	67	375	310
Savoonga	K	23	N	IRA	BIA	114	114	400	395
Saxman (See Gateway Borough.)									
Scammon Bay	B	24	B	4C–IRA	BIA	53	53	185	180
Selawik	K	22	N	4C–IRA	BIA	140	138	440	430
Shageluk	B	17	B	IRA	BIA	50	48	160	155
Shaktoolik	K	23	N	IRA	BIA	49	49	150	150
Sheldon's Point	B	24	B	Traditional	BIA	39	39	145	140
Shishmaref	K	23	N	IRA	BIA	76	74	240	235
Shungnak	K	22	N	4C–IRA	BIA	56	54	165	160
Skagway	M	6	J	1C	CSD	166	20	700	75
Sleetmute	B	17	B	Traditional	BIA	28	28	145	140
South Naknek (See Bristol Bay Borough.)									
Squaw Harbor	P	14	A		S	11	10	75	25
Stebbins	K	23	N	IRA	BIA	59	55	215	210
Stevens Village	T	20	F	IRA	BIA	25	23	85	80
Stony River	B	17	B	Traditional	S	17	15	110	95
Tanacross	T	19	F	IRA	S	9	9	95	90
Tanana	T	18	F	4C–IRA	S	147	128	450	350
Tatitlek	A	8	A	IRA	S	31	31	75	70
Teller	K	23	N	4C	S	69	54	240	215
Tetlin	T	19	F	IRA	S	26	26	105	100
Togiak	KN	15	A	Traditional	S	131	131	400	395
Tok	T	19	F		S	165	51	510	120
Toksook Bay	B	16	B	Traditional	BIA	74	74	250	245
Tuluksak	B	16	B	IRA	BIA	57	57	180	175
Tuntutuliak	B	16	B	Traditional	BIA	49	47	190	185
Tununak	B	16	B	IRA	BIA	76	76	260	255
Twin Hills	KN	15	A	Traditional	S	15	15	60	60
Tyonek (See Kenai Peninsula Borough.)									
Ugashik	P	14	A	Traditional				25	25
Unalakleet	K	23	N	IAR	BIA	206	193	610	500
					P or D	64	58		
Unalaska	P	14	A	1C	CSD	77	66	350	225
Valdez	A	8	A	Home rule	CSD	194	32	800	115
Venetie	T	20	F	IRA	BIA	38	38	100	95
Wainwright	BA	21	F	4C/traditional	BIA	91	91	290	285
Wales	K	23	N	4C–IRA	BIA	47	45	125	120
White Mountain	K	23	N	IRA	BIA	51	50	115	110
Wrangell	M	3	J	HR/IRA	CSD	622	256	1,850	625
					BIA	232	232		
					P or D	7	0		
					P or D	5	0		
Yakutat	M	6	J	2C	CSD	97	55	40	275
Military bases						9,737	49		
Chilocco, Okla					BIA	261	261		
Chemawa, Ore					BIA	751	751		

[1] Included above.
[2] Not available.
[3] 1969 1st quarter.

	Government	Fiscal year 1968 school	1967–68 school enrollment		Estimated population, 1969	
			Total	Native	Total	Native
1. Prince of Wales				196		595
Craig	2C–IRA	CSD	89	81	240	190
Hydaburg	2C–IRA	CSD	54	53	235	195
Klawock	1C–IRA	CSD	64	62	215	210
2. Ketchikan				1,026		2,900
Annette		S	88	8	550	30
Gateway Borough	2C	BSD	2,704	664	10,900	1,900
Saxman	2C-IRA	BSD	(1)	(1)	(150)	(150)
Other places (including Ketchikan).		BSD	(1)	(1)	(10,750)	(1,750)
		P or D	31	4		
		P or D	95	8		
Metlakatla	Federal charter	S	359	342	1,000	970
3. Wrangell-Petersburg				787		1,525
Kake	1C–IRA	CSD	176	163	550	500
Petersburg	HR-IRA	CSD	657	136	1,950	400
Wrangell	HR–IRA	CSD	622	256	1,850	625
		BIA	232	232		
		P or D	7	0		
		P or D	5	0		
4. Sitka				1,481		2,330
Angoon	4C–IRA	S	142	138	440	430
Greater Sitka Borough (including Sitka, Mount Edgecumbe).	2C	BSD	1,790	664	7,550	1,900
		BIA	673	673		
		P or D	13	6		
5. Juneau				697		1,850
Greater Juneau Borough (including Juneau, Douglas).	1C	BSD	3,635	667	12,900	1,850
		P or D	23	7		
		P or D	125	23		
6. Lynn Canal–Icy Straits				438		1,590
Haines-Port Chilkoot		BSD	345	87	1,000	300
Hoonah	1C–IRA	CSD	285	255	910	850
Klukwan	IRA	BIA	23	21	95	90
Skagway	1C	CSD	166	20	700	75
Yakutat	2C	CSD	97	55	400	275
7. Cordova-McCarthy				151		450
Cordova	HR	CSD	516	151	1,500	450
8. Valdez-Chitina-Whittier				234		655
Chistochina	Traditional	S	25	13	75	50
Copper Center	do	S	17	7	150	110
Glenallen and vicinity		S	242	52	600	100
		P or D	142	61		
Gulkana (Gakona School)	Traditional	S	40	19	100	95
Kenny Lake		S	31	6	100	50
Mentasta Lake		S	17	13	75	65
Tatitlek	IRA	S	31	31	75	70
Valdez	HR	CSD	194	32	800	115
9. Palmer-Wasilla-Talkeetna				131		270
Matanuska-Susitna Borough (including Palmer).	2C	BSD	1,611	93	6,210	270
		P or D	30	28		
		P or D	13	0		
		S(YAA)	26	10		
10. Anchorage				1,488		4,000
Greater Anchorage Area Borough	2C	BSD	24,873	1,477	113,522	4,000
		P or D	24	1		
		P or D	39	0		
		P or D	34	5		
		P or D	46	0		
		P or D	262	5		
		P or D	25	0		
		P or D	112	0		
Eklutna	Traditional	(1)	(1)		(35)	(35)
11/12. Seward/Kenai-Cook Inlet				436		1,550
Kenai Peninsula Borough	2C	BSD	3,886	422	11,000	1,550
		P or D	,20	14		
		P or D	18	0		
English Bay			(16)	(16)	(55)	(50)
Port Graham			(23)	(23)	(120)	(115)
Tyonek			(63)	(63)	(220)	(210)
Other places (including Homer, Ninilchik, Kenai, Seldovia, Seward, and Soldotna).						(1,175)

CENSUS DIRECTORY—Continued

	Government	Fiscal year 1968 school	1967–68 school enrollment		Estimated population, 1969	
			Total	Native	Total	Native
13. Kodiak				530		1,620
Kodiak Island Borough	2C	BSD	1,917	529	8,600	1,620
		P or D	97	1		
Akhiok (Alitak)	Traditional	BSD	(53)	(2)	(135)	(130)
Karluk	IRA	BSD	(24)	(2)	(105)	(100)
Kodiak	HR	BSD	(1,613)	(2)	(7,565)	(650)
Larsen Bay	Traditional	BSD	(27)	(2)	(105)	(95)
Old Harbor	4C	BSD	(83)	(2)	(260)	(245)
Ouzinkie	4C-traditional	BSD	(43)	(2)	(180)	(175)
Port Lions	do	BSD	(74)	(2)	(250)	(225)
14. Aleutian Islands				565		2,295
Akutan	Traditional	S	19	19	100	90
Atka	IRA	S	33	33	100	95
Belkofsky	Traditional	S	17	17	50	50
Chignik	do	S	28	28	100	95
Chignik Lagoon	do	S	24	24	70	65
Chignik Lake	do	S	33	33	120	120
False Pass		S	14	7	60	50
Ivanof Bay	do	S	13	13	50	45
King Cove	2C	CDS	62	59	300	280
Nelson Lagoon	Traditional	S	[3] 10	[3] 10	50	45
Nikolski	IRA	S	10	10	65	60
Paulof Harbor		S	15	15	50	50
Perryville	IRA	S	15	15	90	85
St. George Island	Traditional	S	54	54	175	170
St. Paul Island	1C–IRA	S	108	105	435	410
Sand Point	4C	S	72	67	375	310
Squaw Harbor		S	11	10	75	25
Ugashik	Traditional				25	25
Unalaska	1C	CSD	77	66	350	225
15. Bristol Bay				1,138		3,535
Aleknagik	Traditional	S	55	50	220	175
		P or D	35	29		
Bristol Bay Borough	2C	BSD	261	162	680	365
Naknek	2C	BSD	(1)	(1)	(310)	(200)
South Naknek	2C	BSD	(1)	(1)	(180)	(160)
Other places (including King Salmon).					(190)	(5)
Clark's Point	Traditional	S	35	35	90	85
Dillingham	2C	CSD	285	255	1,000	850
		P or D	18	2		
Egegik	Traditional	S	59	51	180	150
Ekuk	do	S	11	11	40	35
Ekwok	do	S	24	24	100	95
Igiugig		S	11	11	30	30
Kol ganek	Traditional	S	38	35	140	135
Kokhanok Bay	do	S	19	17	85	80
Levelock	do	S	20	20	85	80
Manokotak	do	S	58	55	200	195
Newhalen (includes Iliamna)	do	S	22	30	130	105
New Stuyakok	do	S	60	60	210	205
Nondalton	do	S	80	78	240	235
Ohgsenakale (Portage Creek)	do	S	19	19	80	75
Pedro Bay	do	S	14	11	70	65
Pilot Point	do	S	24	20	60	55
Port Heiden (Meshik)	do	S	20	17	70	65
Togiak	do	S	131	131	400	395
Twin Hills	do	S	15	15	60	60
16. BETHEL				2,165		6,760
Akiachak	IRA	BIA	77	74	325	315
Akiak	IRA	BIA	57	55	175	170
Bethel	4C	S	701	608	2,000	1,750
Chefornak	Traditional	BIA	50	50	155	145
Eek	do	BIA	55	55	190	185
Goodnews Bay	do	BIA	55	55	220	210
Kasigluk	do	BIA	81	81	265	260
Kipnuk	do	BIA	90	90	310	305
Kongiganak	do	S	[3] 55	[3] 55	175	170
Kwethluk	IRA	BIA	118	117	425	420
		P or D	37	36		
Kwigillingok	IRA	BIA	94	93	185	180
Mekoryuk	IRA	BIA	98	98	290	280
Napakiak	IRA	BIA	68	68	270	265
Napaskiak	Traditional	BIA	54	52	205	195
Newtok	do	BIA	49	48	125	120
Nightmute	do	BIA	43	43	120	115
Nunapitchuk	IRA	BIA	131	131	400	390
Oscarville	Traditional	BIA	20	19	60	55
Platinum	do	S	18	16	60	55
Quinhagak	IRA	BIA	70	67	320	315
Toksook Bay	Traditional	BIA	74	74	250	245
Tuluksak	IRA	BIA	57	57	180	175
Tuntutuliak	Traditional	BIA	49	47	190	185
Tununak	IRA	BIA	76	76	260	255

CENSUS DIRECTORY—Continued

	Government	Fiscal year 1968 school	1967–68 school enrollment		Estimated population, 1969	
			Total	Native	Total	Native
17. Kuskokwim				541		1,825
Aniak	Traditional	S	61	58	210	160
Anvik	do	S	30	28	95	90
Chuathbaluk (Russian Mission, Kuskokwim).	do	S	22	22	120	115
Crooked Creek	do	S	27	25	85	80
Georgetown	do	S	14	14	40	35
Grayling	IRA	BIA	46	43	150	135
Holy Cross	Traditional	P or D	70	70	210	205
Kalskag	do	BIA	69	65	180	170
Lime Village (Hungry)					30	30
Lower Kalskag	Traditional	BIA	53	51	180	170
McGrath	do	S	89	48	260	135
Nikolai	do	S	27	26	100	85
Red Devil					30	25
Shageluk	IRA	BIA	50	48	160	155
Sleetmute	Traditional	BIA	28	28	145	140
Stony River	do	S	17	15	110	95
18. Yukon-Koyukuk				759		2,385
Allakaket (including Alatna)	Traditional	S	45	42	170	160
Cantwell	do	S	23	8	75	40
Galena	do	S	18	6	350	315
		BIA	120	100		
Hughes	do	S	29	29	80	75
Huslia	do	S	40	40	165	155
Kaltag	do	BIA	67	67	220	210
Koyukuk	do	S	44	44	155	150
Manley Hot Springs	do	S	18	16	50	35
Minto	IRA	S	32	32	185	170
Nenana	1C-traditional	CSD	214	93	550	270
Nulato	4C-traditional	P or D	108	108	325	315
Rampart	Traditional	S	11	11	40	35
Ruby	do	S	37	35	135	105
Tanana	4C-IRA	S	147	128	450	350
19. Fairbanks				814		2,755
Delta Junction	4C	S	330	20	990	50
Dot Lake	Traditional	S	12	9	45	35
North Star Borough (including Fairbanks).	2C	BSD	6,790	648	46,000	2,180
		P or D	19	3		
		P or D	251	1		
		P or D	116	1		
Northway	Traditional	S	81	46	245	180
Tanacross	IRA	S	9	9	95	90
Tetlin	IRA	S	26	26	105	100
Tok		S	165	51	510	120
20. Upper Yukon				377		1,215
Arctic Village	Traditional	BIA	24	24	80	77
Barter Island	do	BIA	41	37	160	150
Beaver	do	BIA	30	30	100	90
Birch Creek	do	BIA	20	20	45	40
Chalkyitsik	do	BIA	25	25	95	90
Circle	do	S	19	15	60	50
Eagle	1C-traditional	S	19	13	85	65
Fort Yukon	4C-IRA	S	160	152	550	480
Stevens Village	IRA	BIA	25	23	85	80
Venetie	IRA	BIA	38	38	100	95
21. Barrow				723		2,195
Anaktuvuk Pass	4C-Traditional	S	35	35	115	110
Barrow and vicinity	do	BIA	622	597	2,050	1,800
Wainwright	do	BIA	91	91	290	285
22. Kobuk				1,302		4,210
Ambler	Traditional	S	44	44	170	155
Buckland	4C-IRA	BIA	32	32	90	85
Deering	IRA	BIA	26	26	95	90
Kiana	4C	BIA	94	91	265	255
Kivalina	IRA	BIA	50	50	175	170
Kobuk	Traditional	S	19	19	75	70
Kotzebue	4C-IRA	BIA	562	520	1,875	1,750
Noatak	IRA	BIA	81	79	275	265
Noorvik	4C-IRA	BIA	140	138	455	450
Point Hope	4C-IRA	BIA	111	111	340	330
Selawik	4C-IRA	BIA	140	138	440	430
Shungnak	4C-IRA	BIA	56	54	165	160

CENSUS DIRECTORY—Continued

	Government	Fiscal year 1968 school	1967–68 school enrollment		Estimated population, 1969	
			Total	Native	Total	Native
23. Nome				1,792		5,110
Brevig Mission	Traditional	BIA	39	39	115	110
Diomede (Inalik)	IRA	BIA	26	26	85	80
Elim	IRA	BIA	44	44	145	135
Gambell	4C–IRA	BIA	106	102	415	410
Golovin	Traditional	BIA	27	27	90	85
Koyuk	IRA	BIA	44	44	160	155
Nome	1C–IRA	CSD	748	585	2,800	1,950
		S	154	154		
Northeast Cape	Traditional	BIA	[3] 13	[3] 13	50	50
St. Michael	IRA	BIA	66	66	215	200
Savoonga	IRA	BIA	114	114	400	395
Shaktoolik	IRA	BIA	49	49	150	150
Shishmaref	IRA	BIA	76	74	240	235
Stebbins	IRA	BIA	59	55	215	210
Teller	4C	S	69	54	240	215
Unalakleet	IRA	BIA	206	193	610	500
		P or D	64	58		
Wales	4C–IRA	BIA	47	45	125	120
White Mountain	IRA	BIA	51	50	115	110
24. Wade Hampton				1,245		3,730
Alakanuk	Traditional	BIA	109	107	440	430
Chevak	4C	BIA	144	141	420	410
Emmonak (Kwiguk)	4C	BIA	120	118	440	430
Fortuna Ledge (Marshall)	IRA	S	43	43	170	165
Hooper Bay	4C-traditional	BIA	211	206	575	560
Kotlik	Traditional	BIA	66	65	255	245
Mountain Village	4C-traditional	BIA	111	104	390	375
Pilot Station	Traditional	BIA	84	84	285	280
Pitkas Point	do	S	9	9	70	70
Russian Mission, Yukon	do	S	29	26	135	130
St. Mary's	2C–IRA	S	12	12	335	315
		P or D	238	238		
Scammon Bay	4C–IRA	BIA	53	53	185	180
Sheldon's Point	Traditional	BIA	39	39	145	140

[1] Included above.
[2] Not available
[3] 1st quarter 1969.

APPENDICES

I. ABBREVIATIONS

PHSU—Public Health Service Unit

A	Anchorage Service Unit
BA	Barrow Service Unit
B	Bethel Service Unit
KN	Kanakanak Service Unit
K	Kotzebue Service Unit
M	Mt. Edgecumbe Service Unit
P	Pribilof Service Unit
T	Tanana Service Unit

CD—Census District (Old election districts)

1	Prince of Wales*
2	Ketchikan*
3	Wrangell-Petersburg*
4	Sitka*
5	Juneau*
6	Lynn Canal-Icy Straits*
7	Cordova-McCarthy*
8	Valdez-Chitina-Whittier*
9	Palmer-Wasilla-Talkeetna*
10	Anchorage*
11	Seward*
12	Kenai-Cook Inlet*
13	Kodiak*
14	Aleutian Islands
15	Bristol Bay
16	Bethel
17	Kuskokwim
18	Yukon-Koyukuk
19	Fairbanks
20	Upper Yukon
21	Barrow
22	Kobuk
23	Nome
24	Wade Hampton

BIA—Bureau of Indian Affairs

A	Anchorage Area Office
B	Bethel Area Office
F	Fairbanks Area Office
J	Southeastern Area Office
N	Nome Area Office

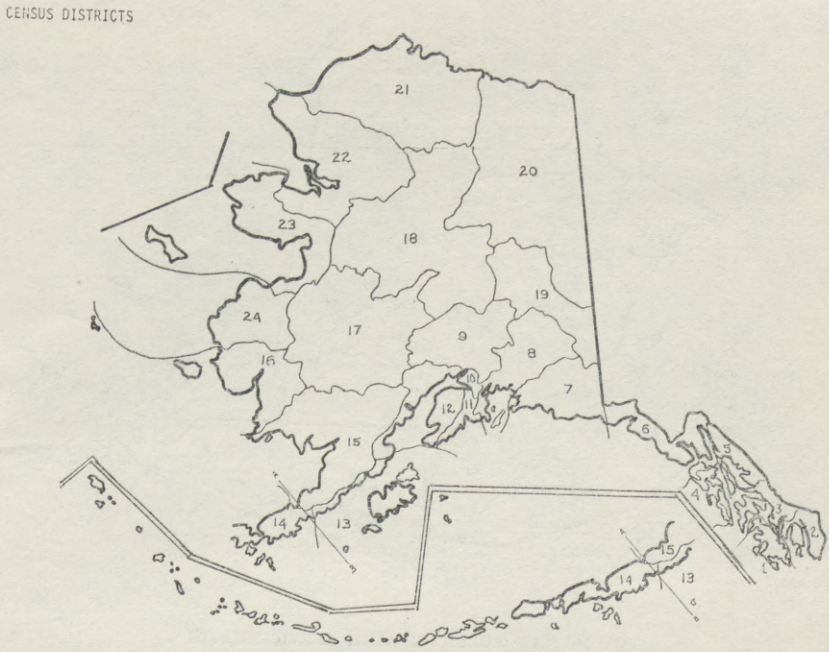
*Italics used in the Directory indicate a larger percentage of population as non-Native.

Government

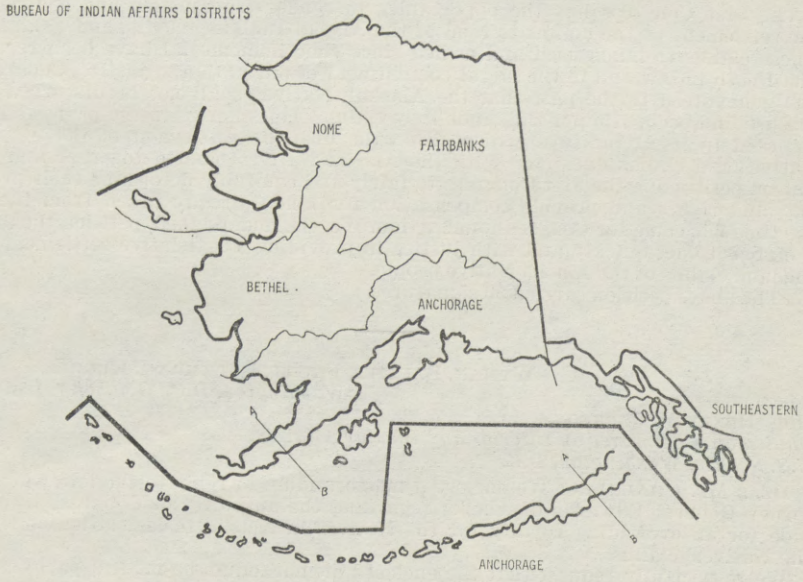
Trad.	Traditional Council
IRA	Council established under the Indian Reorganization Act
1C	First class city
2C	Second class city
4C	Fourth class city
HR	Home Rule

Kind of School

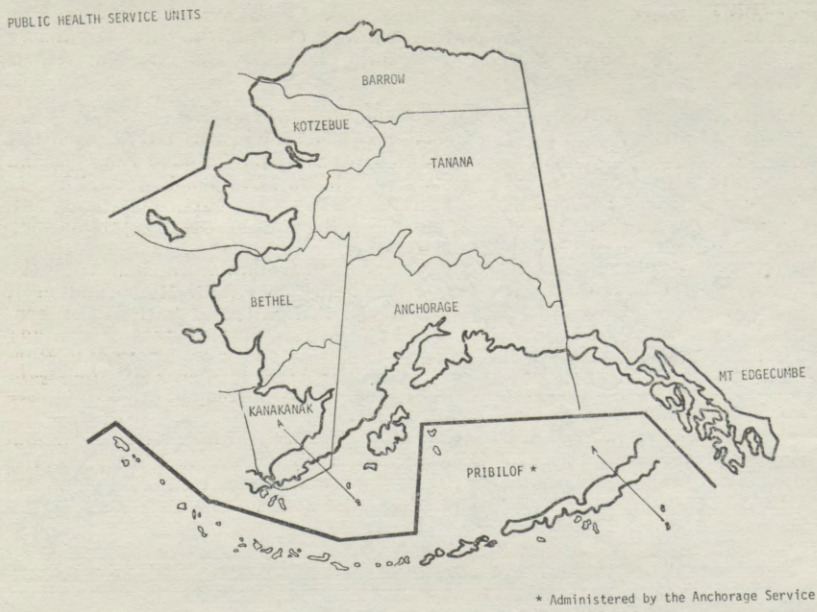
BIA	Bureau of Indian Affairs
BSD	Borough school district
CSD	City school district
P or D	Private or denominational
S	State operated



II. MAP OF CENSUS DISTRICTS



III. MAP OF BUREAU OF INDIAN AFFAIRS DISTRICTS



IV. MAP OF PUBLIC HEALTH SERVICE UNITS

PETITION

The 91st Congress has the opportunity to render true justice and equity in the settlement of the claims to land of the Alaska Indians, Aleuts, and Eskimos. These claims to lands used and owned since time immemorial have been recognized both in law and in the moral commitment of our nation to justice. Congress has guaranteed in the past that the Alaskan Natives shall not be disturbed in the use and occupation of the lands they claim. The Congress in the past further reserved to itself for future disposition the ultimate settlement of the Alaska Native land claims question. With the Alaska Natives banded together and in unison petitioning the 91st Congress to fairly and equitably determine their present land rights and provide compensation for lands already taken from them, the time has come for Congressional action. We, the undersigned, petition the 91st Congress to act quickly and with justice in providing a legislative settlement to the land claims of the Alaska Native people.

(The above petition carried 50 signatures.)

WYMAN, BAUTZER, FINELL, ROTHMAN & KUCHEL,
Washington, D.C., October 7, 1969.

Hon. HENRY M. JACKSON,
Chairman, Committee on Interior and Insular Affairs,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: We enclose a memorandum in reply to the letter of Attorney General Edwards of Alaska regarding the authority of Congress to provide for an overriding royalty for the Natives in Alaska in legislation settling the Natives' claims.

We respectfully request that the enclosed memorandum be made a part of the record of the hearings.

Sincerely yours,

THOMAS H. KUCHEL
(For Wyman, Bautzer, Finell, Rothman & Kuchel).

Reply Memorandum on Behalf of the Alaska Federation of Natives to Opinion of the Attorney General of Alaska Concerning the Authority of Congress To Provide for an Overriding Royalty for the Natives of Alaska

In identical letters of September 5 and 8 (hereinafter referred to as the "State Brief"), to Chairman Aspinall and Chairman Jackson, respectively, Attorney General Edwards of Alaska formally states his reasons for believing that an overriding royalty would conflict with the Alaska Statehood Act (Pub. L. 85–508, July 7, 1958, 72 Stat. 339, 48 U.S.C.A. (1968 pocket part, p. 5), and that, for constitutional reasons, it is beyond the authority of Congress to establish such a royalty in legislation settling the Native claims.

Our views were set forth in detail in the memorandum we filed with the Committee on September 11 (hereinafter referred to as "AFN Memorandum"), entitled "Memorandum on Behalf of The Alaska Federation of Natives Concerning the Powers Reserved by Congress (and Disclaimed by the State of Alaska) under Section 4 of the Alaska Statehood Act to Provide for an Overriding Royalty for, and Other Land Rights in, the Natives of Alaska." The AFN Memorandum demonstrates clearly that by section 4 of the Statehood Act the Congress has retained full power, authority and jurisdiction:

1. To provide for the reservation and transfer to the Natives of public lands in the State of Alaska, whether or not such lands have been selected by the State under section 6 of the Statehood Act and whether or not the State's selections have been tentatively approved by the Secretary of the Interior;

2. To reserve a 2-percent overriding royalty from revenues received from the disposition of surface and mineral resources of public lands in the State of Alaska whether or not such lands have been selected by the State under section 6 of the Statehood Act, and whether or not the State's selections have been tentatively approved by the Secretary of the Interior;

3. To reserve an overriding royalty in favor of the Natives of Alaska from revenues received from the disposition of surface and mineral resources of lands of the United States retained in Federal ownership.

At the outset, we note that much of the argument in the State Brief is devoted to issues that are not involved.

The Alaska Federation of Natives does not suggest that either the State of Alaska or the United States raise its royalty rates. Under the AFN proposal the Natives' overriding royalty would come out of the proceeds received by the lessor, be it the United States or the State of Alaska, without affecting the amount of the royalties, bonuses, rentals or other payments required of the lessees. See AFN memorandum, page 1, footnote 1.

The discussion of the meaning of the term "overriding royalty" (State Brief, pp. 2–3) and the argument that Congress lacks authority to require either the State of Alaska or the United States to increase royalties under existing leases (State Brief, pp. 6, 8–9) may, therefore, be put aside as not relevant to any issue before the Congress.[1]

Likewise unrelated to the real issue are the abstract legal propositions found at pages 4–8 of the State Brief.

We do not quarrel with the abstract proposition that Congress lacks authority to amend State legislation and State contracts on matters within the province of State law. Nor do we dispute the abstract argument that States have authority to regulate internal matters if Congress has not been granted such authority by the Constitution. And, of course, no one quarrels with the general

[1] It is, therefore, not necessary to demonstrate, although we are prepared to do so, that the contentions at pages 8 and 9 of the State Brief are erroneous as a matter of law. These are to the effect that if Congress were to provide a higher royalty for federal oil leases in Alaska than for leases of federal lands elsewhere in the United States, such legislation would violate the equal footing doctrine and the equal protection and due process clauses of the Constitution of the United States.

However, we cannot refrain, in passing, from noting the devastating effect the argument, if valid, would have upon the State of Alaska. If indeed Congress were powerless to require higher royalties on federal leases in Alaska than elsewhere because that would discriminate against Alaska as compared with her sister states, would it not follow that section 28 of the Statehood Act is itsef unconstitutional on the same ground because it gives Alaska 90 percent of the Federal Government's leasing revenues while all other states in which federal lands are leased must be content with a mere 37½ percent? And to carry the point a step further, would not section 6(b) of the Statehood Act, granting the state selection rights to 102,000,000 acres of land, also go down the drain because Congress did not choose to bestow so generous a bounty on any other state?

statement that royalty legislation as to State leases is a matter within the State's jurisdiction, whether the royalty be viewed as a conservation measure or as an exercise of State taxing authority.

These points simply have no relevancy here. Therefore, the first 10 pages of the State Brief do not come to grips with the real issue. The only legal issue presented is the meaning of section 4 of the Statehood Act. For if the Congress has preserved the *status quo* with respect to the Natives' aboriginal claims, if indeed lands which the Natives claim by reason of aboriginal use and occupancy "shall be and remain under the absolute jurisdiction and control of the United States until disposed of under its authority, except to such extent as the Congress has prescribed or may hereafter prescribe"—as section 4 mandates in so many words—then Congress may provide for an overriding royalty for the Natives. In so doing it would invade no rights of the State of Alaska for the simple reason that Congress would be legislating on a matter over which Alaska has no jurisdiction. If Congress now chooses, as we think it should, to exercise powers over Federal lands in Alaska which it expressly reserved in the Statehood Act, it can hardly be said to be acting in conflict with that Act. This is all that is involved and when examined in true perspective the Attorney General's thesis vanishes.

Three fundamental misconceptions pervade the Attorney General's discussion of the Statehood Act, found at pages 10–16 of his letter.

First, there is the erroneous assumption that a royalty as proposed by AFN would be in direct conflict with the Statehood Act.

Second, there is the unsupported and unsupportable assertion that the Statehood Act constitutes, in its entirety, a compact in the nature of a contract between the United States and the State which is immutable without action by both.

Third is the erroneous contention that the disclaimer clause of section 4 of the Statehood Act preserves only whatever rights the Alaska Natives might otherwise have to monetary compensation from the United States—a remedy which is nonexistent in the absence of additional legislation, legislation which would not affect Alaska and which Congress would be as free to enact were section 4 to have been omitted from the Statehood Act as it is with section 4 included.

Each of these propositions was examined in detail in the AFN Memorandum and was shown to be erroneous. Without replowing that ground, it is appropriate to make some limited comments regarding pages 10–16 of the State Brief lest the real issue be submerged by the iteration and reiteration of premises that have no relevancy.

To begin with, the second paragraph on page 10 refers to the "compact provisions" of the Statehood Act but immediately slips back into the erroneous generalization that all of the Statehood Act is a compact or contract. The Statehood Act itself is quite specific as to what the "compact" between Alaska and the United States comprehends. It is, as section 4 states, the disclaimer by the State and its people of any right or title to the lands which may be claimed by the Natives. And even if it be assumed, contrary to the fact, that all of the Statehood Act is a compact or contract it would avail Alaska nothing because by section 4 the United States retained its options. A party to a contract who exercises a unilateral power retained or conferred therein is not estopped because the other party refuses to give an unnecessary assent.

In respect of the arguments designated "first, Second, Third, Fourth and Fifth" at pages 10–15 of the State Brief, we make the comments which follow:

First. Alaska can take no comfort from *Beecher* v. *Wetherby*, 95 U.S. (5 Otto) 517, 24 L.ed. 440 (1877). The case is in fact authority for the principle that grants of land to States are not excepted from the general rule that Indian rights in granted lands continue until the Indian title is extinguished by the United States. The State of Wisconsin, said the court in *Beecher*, took the granted lands subject to the claims of the Indians. Until the United States extinguished the Indian's title, the State held only the bare legal title; not the beneficial ownership. Moreover, unlike the Alaska Statehood Act, the Wisconsin Admission Act (9 Stat. 233) contains neither a disclaimer clause nor an express reservation by Congress of its continuing authority over Indian lands. *Beecher* is discussed in detail in the AFN Memorandum, pp. 10–11.

Second. None of the cases cited are in point. No action by the State of Alaska is necessary. AFN asks only that the Congress act within the scope of the authority it retained by section 4 of the Statehood Act. As for the Congress' power to amend section 28 of the Statehood Act, see the AFN Memorandum, pp. 30–38.

Third. Again the argument is based upon the erroneous assumption that the Congress is powerless to so act without Alaska's consent. Contrary to the assertion in the State Brief, section 8 (b) of the Statehood Act did *not* call for the approval by the Alaskan electorate of the entire Statehood Act. Perhaps it is this misreading of section 8(b) that has led to the erroneous conclusion that Congress divested itself of its authority to legislate concerning Native claims in the case of State selected but unpatented lands.

Section 8(b) of the Statehood Act called for a vote of the people of Alaska on the acceptance or rejection of three specific propositions and statehood was made contingent upon an affirmative vote on each.

The first of these was whether Alaska should be admitted to the Union as a State. The second was acceptance of the boundaries of the State as prescribed in the Statehood Act.

The third proposition upon which the people voted, and this is the only proposition relevant to the AFN proposal, was whether to consent to all provisions of the Statehood Act "reserving rights or powers to the United States, as well as those prescribing the terms or conditions of the grants of land or other property" made to the State of Alaska. These obviously refer to the disclaimer and to the rights reserved by the United States in section 4 and to the limitations attending the grants of real and personal property made by section 6.

It is impossible to understand how the third proposition, which is a promise by the State of Alaska to be bound by section 4 and to accept the limitations laid down in section 6, can be twisted into a surrender by Congress of legislative authority over Federal revenues or over property claimed by the Natives. See AFN Memorandum, pp. 35–37.

Fourth. We are at a complete loss to understand the basis upon which the State Brief reached the conclusion that reliance on the supremacy clause of the Constitution suggest that the United States "may be about to enter into a treaty with the Alaska Natives". Here again the error is in failing to recognize that by the Statehood Act Congress kept the door open to granting interests in land, including a royalty, to the Natives.

Nor have we even remotely suggested that "Federal Indian Law" is outside the bounds of the Constitution of the United States. What we did and do say, and have clearly demonstrated in the AFN Memorandum, is that the authority of Congress to reserve rights, including royalty rights, for the Natives springs from the plenary authority of Congress over Indian affairs and over public lands and the public funds, and that such authority, which unquestionably would have existed had Alaska remained a territory, was not diminished by the Statehood Act. No one, least of all AFN, is suggesting that the plenary authority of Congress over Indian affairs gives Congress the right to impair civil or other personal rights of the Natives contrary to the bill of rights or any other protections afforded by the Constitution against actions by the Federal Government. It is this principle with which the cited quotation from *Federal Indian Law* is concerned.

Fifth. Only at this point does the State Brief reach the real issue—the construction of section 4 of the Statehood Act. Here it does no more than rely on Mr. Justice Frankfurter's dictum in *Kake* v. *Egan*, 369 U.S. 60 (1962) at 66. That this dictum is not to be taken as a holding that Congress' powers are limited to monetary compensation out of the Federal Treasury is shown by the analysis of section 4 of the Statehood Act and its legislative history in Part III of the AFN Memorandum and by the Appendix thereto.

Only in its first proviso is section 4 concerned with Native claims *as against the United States.* But in addition to and preceding the proviso in section 4 are (a) the State's disclaimer of any interest in lands claimed by the Natives, and (b) the reservation by Congress of jurisdiction over lands claimed by the Natives until disposed of under its authority except as Congress might thereafter prescribe. These are independent of the proviso. Yet to argue, as the State Brief argues, that section 4 preserves only the *status quo* with respect to the Natives' claim against the United States is to write both of these provisions out of the Act. It would have the proviso swallow the rest of section 4.

At bottom, Alaska argues that for Congress to provide for the Natives by way of a royalty is to invade her sovereignty notwithstanding the disclaimer clause of section 4, a disclaimer solemnly ratified by vote of her people. The Supreme Court, a century ago, rejected a similar contention:

"There can be no question of state sovereignty in the case, as Kansas accepted her admission into the family of States on condition that the Indian rights

should remain unimpaired and the General Government at liberty to make any regulation respecting them, their lands, property, or other rights, which it would have been competent to make if Kansas had not been admitted into the Union" (*The Kansas Indians*, 72 U.S. 737, 18 L.ed. 667, 672 (1867)).

As it was with Johnson County, Kansas, in 1867, so must it be with the State of Alaska in 1969.

Respectfully submitted.

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WYMAN, BAUTZER, FINELL, ROTHMAN & KUCHEL,
STRASSER, SPIEGELBERG, FRIED, FRANK & KAMPELMAN,
Attorneys for the Alaska Federation of Natives.

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