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ALASKA NATIVE LAND CLAIMS

GOVERNMENT

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HEARINGS

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BEFORE THE

COMMITTEE ON
INTERIOR AND INSULAR AFFAIRS
UNITED STATES SENATE

NINETY-SECOND CONGRESS

FIRST SESSION

ON

S. 35, S. 835, and S. 1571

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

APRIL 29, 1971

PART 2

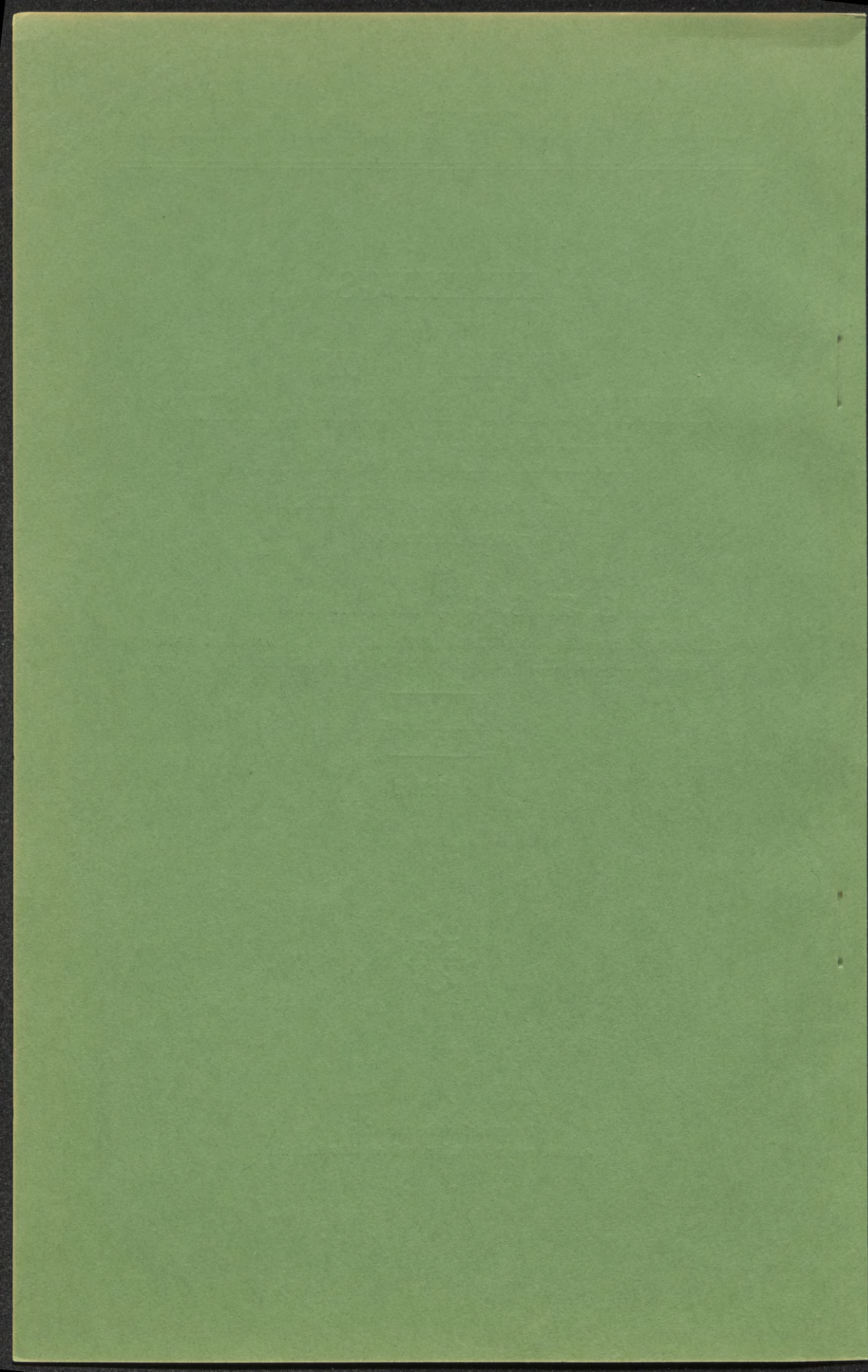


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Printed for the use of the
Committee on Interior and Insular Affairs

U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1971

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(II)

CONTENTS

	Page
S. 1571.....	391
Departmental reports:	
Agriculture.....	444
Civil Service Commission.....	445
Interior.....	440

STATEMENTS

Borbridge John, Jr., president of the Central Council of the Tlingit and Haida Indians of Alaska.....	496
Degnan, Frances, Unalakleet, Alaska.....	478
Egan, Hon., William A., Governor, State of Alaska.....	511
Fleischer, Hugh W., Alaska Legal Services Corp.....	491
Haakanson, Arthur, Ouzinkie, Alaska.....	492
Holdsworth, Phil R., Alaska State Chamber of Commerce.....	501
Isaac, Andrew, Janacross, Alaska.....	469
Itta, Brenda Tigousin, Barrow, Alaska.....	476
Morton, Rogers C. B., Secretary of the Interior.....	445
Muskie, Hon., Edmund S., a U.S. Senator from the State of Maine.....	510
Wright, Donald R., president, Alaska Federation of Natives.....	469

COMMUNICATIONS

Anderson, Robert T., president, Alaska State Chamber of Commerce, Anchorage, Alaska: Letter to Senator Jackson, dated April 27, 1971.....	507
Borbridge, John, Jr., president, Central Council of the Tlingit and Haida Indians of Alaska: Letter to Senator Jackson, dated May 7, 1971.....	500
Egan, Hon. William A., Governor, State of Alaska: Letter to Congressman Haley, dated May 12, 1971.....	517
Udall, Stewart L., chairman of the board, Environmental Consulting Corp., Washington, D.C.: Letter to Senator Jackson, dated April 29, 1971.....	489

ADDITIONAL INFORMATION

Legislature of the State of Alaska—A bill.....	515
--	-----

APPENDIX

(Statements and letters were received from)

Alderson, George, legislative director, Friends of the Earth, statement of ..	564
Armstrong, Robert W., and others, Auburn, Wash.....	577
Boddy, A. W. "Bud", executive director, The Alaska Wildlife Federation and Sportsman's Council, Juneau, Alaska.....	589
Braun, Anton, Fairbanks, Alaska:	
Letter to the President.....	570
"Ignored Alaskans", editorial from the <i>Fairbanks Daily News-Miner</i> , April 19, 1971.....	571
Burton, E. G., Anchorage, Alaska.....	554
Dillingham, Lowell S., Honolulu, Hawaii.....	590
Farmen, Darrell, Anchorage, Alaska:	
Letter to Senator Jackson, dated April 3, 1971.....	572
Letter to Congressman Dingell, dated April 3, 1971.....	574
Letter from Spencer H. Smith, Acting Director, Fish and Wildlife Service, dated March 11, 1971.....	574
George, Gene A., North Pole, Alaska.....	575

	Page
Hufman, R. L., Fairbanks, Alaska.....	568, 569
Isaac, Andrew, Chief of United Crow Bands:	
Letter to Senator Jackson, dated March 1, 1971.....	545
Resolutions and Proposals 1-13.....	546
Jensen, Marcus F., Douglas, Alaska.....	574
Kodiak Area Native Association, resolution of.....	561
Lang, Tom, president, the Tsimshian Tribal Association: Letter to Congressman Begich, dated April 27, 1971.....	548
"Legislators Surprised Endorsement Included State Oil Reserve Land" from the Southeast Alaska Empire, April 26, 1971.....	589
Penfold, J. W., conservation director, the Izaak Walton League, Glen- view, Ill.....	591
Philemonof, Iliodore, president, the Aleut League, Anchorage, Alaska.....	562
Definition of "Native".....	563
Polley, Clayton L., D.M.D., Juneau, Alaska.....	589
Poole, Daniel A., president, Wildlife Management Institute, Washington, D.C.....	565
Rogers, Frank W., Washington representative, Western Oil and Gas Association:	
Letters to Senator Jackson dated—	
March 9, 1971.....	578
April 30, 1971.....	579
Western Oil and Gas Association, statement of.....	580
Sharp, Bert M., Fairbanks, Alaska.....	568
Sierra Club, Washington, D.C., statement of.....	563
Trigg, Jerome, president, Arctic Native Brotherhood, Nome, Alaska, statement of.....	561
"Tsimshian Indians" by Walter Wesley, Metlakatla, Alaska.....	549
Washington Chapter, Alaska Federation of Natives, statement of.....	555
Supplementary comments.....	558
Wright, Donald R., president, Alaska Federation of Natives: Material submitted—	
A Fair Settlement of the Alaska Native Land Claims—The Key Elements.....	521
A Critical Analysis of S. 35.....	524
Petition signed by 16 members of the Alaska State Senate.....	527
Petition signed by 26 members of the Alaska State House of Repre- sentatives.....	527
Alaska Native Land Rights: Take Our Land, Take Our Life.....	528
Meeting with the President at the White House, April 6, 1971.....	532
Memorandum in support of granting native villages the right to select contiguous lands.....	534
"The Land Claims," editorial from the <i>Anchorage Daily News</i> , April 27, 1971.....	541
Letter to Sention Jackson, dated March 11, 1971.....	541
Resolution—March 9, 1971.....	542
Letter to the President, dated February 20, 1971.....	543
Letter to the Vice President, dated February 27, 1971.....	544
Memorandum to all Indian People, March 3, 1971.....	544

ALASKA NATIVES LAND CLAIMS

THURSDAY, APRIL 29, 1971

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

The committee met, pursuant to call, at 10 a.m., in room 3110, New Senate Office Building, Senator Henry M. Jackson, chairman, presiding.

Present: Senators Gravel, Jordan of Idaho, Stevens, Anderson, Bible, Hansen, Burdick, and Metcalf.

Also present: William J. Van Ness, special counsel, and Charles Cook, minority counsel.

The CHAIRMAN. The committee will come to order. This is the third open public hearing in this session of Congress on pending legislative measures to settle the longstanding Alaska Native land claims. The bills before the committee are S. 35, which is identical to the bill passed by the Senate in the 91st Congress: S. 835, which represents the position of the Alaska Federation of Natives; and S. 1571, which represents the administration's current recommendations.

Witnesses appearing before the committee this morning include Secretary of the Interior Rogers C. B. Morton, accompanied by Assistant Secretary Harrison Loesch, Solicitor Mitchell Melich, and Legislative Counsel Frank Bracken; Mr. Donald R. Wright, president, Alaska Federation of Natives, who will be accompanied by Mr. Edward Weinberg and Mr. Ken Bass, legal counsel to the federation; and other representatives of Alaska Native villages and Alaska organizations. The State of Alaska has a representative present and the State will file a statement with the committee early next week.

Arthur Greeley, Associate Chief of the Forest Service, is available to answer questions.

The committee has requested that organizations and individuals not representing the administration, the State, and the Native people file their statements for the record. They will be carefully reviewed in connection with committee action on the pending proposals.

There have been a number of important developments concerning the land claims issue since the committee's February 18 and March 16 hearings. Both the Alaska Federation of Natives and the administration have submitted their own legislative proposals for settlement of this complex and difficult problem. I am hopeful that today's hearing will focus on the provisions of these two proposals.

The three measures pending before the committee today are in major respects very similar in structure and concept. Both the administration bill and the bill proposed by the Alaska Federation of Natives draw heavily upon many of the features of S. 1830 as passed

by the Senate last year. The major areas of difference remaining relate to the amount of land to be granted; the land selection process; the number and the nature of the corporations which would administer the proceeds of the proposed settlement; and the treatment accorded nonresident Alaska Native people.

The remaining differences in the pending bills raise a number of questions and important policy issues which, in my view, must be carefully reviewed before a just and intelligent decision can be made by this committee, the Senate, and the Congress on a final settlement bill.

The Statehood Act recognizes the interests of Native Alaskans to the lands they have historically occupied. It also provides for extensive State land selections to provide the land and resources needed by a developing State. The public at large has an interest in the quality and the recreational values of the lands retained in Federal ownership. It is now clear that none of these interests can be resolved without regard to the other. This committee should, therefore, look into how best to relate a settlement of Native land claims to State selection of lands under the Statehood Act and to the public interest in lands retained in Federal ownership.

Previous testimony has brought out the needs of Native peoples for (1) Village lands, (2) hunting, fishing, and berrypicking sites, (3) rather extensive acreage as hunting range and land valuable for mineral or timber resources. Should these rights in land be given specifically and individually, or should fee simple titles be given for all lands? This question, I believe, should be answered in terms of Native needs and in terms of the best way, both now and in the future, to manage land covering such vast areas and under such difficult circumstances as those presented in Alaska.

The management of lands and funds is crucial to the effective settlement of the Native claims. Considerable objection has developed to a single development corporation for all of Alaska. If separate corporations are to be established, how do we assume effective business management and how are shareholder interests to be protected? These matters are of great importance to this committee and we hope that the witnesses will be able to throw considerable light on the organizational structure, the procedures, and the safeguards of such bodies.

Senator Gravel has introduced S. 1329, a bill to establish a joint Federal-State Natural Resource and Land Use Planning Commission for Alaska. This is an important proposal which seeks to implement recommendations of the Public Land Law Review Commission. I look forward to hearing Secretary Morton's views on the advisability of incorporating a provision of this nature in the land claims settlement bill.

It is my hope that following today's hearing, and after carefully reviewing the statements which will be submitted for the record, the committee can act as soon as possible on this measure. The extension of the Public Land Order withdrawing the public lands of Alaska from entry and State selection will expire on June 30 of this year. I believe that a bill can be enacted by the Congress before that time.

I will direct that at this point in the record a copy of S. 1571 and the departmental reports be printed; S. 35 and S. 835 are in part 1 of the hearing.

92D CONGRESS
1ST SESSION

S. 1571

IN THE SENATE OF THE UNITED STATES

APRIL 19, 1971

Mr. MONDALE (for Mr. JACKSON) (for himself, Mr. ALLOTT, Mr. GRAVEL, and Mr. STEVENS) (by request) introduced the following bill; which was read twice and referred to the Committee on Interior and Insular Affairs

A BILL

To provide for the settlement of certain land claims of Alaska Natives, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Alaska Native Claims
4 Settlement Act of 1971".

DECLARATION OF POLICY

6 SEC. 2. (a) Congress finds and declares that there is
7 an immediate need for a fair and just settlement of all claims
8 by Natives and Native groups of Alaska, and that the pur-
9 pose of this Act is to provide—

10 (1) a right for Natives to receive land occupied by

1 them as a primary place of residence or a primary place
2 of business;

3 (2) a grant of land to the incorporated Native vil-
4 lages for community use and expansion;

5 (3) a grant to the Native Corporation of \$25,000,-
6 000 per year for twenty years beginning in fiscal year
7 1971;

8 (4) a grant to the Native Corporation of the min-
9 eral rights in certain lands patented to individuals and
10 incorporated Native villages;

11 (5) a grant of certain additional land to the incor-
12 porated Native villages; and

13 (6) a right for the Native Corporation to receive
14 a portion of the revenues from the leasing and sale of
15 minerals on certain lands in Alaska.

16 (b) It is the intent of Congress to accomplish these
17 aims rapidly, with certainty, and in conformity to the real
18 economic and social needs of Alaska Natives by avoiding
19 litigation, by maximizing the participation by Natives in
20 decisions affecting their rights and property and by vesting in
21 them as rapidly as prudent and feasible control over the land
22 set aside and the Corporation organized pursuant to this
23 Act, without (1) establishing any permanent racially defined
24 institutions, rights, privileges, or obligations; (2) creating
25 a reservation system or lengthy wardship or trusteeship; or

1 (3) adding to the categories of property and institutions en-
2 joying special tax privileges or to the legislations establish-
3 ing special relationships between the United States Govern-
4 ment and the State of Alaska.

5 (c) No provision of this Act is intended to replace or
6 diminish any right, privilege, or obligation of Alaska Natives
7 as citizens of the United States or of Alaska, nor to relieve,
8 replace, or diminish any obligation of the United States or
9 of the State of Alaska to protect and promote the rights or
10 welfare of Alaska Natives as citizens of the United States or
11 of Alaska.

12 (d) No provision of this Act shall constitute a precedent
13 for reopening, renegotiating, or legislating upon any past
14 settlement involving land claims or other matters with any
15 Native organization, or any tribe, band, or identifiable group
16 of American Indians.

17 DEFINITIONS

18 SEC. 3. For the purposes of this Act, the term—

19 (a) "Secretary" means the Secretary of the
20 Interior;

21 (b) "Native" means any Alaska Indian, Eskimo, or
22 Aleut who the Commission determines to be of at least
23 one-fourth degree Alaska Indian, Eskimo, or Aleut blood,
24 or a combination thereof, and any other individual who
25 the Commission determines to be a Native under rules

1 and regulations that it shall establish, but does not in-
2 clude any Tsimshian Indian;

3 (c) "Native village" means any tribe, band, clan,
4 group, village, community, or association in Alaska listed
5 in section 10 or 14 of this Act and which the Commis-
6 sion determines was on December 31, 1970, composed of
7 twenty-five or more Natives;

8 (d) "Commission" means the Alaska Native Com-
9 mission established by this Act;

10 (e) "public land" means all Federal land and inter-
11 ests therein situated in Alaska except: (1) any improved
12 land used in connection with the administration of any
13 Federal installation; (2) land selections of the State of
14 Alaska which have been patented or tentatively approved
15 under the Alaska Statehood Act, as amended (72 Stat.
16 341, 77 Stat. 223) ; and (3) lands within the utility and
17 transportation corridor which are described in the notice
18 of proposed modification of classification of lands for
19 multiple use management (serial numbers AA2779 and
20 F-955) and the notice of proposed classification of lands
21 for multiple use management (F-12423) published in
22 the Federal Register on January 1, 1970 (35 Fed. Reg.
23 16-17), as corrected on February 4, 1970 (35 Fed.
24 Reg. 2537) ;

5

1 (f) "Corporation" means the Alaska Native Devel-
2 opment Corporation authorized to be established pursuant
3 to this Act under the laws of the State of Alaska.

4 (g) "person" means any individual, firm, corpora-
5 tion, association, or partnership; and

6 (h) "incorporated Native village" means any Na-
7 tive village incorporated as a governmental unit under
8 the laws of the State of Alaska.

9 DECLARATION OF SETTLEMENT

10 SEC. 4. (a) The provisions of this Act shall be regarded
11 as full and final settlement and extinguishment of any and
12 all claims against the United States, the State of Alaska, and
13 all other persons which are based upon aboriginal right, title,
14 use, or occupancy of land in Alaska by any Native or Native
15 group or claims arising under the Act of May 17, 1884 (23
16 Stat. 24), or the Act of June 6, 1900 (31 Stat. 321), includ-
17 ing claims pending before the Indian Claims Commission on
18 the effective date of this Act.

19 (b) The Corporation may pay all reasonable attorney's
20 fees and reasonable attorney's expenses, as determined by the
21 Secretary in pursuing before the Indian Claims Commission
22 any claims pending before the Indian Claims Commission on
23 the effective date of this Act which are dismissed pursuant
24 to this Act.

ALASKA NATIVE COMMISSION

1
2 SEC. 5. (a) The Alaska Native Commission is hereby
3 established. The Commission shall be in existence until
4 June 30, 1992, and shall be composed of three members
5 to be appointed by the President, all of whom upon appoint-
6 ment shall be full-time Federal employees. The Commission
7 members shall be appointed with the advice and consent
8 of the Senate. The Federal laws and regulations on conflicts
9 of interest applicable to other Federal employees shall be
10 applicable to the members of the Commission, but this pro-
11 vision shall not be deemed to preclude a Native from serving
12 as a member: *Provided*, That such Native Commissioner
13 shall not participate in any proceeding before the Commis-
14 sion in which his participation would be in conflict with
15 section 208 of title 18, United States Code.

16 (b) The term of office of members of the Commission
17 shall be three years, except that the first Commission shall
18 be composed of one member appointed for a one-year term,
19 one member appointed for a two-year term, and one mem-
20 ber appointed for a three-year term. Any member appointed
21 to fill a vacancy on the Commission occurring prior to the
22 expiration of the term for which his predecessor was ap-
23 pointed shall be appointed for the remainder of such term.
24 A member of the Commission may be removed by the Presi-

1 dent only for inefficiency, neglect of duty, or malfeasance
2 in office.

3 (c) The Chairman shall receive compensation at a
4 rate equal to that provided for in level V of the Executive
5 Schedule and section 5316 of title 5, United States Code.
6 The other two Commissioners shall receive compensation
7 at a rate equal to that provided for grade GS-18 in section
8 5332 of title 5, United States Code. All Commission mem-
9 bers may be allowed travel and transportation expenses
10 authorized by law when engaged in the performance of
11 services for the Commission.

12 (d) The principal office of the Commission shall be in
13 Alaska. Whenever the Commission deems that the con-
14 venience of the public or the parties may be promoted, or
15 delay or expense may be minimized, or at the request of any
16 party, it shall hold hearings or conduct other proceedings
17 at any other place mutually agreed to by the Chairman
18 of the Commission and the person involved in the hearing
19 and proceeding. The Commission shall have an official seal
20 which shall be judicially noticed and which shall be preserved
21 in the custody of the secretary of the Commission.

22 (e) The Commission shall, without regard to the civil
23 service laws, appoint and prescribe the duties of a secretary
24 of the Commission and such legal counsel as it deems neces-

1 sary. Subject to the civil service laws, the Commission shall
2 appoint such other employees as it deems necessary in exer-
3 cising its powers and duties. The compensation of all em-
4 ployees appointed by the Commission shall be fixed in
5 accordance with chapter 53 of title 5, United States Code.
6 (f) For the purpose of carrying out its functions under
7 this Act, two members of the Commission shall constitute a
8 quorum and official action can be taken only on the affirma-
9 tive vote of at least two members, but any one member upon
10 order of the Commission shall conduct any hearing or other
11 proceeding provided for in this Act and submit the tran-
12 script of such hearing or proceeding to the entire Commis-
13 sion for its action thereon. Such transcript shall be made
14 available to the parties before any final action of the Com-
15 mission. An opportunity to appear before the Commission
16 shall be afforded any party prior to any final action affecting
17 such party and the Commission may afford the party an op-
18 portunity to submit additional evidence as may be required
19 for a full and true disclosure of the facts. Each official action
20 of the Commission shall be entered of record and its hearings
21 and records thereof shall be open to the public. The Com-
22 mission is authorized to make such rules and regulations as
23 it deems necessary for the orderly transaction of its proceed-
24 ings, which shall provide for adequate notice of hearings or
25 other proceedings, to all parties. Any member of the Com-

1 mission may sign and issue subpoenas for the attendance and
2 testimony of witnesses and production of relevant papers,
3 books, and documents and administer oaths. Witnesses sum-
4 moned before the Commission shall be paid the same fees
5 and mileage that are paid witnesses in the courts of the
6 United States. The Commission may order testimony to be
7 taken by deposition in any proceeding before it and in any
8 stage of such proceeding after reasonable notice is first given
9 in writing by the party or his attorney of record which notice
10 shall state the name of the witness and the time and place
11 of the taking of his deposition.

12 (g) Each decision made by the Commission shall show
13 the date on which it was made and shall bear the signatures
14 of the members of the Commission who concur therein and,
15 upon issuance of a decision under this Act, the Commission
16 shall cause a true copy thereof to be sent by certified mail
17 to all parties and their attorneys of record. The Commission
18 shall cause each decision to be entered on its official record
19 together with any written opinion prepared by any mem-
20 bers in support of, or dissenting from, any decision.

21 (h) Any decision issued by the Commission under this
22 section shall be subject to judicial review by the United
23 States district court in Alaska upon the filing in such court
24 within thirty days from the date of such decision of a peti-

1 tion by the person aggrieved by the decision praying that
2 the action of the Commission be modified or set aside in
3 whole or in part. A copy of the petition shall forthwith be
4 sent by registered or certified mail to any other party to
5 the proceeding and to the Commission, and thereupon the
6 Commission shall certify and file in such court the record
7 upon which such decision complained of was issued. The
8 court shall hear such appeal on the record made before the
9 Commission. The findings of the Commission, if supported
10 by substantial evidence on the record considered as a whole,
11 shall be conclusive. The court may affirm, vacate, or modify
12 any decision or may remand the proceeding to the Com-
13 mission for such further action as it directs. The judgment
14 of the court shall be subject to review by the United States
15 court of appeals for the circuit in which the petitioner is
16 located and by the Supreme Court of the United States
17 upon certiorari or certification as provided in section 1254,
18 title 28, United States Code.

19 (i) The duties and responsibilities of the Commission
20 shall for the purposes of this Act, among others, be:

21 (1) the determination of those individuals that
22 qualify as Natives and those villages that qualify as
23 Native villages and the issuance of the necessary rules
24 and regulations to cover the procedure for such deter-
25 mination;

1 (2) the preparation of the roll, the issuance of rules
2 and regulations applicable thereto, and the hearing of
3 claims filed by any applicant denied enrollment;

4 (3) the appointment of the incorporators of the
5 Corporation and, in conjunction with the Secretary, the
6 approval of the articles of incorporation before they are
7 filed;

8 (4) the establishment of geographic regions under
9 section 9 of this Act;

10 (5) the issuance of rules and regulations for and the
11 approval of land transactions as provided under this
12 Act;

13 (6) the submission of reports to Congress as pro-
14 vided in section 17 of this Act; and

15 (7) such other duties and responsibilities as are pro-
16 vided under this Act.

17 ENROLLMENT

18 SEC. 6. The Commission, in accordance with such regu-
19 lations as the Commission may issue, shall prepare a roll
20 listing all Natives born on or before December 31, 1970, and
21 living on the date of enactment of this Act. Any Native,
22 whose name does not appear on the roll who was born on or
23 before December 31, 1970, and who was living on the date
24 of enactment of this Act shall be entitled to have his name
25 so listed upon proof of eligibility satisfactory to the Com-

1 mission. The Secretary shall make available to the Commis-
2 sion such personnel, services, and material as he deems rea-
3 sonable in connection with the preparation of the roll pro-
4 vided for herein. Any applicant denied enrollment shall be
5 notified in writing thereof and such applicant and any other
6 interested person shall be given an opportunity for a hearing
7 by the Commission and judicial review as provided in sec-
8 tion 5 of this Act.

9 ALASKA NATIVE DEVELOPMENT CORPORATION

10 SEC. 7. (a) There is authorized to be established the
11 Alaska Native Development Corporation as an Alaskan cor-
12 poration which will not be an agency or establishment of
13 the United States Government. The Corporation, for a period
14 of twenty years after its incorporation, shall be subject to
15 the provisions of this Act, and to the extent consistent with
16 this Act, to the laws of the State of Alaska.

17 (b) The Commission shall appoint five incorporators,
18 one of whom shall be the Chairman of the Commission, who
19 shall take whatever actions are necessary to establish the
20 Corporation, including the filing of articles of incorporation,
21 as approved by the Commission and the Secretary. The in-
22 corporators shall serve as the Corporation's initial board of
23 directors and shall serve until the permanent directors have
24 been elected as provided in subsection (c) of this section.

1 The Secretary is authorized to pay the sum of \$1,000,000
2 to the Corporation as paid-in capital.

3 (c) The management of the Corporation shall be vested
4 in a board of directors which shall consist of seventeen mem-
5 bers elected by the stockholders of the Corporation on the fol-
6 lowing basis:

7 (1) one member representing and elected by the
8 stockholders living in each of the twelve regions of
9 Alaska as determined by section 9 of this Act; and

10 (2) five members representing and elected by all
11 of the stockholders.

12 Members of the board so elected shall serve for terms of four
13 years or until their successors have been elected and qualified:

14 *Provided*, That among the directors first elected, five shall
15 serve for terms of one year, four shall serve for terms of
16 two years, four shall serve for terms of three years, and four
17 shall serve for terms of four years: *And provided further*,

18 That the directors who serve the shorter terms shall be deter-
19 mined by a drawing of lots conducted by the initial board.

20 Any director elected to fill a vacancy shall serve only for
21 the period of the unexpired term of the director whom he
22 succeeds. Elections for membership on the board of directors
23 shall be conducted in accordance with procedures set forth
24 in the articles of incorporation or bylaws of the Corporation:

25 *Provided*, That the first such election shall be held not less

1 than six months nor more than one year after the effective
2 date of incorporation of the Corporation.

3 (d) The Corporation shall have a president, and such
4 other officers as may be named and appointed by the board,
5 at rates of compensation fixed by the board and serving at
6 the pleasure of the board. No officer of the Corporation shall
7 engage in any other business during the period of his em-
8 ployment by the Corporation. The President shall be respon-
9 sible for carrying out the Corporation's functions in a busi-
10 nesslike manner consistent with the provisions of this Act,
11 the articles of incorporation, and the policies of the board,
12 and shall appoint such other employees as the board deems
13 appropriate. Such employees shall be subject to standards
14 and requirements similar to those applicable to Federal civil-
15 ian employees, but shall not be regarded as Federal employees
16 for any purpose.

17 (e) The Corporation shall be authorized to have one mil-
18 lion shares of common stock, without par value, divided into
19 such classes of shares as may be authorized in the articles of
20 incorporation. Until June 30, 1992, shares of stock of the
21 corporation shall be issued only to Natives and each Native
22 shall be issued ten shares of stock immediately upon the list-
23 ing of his name on the roll authorized by section 6 of this Act.
24 Until June 30, 1992, the shares authorized to be issued under
25 this subsection shall not be sold, transferred, assigned, or

1 otherwise disposed of or mortgaged or pledged by the holder
2 thereof except by testamentary disposition to the surviving
3 spouse and heirs under State law or intestate succession. Any
4 succeeding stockholder shall, until June 30, 1992, be pro-
5 hibited from transferring, mortgaging, or pledging such shares
6 in the same manner and to the same extent as the initial stock-
7 holder. Until June 30, 1992, the stock issued pursuant to this
8 section shall not be subject to Federal or State estate or in-
9 heritance tax laws.

10 (f) The Corporation shall, in accordance with such
11 terms and conditions as the board may prescribe and consist-
12 ent with the laws of the State of Alaska and for the benefit of
13 the stockholders thereof, invest its funds; make dividend pay-
14 ments to the stockholders at such times as the board of direc-
15 tors deems appropriate; provide for the lending of funds to
16 individuals or organizations for the construction of homes and
17 other purposes that would promote economic development of
18 the Natives; provide loans or grants to Native villages, or
19 regional or governing bodies or Native Corporation for the
20 purpose of fostering the health and welfare of the people;
21 provide loans for the education of individual Natives; provide
22 emergency or charitable grants and loans to individuals or
23 communities in times of distress; sell, lease, or otherwise dis-
24 pose of its assets, both real and personal; and promote the
25 economic development of the Native and the Native villages

1 to the greatest possible extent. The Corporation shall estab-
2 lish such rules and procedures as it deems appropriate in
3 carrying out the provisions of this subsection. For a period of
4 twenty years after incorporation, the Corporation shall not,
5 in any one fiscal year, issue dividends or make any unsecured
6 loans, of more than one-half of the income received by the
7 Corporation from the following sources during the previous
8 fiscal year: (1) corporate profit, (2) annual contributions
9 as provided in subsection (h) of this section or section 8, and
10 (3) income received from disposal of minerals patented to it
11 pursuant to subsection (e) of section 12 of this Act. Neither
12 the annual contributions made to the Corporation under sub-
13 section (h) of this section or section 8 nor the income re-
14 ceived by the Corporation prior to June 30, 1992, from dis-
15 posal of minerals patented to it pursuant to subsection (e) of
16 section 12 of this Act shall be subject to Federal or State tax
17 laws.

18 (g) The Corporation shall be subject to audit by the
19 General Accounting Office until June 30, 1992. After final
20 audit by the General Accounting Office and the filing of a
21 summary financial report with the Congress, the limitations
22 established under this section applicable to the Corporation
23 shall terminate and the Corporation shall continue in business
24 under the applicable laws of the State of Alaska.

25 (h) The Secretary is authorized to and shall pay to the

1 Corporation beginning in fiscal year 1972 the sum of \$24,-
2 250,000 and on July 1 of each fiscal year thereafter for a
3 period of nineteen years the sum of \$25,000,000. There are
4 hereby appropriated, out of any money in the Treasury not
5 otherwise appropriated, such sums as may be necessary for
6 the payments authorized in this subsection.

7 REVENUE SHARING

8 SEC. 8. (a) (1) Disposition of all deposits of coal, phos-
9 phate, sodium, potassium, oil, oil shale, gas, or sulfur located
10 in public lands in Alaska and of all deposits of any other
11 minerals located in such lands which the Congress may here-
12 after authorize to be disposed of by sale or lease, after the
13 date of enactment of this Act shall be made only pursuant
14 to the terms of this Act and shall be subject to the provisions
15 on revenue sharing as provided in this section. The provisions
16 of the Mineral Leasing Act of February 25, 1920, as amended
17 and supplemented (41 Stat. 437; 30 U.S.C. 181 et seq.),
18 and the Mineral Leasing Act for Acquired Lands (30 U.S.C.
19 351, et seq.) shall apply to the extent that such provisions
20 are not inconsistent with this Act.

21 (2) All revenues derived by the United States from
22 rentals and bonuses upon disposition of such minerals during
23 the period beginning January 1, 1969, and ending on the
24 date of enactment of this Act, shall be distributed as provided

1 in the Alaska Statehood Act of July 7, 1958 (72 Stat.
2 339), except that, prior to calculating the shares of the
3 State of Alaska and the United States as set forth in such
4 Act, 2 per centum of such proceeds shall be deducted and
5 paid to the Corporation. From the royalty derived by the
6 United States from the disposition of such minerals during
7 the same period, an amount equal to 2 per centum of the
8 gross value of the minerals (as the gross value thereof is
9 determined for royalty purposes under the lease involved)
10 shall be deducted and paid to the Corporation, and the re-
11 spective shares of the State of Alaska and the United States
12 in such royalty shall be calculated on the remaining balance.

13 (3) All leases or other dispositions of such minerals
14 made after the date of enactment of this Act shall provide
15 that prior to calculating the respective shares of the State
16 of Alaska and the United States in such proceeds under
17 the Statehood Act: (A) a royalty of 2 per centum upon
18 the gross value of any minerals produced (as that gross
19 value is determined for royalty purposes under such lease
20 or other disposition) shall be paid to the Corporation;
21 and (B) 2 per centum of all revenues derived from rentals
22 and bonuses shall be deducted and paid to the Corporation.

23 (b) The royalties provided under this section shall not
24 operate to exclude lands subject thereto from selection by
25 the State of Alaska under the Alaska Statehood Act of

1 July 7, 1958 (72 Stat. 339), if such lands otherwise are
2 available for selection. Every patent of public lands issued
3 to the State of Alaska under the Statehood Act after the
4 date of enactment of this Act, however, shall expressly
5 reserve for the benefit of the Natives: (1) a royalty of 2
6 per centum upon the gross value (as such gross value is
7 determined for royalty purposes under any lease or other
8 disposition by the State of Alaska) of the minerals referred
9 to in subsection (a) hereof produced on or removed from
10 such lands from the royalties payable to the State of Alaska;
11 (2) a right to receive 2 per centum of all revenues derived
12 by the State of Alaska from rentals and bonuses upon dis-
13 position of such minerals. There are also reserved for the
14 benefit of the Natives from and after January 1, 1969, an
15 amount equal to a like royalty and other revenues from
16 rentals, royalties, and bonuses payable to the State of Alaska
17 under (i) leases of the United States which are or may be
18 assumed by the State of Alaska under section 6(h) of the
19 Alaska Statehood Act, and (ii) under conditional leases
20 and sales made pursuant to section 6(g) of the Alaska
21 Statehood Act in the case of lands heretofore or hereafter
22 selected by the State of Alaska, the selection of which is
23 or was tentatively approved by the Secretary, but as to
24 which patents had not issued to the State of Alaska by
25 January 1, 1969: *Provided, however,* That the bonus reve-

1 nues received by the State of Alaska at the September 1969,
2 sale of lands tentatively approved under the Statehood Act
3 shall not be subject to the 2 per centum revenue-sharing
4 provisions of this section, nor shall rentals received pur-
5 suant to such sale up to the date of December 31, 1970.
6 Any royalty and rentals received pursuant to such sale
7 after December 31, 1970, shall be subject to the revenue-
8 sharing provisions of this section.

9 (c) Revenues received by the United States or the State
10 of Alaska as compensation for estimated drainage of oil and
11 gas shall, for purposes of this section, be deemed to be rev-
12 enues from the disposition of oil and gas and the appropriate
13 payments shall be paid to the Corporation on account thereof.
14 All royalty and other revenues required to be paid under this
15 section shall be paid to the Corporation promptly after the
16 expiration of the fiscal year in which they accrue by the Sec-
17 retary of the Treasury or the State of Alaska as the case
18 may be, and shall be distributed or withdrawn therefrom only
19 in accordance with this Act. In the event the United States
20 or the State of Alaska elects to take royalties in kind, there
21 shall be paid to the Corporation on account thereof an amount
22 equal to the royalties that would have been paid to the Cor-
23 poration under the provisions of this section had the royalty
24 been taken in cash.

25 (d) The payments required pursuant to this section shall

1 continue only until \$500,000,000 has been paid to the Cor-
2 poration. Thereafter the provisions of this section shall not
3 apply and the reservation required in patents under subsec-
4 tion (b) of this section shall be of no further force and effect.

5 (e) The provisions of this section requiring revenue shar-
6 ing by the State of Alaska shall be enforceable by the United
7 States on behalf of the Natives but this shall not preclude the
8 Corporation from pursuing any remedies available to it in
9 the event of default by the State of Alaska. In the event of
10 default by the State of Alaska in making any payments due
11 under this section, and in addition to any other remedies
12 provided by law, there shall be deducted annually and paid
13 to the Corporation the amount of any underpayment from the
14 share of mineral revenues from public lands in Alaska which
15 would otherwise be paid to the State of Alaska pursuant to
16 Federal law.

17 (f) (1) The provisions of this section requiring revenue
18 sharing by the State of Alaska and the United States are
19 enacted pursuant to the authority reserved by the United
20 States in section 4 of the Alaska Statehood Act to determine
21 the disposition of lands used and claimed by Natives and as
22 to which the State of Alaska was, by the Alaska Statehood
23 Act, required to and did disclaim all right and title. There-
24 fore, in the event that the State of Alaska initiates litigation

1 or becomes a party to litigation to contest in any manner the
2 operation of this section 8 all rights of land selection granted
3 to the State of Alaska by the Alaska Statehood Act shall
4 be suspended as to any public lands which are determined
5 by the Secretary as potentially valuable for mineral develop-
6 ment, timber, or other commercial purposes, and no selec-
7 tions shall be made, no tentative approvals shall be granted,
8 and no patents shall be issued for such lands during the pend-
9 ency of such litigation.

10 (2) Any civil action commenced by the State of Alaska
11 or by any other parties to contest in any manner the purpose
12 and the substantive operation of this section 8 shall be barred
13 unless the complaint is filed within one year of the date of
14 enactment of this Act. The purpose of this limitation on suits
15 is to insure that, after the expiration of a reasonable period
16 of time, the right, title, and interest of the United States, the
17 Natives and the State of Alaska to share in revenues will vest
18 with certainty and finality and may be relied upon by all
19 other parties in their dealings with the State of Alaska, the
20 Natives, and the United States.

21 (3) In the event that rights of land selection granted
22 to the State of Alaska by the Alaska Statehood Act should
23 ever be suspended pursuant to the provisions of subsection
24 (f) (1) hereof, the State of Alaska's right of land selec-
25 tion pursuant to section 6 of the Alaska Statehood Act, Act

1 of 1958 (72 Stat. 341, 77 Stat. 223) shall be extended for
2 a period of time equal to the period of time as the selection
3 right was suspended pursuant to the provisions of subsection
4 (f) (1).

5 (g) The respective shares of the United States and the
6 State of Alaska with respect to payments to the Corporation
7 required by this section shall be determined pursuant to this
8 subsection and in the following order:

9 (1) first, from sources identified under subsection
10 (b) hereof; and

11 (2) then, from sources identified under subsection
12 (a) hereof.

13 (h) The provisions of this section do not apply to min-
14 eral revenues received from the Outer Continental Shelf.

15 REGIONES

16 SEC. 9. For purposes of this Act, the State of Alaska
17 shall be divided by the Commission within one year after
18 the date of enactment of this Act into twelve geographic
19 regions, with each region composed as far as practicable of
20 Natives having a common heritage and sharing common
21 interest. In the absence of good cause shown to the contrary,
22 such regions shall approximate the areas covered by the op-
23 erations of the following existing Native associations:

24 (1) Arctic Slope Native Association (Barrow,
25 Point Hope) ;

- 1 (2) Bering Strait Association (Seward Peninsula,
2 Unalakleet, Saint Lawrence Island) ;
- 3 (3) Northwest Alaska Native Association (Kotze-
4 bue) ;
- 5 (4) Association of Village Council Presidents
6 (southwest coast, all villages in the Bethel area, includ-
7 ing all villages on the Lower Yukon River and the Lower
8 Kuskokwim River) ;
- 9 (5) Tanana Chief's Conference (Koyukuk, Mid-
10 dle and Upper Yukon Rivers, Upper Kuskokwim, Ta-
11 nana River) ;
- 12 (6) Cook Inlet Association (Kenai, Tyonek,
13 Ekutna, Iliamna) ;
- 14 (7) Bristol Bay Native Association (Dillingham,
15 Upper Alaska Peninsula) ;
- 16 (8) Aleut League (Aleutian Islands, Pribilof
17 Islands, and that part of the Alaska Peninsula which is
18 in the Aleut League) ;
- 19 (9) Chugach Native Association (Cordova, Tititlek,
20 Port Graham, English Bay, Valdez, and Seaward) ;
- 21 (10) Tlingit-Haida Central Council (southeastern
22 Alaska) ;
- 23 (11) Kodiak Area Native Association (all villages
24 on and around Kodiak Island) ; and

1 (12) Copper River Native Association (Copper
2 Center, Glennallen, Chitina, Mentasta).

3 Any dispute over the boundaries of any region or regions
4 shall be determined by the Commission and shall be final.

5 WITHDRAWAL OF PUBLIC LANDS

6 SEC. 10. (a) Public Land Order Numbered 4582 (34
7 F.R. 1025) and Public Land Order Numbered 4962 (35
8 F.R. 18874) are hereby revoked.

9 (1) Except as hereinafter provided, there are hereby
10 withdrawn, until June 30, 1992, all public lands in the State
11 of Alaska, except land withdrawn or reserved for national
12 defense purposes, other than naval petroleum reserve num-
13 bered 4, and land in the national park system, subject to all
14 valid existing rights, from all forms of appropriation under
15 the public land laws, including selection rights under the
16 Alaska Statehood Act, as amended, including the mining
17 laws, and the mineral leasing laws, in each township, as
18 shown on current plats of survey or protraction diagrams of
19 the Bureau of Land Management, or protraction diagrams of
20 the State of Alaska where protraction diagrams of the Bureau
21 of Land Management are not available, which encloses all or
22 part of any Native village listed in paragraph (2) of this sub-
23 section plus all public lands in the State of Alaska, except
24 land withdrawn or reserved for national defense purposes,
25 other than naval petroleum reserve numbered 4 and land in

1 the national park system, subject to all valid existing rights,
2 from all forms of appropriation under the public land laws,
3 including selection rights under the Alaska Statehood Act, as
4 amended, and including the mining laws, and the mineral
5 leasing laws, in each township that is contiguous to or cor-
6 nering on the township which encloses said Native village as
7 shown on current plats of survey or protraction diagrams of
8 the Bureau of Land Management, or protraction diagrams of
9 the State of Alaska where protraction diagrams of the Bureau
10 of Land Management are not available. During a period of
11 one year from the date of withdrawal, each Native village
12 shall select, in accordance with rules and regulations estab-
13 lished by the Secretary, an area equal to three townships from
14 within the townships that are contiguous to or corner on the
15 township enclosing the Native village. All selections made
16 under this subsection shall be contiguous, and in reasonably
17 compact tracts according to Federal or State protraction dia-
18 grams or approved surveys except as separated by bodies of
19 water. At the end of the said one-year period, all townships
20 or portions thereof withdrawn under the authority of this sub-
21 section, except those enclosing listed Native villages and that
22 area selected by the Native villages, and also except those
23 located in the national wildlife refuge system and naval
24 petroleum reserve numbered 4 shall be subject to the provi-
25 sions of subsection (b) hereof and shall be deemed to have

1 been withdrawn under the provisions of said subsection. At
 2 the end of the said one-year period, all townships or portions
 3 thereof withdrawn under the authority of this subsection, ex-
 4 cept those enclosing listed Native villages and that area
 5 selected by the Native village, located in the national wild-
 6 life refuge system and naval petroleum reserve numbered 4,
 7 shall terminate.

8 (2) The following native villages are qualified for with-
 9 draws under the provisions of this subsection:

10	Name of Place and Region
11	Akiachak, Southwest Coastal Lowland.
12	Akiak, Southwest Coastal Lowland.
13	Akutan, Aleutian.
14	Alakanuk, Southwest Coastal Lowland.
15	Aleknagik, Bristol Bay.
16	Alatna, Koyukuk-Lower Yukon.
17	Allakaket, Koyukuk-Lower Yukon.
18	Ambler, Bering Strait.
19	Anaktuvuk Pass, Arctic Slope.
20	Andreafsey, Southwest Coastal Lowland.
21	Aniak, Southwest Coastal Lowland.
22	Anvik, Koyukuk-Lower Yukon.
23	Arctic Village, Upper Yukon-Porcupine.
24	Atka, Aleutian.
25	Atkasook, Arctic Slope.

- 1 Barrow, Arctic Slope.
- 2 Beaver, Upper Yukon-Porcupine.
- 3 Belkofsky, Aleutian.
- 4 Bethel, Southwest Coastal Lowland.
- 5 Bill Moore's, Southwest Coastal Lowland.
- 6 Biorka, Aleutian.
- 7 Birch Creek, Upper Yukon-Porcupine.
- 8 Brevig Mission, Bering Strait.
- 9 Buckland, Bering Strait.
- 10 Candle, Bering Strait.
- 11 Cantwell, Cook Inlet.
- 12 Canyon Village, Upper Yukon-Porcupine.
- 13 Chalkyitsik, Upper Yukon-Porcupine.
- 14 Chanilut, Southwest Coastal Lowland.
- 15 Cheforak, Southwest Coastal Lowland.
- 16 Chevak, Southwest Coastal Lowland.
- 17 Chignik, Kodiak.
- 18 Chignik Lagoon, Kodiak.
- 19 Chignik Lake, Kodiak.
- 20 Chistochina, Copper River.
- 21 Chukwuktoligamute, Southwest Coastal Lowland.
- 22 Circle, Upper Yukon-Porcupine.
- 23 Clark's Point, Bristol Bay.
- 24 Copper Center, Copper River.
- 25 Crooked Creek, Upper Kuskokwim.

- 1 Deering, Bering Strait.
- 2 Dillingham, Bristol Bay.
- 3 Eagle, Upper Yukon-Porcupine.
- 4 Dot Lake, Tanana.
- 5 Eek, Southwest Coastal Lowland.
- 6 Egegik, Bristol Bay.
- 7 Eklutna, Cook Inlet.
- 8 Ekwook, Bristol Bay.
- 9 Elim, Bering Strait.
- 10 Emmonak, Southwest Coastal Lowland.
- 11 English Bay, Cook Inlet.
- 12 False Pass, Aleutian.
- 13 Fort Yukon, Upper Yukon-Porcupine.
- 14 Gakona, Copper River.
- 15 Galena, Koyukuk-Lower Yukon.
- 16 Gambell, Bering Sea.
- 17 Georgetown, Upper Kuskokwim.
- 18 Golovin, Bering Strait.
- 19 Goodnews Bay, Southwest Coastal Lowland.
- 20 Grayling, Koyukuk-Lower Yukon.
- 21 Gulkana, Copper River.
- 22 Hamilton, Southwest Coastal Lowland.
- 23 Hold Cross, Koyukuk-Lower Yukon.
- 24 Hooper Bay, Southwest Coastal Lowland.
- 25 Hughes, Koyukuk-Lower Yukon.

- 1 Huslia, Koyukuk-Lower Yukon.
- 2 Igiugig, Bristol Bay.
- 3 Iliamna, Cook Inlet.
- 4 Inalik, Bering Strait.
- 5 Ivanof Bay, Aleutian.
- 6 Kaktovik, Arctic Slope.
- 7 Kalskag, Southwest Coastal Lowland.
- 8 Kaltag, Koyukuk-Lower Yukon.
- 9 Karluk, Kodiak.
- 10 Kasigluk, Southwest Coastal Lowland.
- 11 Kiana, Bering Strait.
- 12 King Cove, Aleutian.
- 13 Kipnuk, Southeast Coastal Lowland.
- 14 Kivalina, Bering Strait.
- 15 Kobuk, Bering Strait.
- 16 Koliganek, Bristol Bay.
- 17 Kokhanok, Bristol Bay.
- 18 Kongiganak, Southwest Coastal Lowland.
- 19 Kotlik, Southwest Coastal Lowland.
- 20 Kotzebue, Bering Strait.
- 21 Koyuk, Bering Strait.
- 22 Koyukuk, Koyukuk-Lower Yukon.
- 23 Kwethluk, Southwest Coastal Lowland.
- 24 Kwigillingok, Southwest Coastal Lowland.
- 25 Larsen Bay, Kodiak.

- 1 Levelock, Bristol Bay.
- 2 Lime Village, Upper Kuskokwim.
- 3 Lower Kalskag, Southwest Coastal Lowland.
- 4 McGrath, Upper Kuskokwim.
- 5 Makok, Koyukuk-Lower Yukon.
- 6 Manokotak, Bristol Bay.
- 7 Marshall, Southwest Coastal Lowland.
- 8 Mary's Igloo, Bering Strait.
- 9 Medfra, Upper Kuskokwim.
- 10 Mekoryuk, Southwest Coastal Lowland.
- 11 Mentasta Lake, Copper River.
- 12 Minchumina Lake, Upper Kushokwim.
- 13 Minto, Tanana.
- 14 Mountain Village, Southwest Coastal Lowland.
- 15 Nabesna Village, Tanana.
- 16 Naknek, Bristol Bay.
- 17 Napaimute, Upper Kuskokwim.
- 18 Napakiak, Southwest Coastal Lowland.
- 19 Napaskiak, Southwest Coastal Lowland.
- 20 Nelson Lagoon, Aleutian.
- 21 Newhalen, Cook Inlet.
- 22 Nenana, Tanana.
- 23 New Stuyahok, Bristol Bay.
- 24 Newtok, Southwest Coastal Lowland.
- 25 Nightmute, Southwest Coastal Lowland.

- 1 Nikolai, Upper Kuskokwim.
- 2 Nikolski, Aleutian.
- 3 Ninilchik, Cook Inlet.
- 4 Noatak, Bering Strait.
- 5 Nome, Bering Strait.
- 6 Nondalton, Cook Inlet.
- 7 Nooiksut, Arctic Slope.
- 8 Noorvik, Bering Strait.
- 9 Northeast Cape, Bering Sea.
- 10 Northway, Tanana.
- 11 Nulato, Koyukuk-Lower Yukon.
- 12 Nunapitchuk, Southwest Coastal Lowland.
- 13 Ohogamiut, Southwest Coastal Lowland.
- 14 Old Harbor, Kodiak.
- 15 Oscarville, Southwest Coastal Lowland.
- 16 Ouzinkie, Kodiak.
- 17 Paradise, Koyukuk-Lower Yukon.
- 18 Paulof Harbor, Aleutian.
- 19 Pedro Bay, Cook Inlet.
- 20 Perryville, Kodiak.
- 21 Pilot Point, Bristol Bay.
- 22 Pilot Station, Southwest Coastal Lowland.
- 23 Pitkas Point, Southwest Coastal Lowland.
- 24 Platinum, Southwest Coastal Lowland.
- 25 Point Hope, Arctic Slope.

- 1 Point Lay, Arctic Slope.
- 2 Portage Creek (Ohgsenakale), Bristol Bay.
- 3 Port Graham, Cook Inlet.
- 4 Port Lions, Kodiak.
- 5 Port Heiden (Meshick), Aleutian.
- 6 Quinhagak, Southwest Coastal Lowland.
- 7 Rampart, Upper Yukon-Porcupine.
- 8 Red Devil, Upper Kuskokwim.
- 9 Ruby, Koyukuk-Lower Yukon.
- 10 Russian Mission (Kuskokwim) (or Chauthalue),
11 Upper Kuskokwim.
- 12 Russian Mission (Yukon), Southwest Coastal Low-
13 land.
- 14 Saint George, Aleutians.
- 15 Saint Mary's, Southwest Coastal Lowland.
- 16 Saint Michael, Bering Strait.
- 17 Saint Paul, Aleutians.
- 18 Salamatof, Cook Inlet.
- 19 Sand Point, Aleutians.
- 20 Savonoski, Bristol Bay.
- 21 Savoonga, Bering Sea.
- 22 Scammon Bay, Southwest Coastal Lowland.
- 23 Selawik, Bering Strait.
- 24 Shageluk, Koyukuk-Lower Yukon.
- 25 Shaktoolik, Bering Strait.

- 1 Sheldon's Point, Southwest Coastal Lowland.
- 2 Shishmaref, Bering Strait.
- 3 Shungnak, Bering Strait.
- 4 Slana, Copper River.
- 5 Sleetmute, Upper Kuskokwim.
- 6 South Naknek, Bristol Bay.
- 7 Squaw Harbor, Aleutians.
- 8 Stebbins, Bering Strait.
- 9 Stevens Village, Upper Yukon-Porcupine.
- 10 Stony River, Upper Kuskokwim.
- 11 Tanacross, Tanana.
- 12 Tanana, Koyukuk-Lower Yukon.
- 13 Telida, Upper Kuskokwim.
- 14 Teller, Bering Strait.
- 15 Tetlin, Tanana.
- 16 Togiak, Bristol Bay.
- 17 Toksook Bay, Southwest Coastal Lowland.
- 18 Tuluksak, Southwest Coastal Lowland.
- 19 Tuntutuliak, Southwest Coastal Lowland.
- 20 Tununak, Southwest Coastal Lowland.
- 21 Twin Hills, Bristol Bay.
- 22 Tyonek, Cook Inlet.
- 23 Ugashik, Bristol Bay.
- 24 Unalakleet, Bering Strait.
- 25 Unalaska, Aleutian.

- 1 Unga, Aleutian.
- 2 Uyak, Kodiak.
- 3 Venetie, Upper Yukon-Porcupine.
- 4 Wainwright, Arctic Slope.
- 5 Wales, Bering Strait.
- 6 White Mountain, Bering Strait.

7 (b) Except as hereinafter provided, there are hereby
8 withdrawn, until June 30, 1992, all public land in the State
9 of Alaska, except land withdrawn or reserved for national
10 defense purposes, including naval petroleum reserve num-
11 bered 4, and land in the national park system and the
12 national wildlife refuge system subject to all valid existing
13 rights, from all forms of appropriation under the public land
14 laws, including selection rights under the Alaska Statehood
15 Act, as amended, including the mining laws and the mineral
16 leasing laws in each township that is contiguous to or cor-
17 nering on the townships surrounding the township which
18 encloses each Native village as set forth in paragraph (1)
19 of subsection (a) of this section as shown on current plats
20 of survey or protraction diagrams of the Bureau of Land
21 Management, or protraction diagrams of the State of Alaska
22 where protraction diagrams of the Bureau of Land Manage-
23 ment are not available.

24 (c) Except as hereinafter provided, there are hereby
25 withdrawn, until June 30, 1992, all public lands in the State

1 of Alaska except land withdrawn or reserved for national
2 defense purposes, other than naval petroleum reserve num-
3 bered 4, and land in the national park system, subject to
4 all valid existing rights, from all forms of appropriation un-
5 der the public land laws, including selection rights under
6 the Alaska Statehood Act, as amended, and including the
7 mining laws, and the mineral leasing laws, in each section,
8 as shown on current plats of survey or protraction diagrams
9 of the Bureau of Land Management or protraction diagrams
10 of the State of Alaska where protraction diagrams of the
11 Bureau of Land Management are not available, outside the
12 areas withdrawn and selected under subsection (a) of this
13 section or outside of the areas withdrawn under subsection
14 (a) of section 14 of this Act, which encloses land occupied,
15 as determined by the Commission, by a Native as a primary
16 place of residence on December 31, 1970. Determination
17 of land occupied by a Native as a primary place of residence
18 on December 31, 1970, shall be made by the Commission
19 upon application filed with the Commission by such Native
20 within two years after the effective date of this Act.

21 (d) Pending the disposition of any land withdrawn
22 under this section or section 14, the applicable laws and regu-
23 lations, other than the mining laws and the mineral leasing
24 laws, shall govern the use, management, and administration
25 of such land, including the right to acquire, grant, or use

1 leases, permits, or rights-of-way under such terms and con-
2 ditions as the Secretary may establish.

3 (e) Withdrawals made pursuant to subsection (b) of
4 this section shall terminate five years after the date of enact-
5 ment of this Act for those lands the surface estate of which
6 the Corporation has not designated for patent to Native vil-
7 lages pursuant to section 12 (a) and 12 (d) and the mineral
8 estate of which the Corporation has not designated for patent
9 to itself pursuant to section 12 (e). Withdrawals made pur-
10 suant to subsection (c) of this section may be terminated by
11 the Secretary prior to June 30, 1992, upon issuance of a
12 patent to the Native occupying land within such area or upon
13 the relocation of such Native of his primary place of resi-
14 dence as determined by the Commission outside such with-
15 drawn area. Withdrawals of minerals covered by the mining
16 laws and the mineral leasing laws in lands located in naval
17 petroleum reserve numbered 4 made pursuant to subsection
18 (a) of this section may be terminated by the Secretary prior
19 to June 30, 1992.

20 SURVEYS

21 SEC. 11. The Secretary shall survey the areas selected
22 or designated for conveyance to incorporated Native villages
23 pursuant to the provisions of this Act. He shall monument
24 only exterior boundaries of the selected or designated areas
25 at angle points and at intervals of approximately one mile on

1 straight lines. No ground survey or monumentation will be
2 required along meanderable water boundaries. He shall survey
3 within the areas selected or designated land occupied as a pri-
4 mary place of residence, a primary place of business, and for
5 other purposes, and any other land to be patented under this
6 Act.

7 CONVEYANCE OF LANDS

8 SEC. 12. (a) Upon application of any Native village
9 listed in section 10 of this Act, which is an incorporated
10 Native village, filed with the Commission and upon certifica-
11 tion thereof by the Commission, the Secretary shall, until
12 June 30, 1992, issue a patent to the surface estate, without
13 payment therefor, to such applicant incorporated Native vil-
14 lage of ninety-two thousand one hundred and sixty acres of
15 land subject to all valid existing rights, from any public land
16 within areas withdrawn and selected by such Native village
17 under the provisions of subsection (a) of section 10 of this
18 Act: *Provided, however,* That if, because of the lack of public
19 lands, a patent to the surface estate to any such applicant
20 incorporated Native village of ninety-two thousand one hun-
21 dred and sixty acres is not possible, the Secretary shall patent
22 to such incorporated Native village such surface estate of
23 public land withdrawn under the provisions of subsection (b)
24 of section 10, as the Corporation may designate, without pay-
25 ment therefor and subject to all valid existing rights, which

1 are necessary to provide a total surface estate patented to
2 such incorporated Native village of ninety-two thousand one
3 hundred and sixty acres. Designations made for each Native
4 village under this subsection shall be contiguous, and in rea-
5 sonably compact tracts according to Federal or State protract-
6 tion diagrams or approved surveys except as separated by
7 bodies of water.

8 Upon receipt of a patent or patents to land under the
9 provisions of this subsection (a) the incorporated Native
10 village—

11 (1) shall issue deeds to the occupants, without pay-
12 ment therefor, for any tracts occupied by Natives as a
13 primary place of residence, as a primary place of busi-
14 ness, or used for subsistence campsites or for reindeer
15 husbandry, subject to all valid existing rights;

16 (2) shall issue deeds to the occupants, either with-
17 out payment therefor or upon the payment of an amount
18 not in excess of fair market value for such property, de-
19 termined as of the date of initial occupancy and without
20 regard to any improvements thereon, for any tracts,
21 occupied by non-Natives as a primary place of residence
22 or a primary place of business, subject to all valid exist-
23 ing rights: *Provided*, That all occupants of the same
24 general character shall be accorded similar treatment
25 with respect to any payment for land;

1 (3) shall issue deeds to the occupants, either with-
2 out payment therefor or upon payment of an amount
3 not in excess of fair market value for such property
4 determined as of the date of initial occupancy and with-
5 out regard to any improvements thereon, for any tracts
6 occupied by nonprofit organizations for the purposes
7 for which such organizations were established, subject
8 to all valid existing rights: *Provided*, That all nonprofit
9 organizations of the same general character shall be
10 accorded similar treatment with respect to payment for
11 land; and

12 (4) may issue deeds, subject to all valid existing
13 rights, to all others.

14 (b) Upon application of any Native village listed in
15 section 14 of this Act, which is an incorporated Native
16 village, filed with the Commission and upon certification
17 thereof by the Commission, the Secretary shall, until June 30,
18 1992, issue a patent to the surface estate, without payment
19 therefor, to such applicant incorporated Native village of
20 twenty-three thousand and forty acres of land, subject to
21 all valid existing rights, from any public land within areas
22 withdrawn under the provisions of section 14 of this Act.

23 Upon receipt of a patent or patents to land under the
24 provisions of subsection (b) the incorporated Native village:

25 (1) shall issue deeds to the occupants, without

1 payment therefor, for any tracts occupied by Natives as
2 a primary place of residence, as a primary place of busi-
3 ness, or used for subsistence campsites or for reindeer
4 husbandry, subject to all valid existing rights;

5 (2) shall issue deeds to the occupants, either with-
6 out payment therefor or upon the payment of an amount
7 not in excess of fair market value for such property,
8 determined as of the date of initial occupancy and with-
9 out regard to any improvements thereon, for any tracts
10 occupied by non-Natives as a primary place of residence
11 or a primary place of business, subject to all valid
12 existing rights: *Provided*, That all occupants of the
13 same general character shall be accorded similar treat-
14 ment with respect to any payment for land;

15 (3) shall issue deeds to the occupants, either with-
16 out payment therefor or upon payment of an amount
17 not in excess of fair market value for such property
18 determined as of the date of initial occupancy and with-
19 out regard to any improvements thereon, for any tracts
20 occupied by nonprofit organizations for the purposes
21 for which such organizations were established, subject
22 to all valid existing rights: *Provided*, That all non-
23 profit organizations of the same general character shall
24 be accorded similar treatment with respect to payment
25 for land; and

1 (4) may issue deeds, subject to all valid existing
2 rights, to all others.

3 (c) Upon application filed with the Commission and
4 certification thereof, the Secretary shall, until June 30,
5 1992, issue a patent to the surface estate of up to, but not
6 to exceed, one hundred and sixty acres of land, subject to
7 all valid existing rights, from any public lands within the
8 areas withdrawn for Natives under subsection (c) of sec-
9 tion 10 of this Act, without payment therefor, to any
10 Native occupying land within such one hundred and sixty
11 acres on the date of enactment of this Act as a primary
12 place of residence. The Secretary is authorized to apply the
13 rule of approximation with respect to the acreage limitations
14 set forth in this subsection.

15 (d) (1) Within a period of five years after the date of
16 enactment of this Act the Corporation shall designate addi-
17 tional land for the benefit of each Native village from within
18 areas withdrawn under subsection (b) of section 10 of this
19 Act. In designating land for the benefit of each Native vil-
20 lage, the Corporation shall take into account such factors as
21 population, subsistence needs, traditional way of life of the
22 occupants, economic resources, and the nature and value of
23 the land designated. The land designated under this subsection
24 shall in aggregate total forty million acres reduced by the
25 total number of acres patented or to be patented to individuals

1 or incorporated Native villages pursuant to subsections (a),
2 (b), and (c) of this section 12. Designations made for each
3 Native village under this subsection shall be contiguous, and
4 in reasonably compact tracts according to Federal or State
5 protraction diagrams or approved surveys except as separated
6 by bodies of water.

7 (2) Contemporaneous with the issuance of a patent to
8 each incorporated Native village under subsection (a)
9 hereof, or as soon thereafter as possible, the Secretary shall
10 issue a patent to the surface estate without payment therefor
11 subject to all valid existing rights to such additional public
12 land designated by the Corporation for the benefit of each
13 such Native village pursuant to paragraph (1) of this sub-
14 section (d).

15 (e) Contemporaneous with the issuance of a patent to
16 individuals or incorporated Native villages as provided in sub-
17 sections (a), (b), (c), and (d) hereof, the Secretary shall,
18 with the exception of those lands located in the national
19 wildlife refuge system, and land withdrawn or reserved for
20 national defense purposes, including naval petroleum reserve
21 numbered 4, issue a patent or patents to all minerals in such
22 lands covered by the mining laws and the mineral leasing
23 laws, without payment therefor and subject to all valid exist-
24 ing rights, to the Corporation: *Provided, however, That con-*
25 *temporaneous with the issuance of a patent to incorporated*

1 Native villages, as provided in subsection (a) hereof, of land
2 located in the national wildlife refuge system or naval
3 petroleum reserve numbered 4, the Secretary shall patent to
4 the Corporation all minerals covered by the mining laws and
5 the mineral leasing laws in such public land withdrawn under
6 the provisions of subsection (b) of section 10 as the Cor-
7 poration may designate, without payment therefor and sub-
8 ject to all valid existing rights, equal to the number of acres
9 the surface estate of which is patented to incorporated Na-
10 tive villages and located in the national wildlife refuge
11 system or naval petroleum reserve numbered 4. Designations
12 made under this subsection shall be contiguous, and in rea-
13 sonably compact tracts according to Federal or State pro-
14 traction diagrams or approved surveys except as separated
15 by bodies of water.

16 (f) Where, prior to patent of any land or interest there-
17 in, under this section, a lease, contract, or permit has been
18 issued for the utilization of resources, such patent shall con-
19 tain provisions making the patent subject to the lease, con-
20 tract, or permit and the right of the lessee, contractee, or
21 permittee to the complete enjoyment of all rights, privileges,
22 and benefits granted him by such lease, contract, or permit.
23 After the issuance of a patent for the land or interest there-
24 in subject to such lease, contract, or permit, all income de-
25 rived from any such lease, contract, or permit shall be re-

1 ceived by the patentee except that the administration of such
2 lease, contract, or permit shall continue to be conducted by
3 the lessor, contractor, or permitter.

4 MINERAL LEASING ACT

5 SEC. 13. Deposits of all minerals included under the
6 mineral leasing laws, including but not limited to, coal,
7 phosphate, sodium, potassium, oil, oil shale, or gas located
8 in all public lands in Alaska except land within naval pe-
9 troleum reserve numbered 4 shall be subject to disposition
10 by the Secretary under the terms of this Act. Except as
11 otherwise provided in section 13 (e) herein, after the date
12 of enactment of this Act, the Secretary is authorized to dis-
13 pose of such deposits only by competitive bidding, but other-
14 wise under the provisions of the applicable mineral leasing
15 law. He shall prescribe by regulation the procedures to be
16 used for competitive bidding. The term "mineral leasing
17 laws" as used in this section means only the Mineral Leasing
18 Act of February 25, 1920, as amended and supplemented
19 (30 U.S.C. 181-283), and the Mineral Leasing Act for
20 Acquired Lands (30 U.S.C. 351-359).

21 THP TLINGIT-HAIDA SETTLEMENT

22 SEC. 14. (a) There are hereby withdrawn, until
23 June 30, 1992, all public lands in the State of Alaska, ex-
24 cept land withdrawn or reserved for national defense pur-
25 poses other than naval petroleum reserve numbered 4, sub-

ject to all valid existing rights, from all forms of appropriation under the public land laws, including selection rights under the Alaska Statehood Act, as amended, and including the mining laws and the mineral leasing laws, 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 of Alaska where protraction diagrams of the Bureau of Land Management are not available, which encloses all or part of the following Native villages:

- Angoon, Southeast.
- Craig, Southeast.
- Hoonah, Southeast.
- Hydaburg, Southeast.
- Kake, Southeast.
- Kasaan, Southeast.
- Klawock, Southeast.
- Klukwan, Southeast.
- Saxman, Southeast.
- Tatitlek, Gulf of Alaska.
- Yakutat, Southeast.

(b) The funds appropriated by the Act of July 9, 1968 (82 Stat. 307), to pay the judgment of the Court of Claims in the case of The Tlingit and Haida Indians of Alaska et al. against The United States, numbered 479000, and distributed to the Tlingit and Haida Indians pursuant to the

1 Act of July 13, 1970 (84 Stat. 431), is in lieu of the addi-
2 tional acreage of up to sixty-nine thousand one hundred and
3 twenty acres to be conveyed to each village listed in section
4 12 of this Act which qualifies as an incorporated Native
5 village.

6 (c) Any and all claims of the Tlingit and Haida Indians,
7 including but not limited to the two and six-tenths million
8 acres of land in southeast Alaska referred to in the Court of
9 Claims case of The Tlingit and Haida Indians of Alaska
10 et al. against The United States, numbered 479000, are
11 hereby extinguished.

12 REVOCATION OF INDIAN ALLOTMENTS IN ALASKA

13 SEC. 15. No Native covered by the provisions of this
14 Act may hereafter avail himself of an allotment under the
15 provisions of the Act of February 8, 1887, as amended and
16 supplemented (24 Stat. 389; 25 U.S.C. 334, 336), or the
17 Act of June 25, 1910 (36 Stat. 363; 25 U.S.C. 337).
18 Further, the Act of May 17, 1906, as amended (34 Stat.
19 197), is hereby repealed.

20 REVOCATION OF RESERVATIONS

21 SEC. 16. Notwithstanding any other provision of law, and
22 except where inconsistent with the provisions of this Act, the
23 various reserves set aside by legislation or by Executive or
24 secretarial order for Native use or for administration of

1 Native affairs, including those created under the Act of May
2 31, 1938 (52 Stat. 593), are hereby revoked subject to any
3 valid existing rights of non-Natives. This section shall not
4 apply to the Annette Island Reserve established by the Act
5 of March 3, 1891 (26 Stat. 1101).

6 REVIEW BY CONGRESS

7 SEC. 17. The Commission and the Secretary shall submit
8 to the Congress annual reports on implementation of this Act.
9 Such reports are to be filed by the Commission until its
10 termination, and by the Secretary annually until June 30,
11 1992. At the beginning of the first session of Congress pre-
12 ceding June 30, 1992, the Commission and the Secretary
13 will submit, through the President, a joint report of the status
14 of the Natives and Native groups in Alaska, and a summary
15 of actions taken under this Act, together with such recom-
16 mendations as may be appropriate for continuation or modifi-
17 cation of any provisions of this Act which will specifically
18 expire as of June 30, 1992.

19 APPROPRIATIONS

20 SEC. 18. There is authorized to be appropriated to the
21 Secretary and to the Commission such sums as may be neces-
22 sary to carry out the functions and responsibilities including
23 payments that he is required to perform under the provisions
24 of this Act. Such sums shall remain available until expended.

PUBLICATION

1

2 SEC. 19. The Secretary is authorized to issue and publish
3 in the Federal Register, pursuant to the Administrative
4 Procedures Act (5 U.S.C.) such regulations as may be
5 necessary to carry out the purposes of this title.

6

SAVING CLAUSE

7 SEC. 20. Except as specifically provided for in this Act,
8 nothing in this Act shall be construed as repealing any
9 other provision of Federal law applicable to Alaska. To
10 the extent that there is a conflict between any provision
11 of this Act and any other Federal laws applicable to Alaska,
12 the provisions of this Act shall govern.

13

SEPARABILITY

14 SEC. 21. If any provision of this Act or the applicability
15 thereof is held invalid the remainder of this Act shall not be
16 affected thereby.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., April 5, 1971.

HON. SPIRO T. AGNEW,
*President of the Senate,
Washington, D.C.*

DEAR MR. PRESIDENT: Enclosed is a draft bill "To provide for the settlement of certain land claims of Alaska natives, and for other purposes."

We recommend that the proposed bill be referred to the appropriate committee for consideration and that it be enacted.

This bill sets out the recommendations of this Administration for solution of the land claims of Alaska natives.

The proposed bill, through a combination of providing land and money as settlement for the native claims, will provide an equitable solution to the claims made by the natives of Alaska. It will, on the one hand provide land that is necessary for the living and subsistence needs of those natives who continue to rely upon the land for their living, while at the same time provide an economic settlement both in terms of cash contributions and patents to land and mineral rights which we consider to be generous and equitable which will be used by the natives for promoting their economic development to the fullest extent possible. It is our firm belief that the economic development of the Alaska natives will be of benefit, not only to themselves, but to all of Alaska as well as all Americans.

Following is a discussion of the basic provisions of our proposed bill:

Section 1 of the bill is a citation section and provides that the Act may be cited as the "Alaska Native Claims Settlement Act of 1971".

Section 2 of the bill sets forth the Declaration of Policy. It states that Congress finds and declares that there is an immediate need for a fair and just settlement of all claims by natives and native groups of Alaska. It further states that the intent of the bill is to provide: (1) a right for natives to receive certain land occupied by them, (2) a grant to incorporated native villages for community use and expansion, (3) a grant of \$500 million to the native Corporation, (4) a grant to the native Corporation of mineral rights in certain patented lands, (5) a grant of certain additional lands to incorporated native villages, and (6) a right to receive a portion of the revenues from the leasing and sale of mineral resources up to a total of \$500 million.

Section 2 also provides that it is the intent of Congress to accomplish these ends with rapidity and with certainty and in conformity with the economic and social needs of the Alaska natives, but without establishing any permanent racially defined institution, rights, privileges, or obligations, without creating a reservation system or a lengthy ward or trusteeship; without adding to the categories of property or institutions that enjoy special tax privileges; or without adding to the legislation that has established special relationships between the United States and the State of Alaska.

Section 2 makes it clear that no provision of the Act is intended to replace or diminish any right, privilege, or obligation of any Alaska native as a citizen of the United States or of Alaska, or diminish any obligation of the United States or Alaska to protect or promote the rights and welfare of the natives as citizens. Section 2 also makes it clear that no part of this Act shall constitute a basis for renegotiating or legislating upon any past settlement involving the land claims of any American Indian, or constitute a precedent for any other settlement.

Section 3 of the bill is a definition section in which are defined the terms that are commonly used throughout the bill. Excluded from the definition of "public land" are improved lands used in connection with any Federal installation lands which have been patented or tentatively approved for patent to the State and lands within the utility and transportation corridor.

Section 4 of the bill contains the Declaration of Settlement. It provides that this Act is to be regarded as full and final settlement and extinguishment of any and all claims against the United States, the State of Alaska or others based upon the aboriginal title, right, use, or occupancy of land in Alaska by the natives. It also provides for payment of attorneys' fees by the Government in connection with claims pending before the Indian Claims Commission that are dismissed pursuant to the provisions of this Act.

In setting the compensation to be received by the attorneys, we believe that the payments should be based on proof of work performed in connection with the pending claims, with the amount of the payment being based upon an hourly rate for the hours of proven work. The hourly rate paid each attorney would be that

rate generally recognized for attorneys practicing in the area where each of the claimant attorneys practice. Our investigation of the cases pending before the Indian Claims Commission reveals that \$250 thousand will be more than adequate to cover the compensation of the attorneys handling the pending cases and we have added this sum to the amount that the Secretary is directed to pay to the Corporation in fiscal 1973 by section 7(h) of the bill to cover such costs.

Section 5 of the bill creates the Alaska Native Commission. The Commission will be made up of three members, all of whom are to be appointed by the President with the advice and consent of the Senate. The Commission shall exist until June 30, 1992. The Commission terms are for three years with the terms being staggered. The Commission will be located in Alaska and will have necessary staff to support its work. The principal functions of the Commission are: (1) to determine who qualifies as natives and what villages qualify as native villages, (2) the preparation of the roll of natives, (3) the appointment of incorporators of the Alaska Native Development Corporation, (4) the establishment of geographic regions, (5) the issuance of rules and regulations and the approval of land transactions, (6) the submission of required reports to Congress, and (7) any other duties required by the Act.

Section 6 provides for the enrollment of the Alaska natives. The roll will be prepared by the Commission under rules and regulations issued by them and will be a listing of the natives of Alaska born on or before December 31, 1970, and living on the date of enactment of the Act. The section directs the Secretary of the Interior to make available to the Commission for their use in connection with the preparation of the roll such personnel services and material as he deems reasonable. This will allow the Commission to draw upon the resources and expertise of the Bureau of Indian Affairs in connection with the preparation of the roll.

Section 7 authorizes the establishment of the Alaska Native Development Corporation as an Alaskan corporation and subjects it to the provisions of this Act for a period of 20 years. The Corporation is to be formed by five incorporators appointed by the Alaska Native Commission. The management of the Corporation shall be vested in the Board of Directors made up of 17 members elected by the stockholders; one member will be elected by the stockholders living in each of the 12 regions determined by the Commission pursuant to section 9 of this bill. The other 5 members will be elected at large by all of the stockholders. The terms of the directors is 4 years with a provision for staggering the terms of the initial board with lots to be drawn to determine who shall serve the short terms.

The Corporation is authorized to have a president and such other officers as may be named and appointed by the board at rates of compensation approved by the board. The other employees of the Corporation shall be appointed by the president. The employees are subject to standards and requirements similar to those applicable to Federal civilian employees but are not employees of the Federal Government.

This section gives the Corporation general corporate authority but provides for some additional authority in order to foster native development. This Corporation will, of course, have authority to establish subsidiary corporations on a regional basis, or any other basis the natives desire. There is a limitation placed on the amount of money the Corporation may use for dividends or unsecured loans in any one year. Certain of the Corporation's income is excluded from Federal and State tax laws.

The section authorizes the issuance of one million shares of common stock which stock shall for the first 20 years of the life of the Corporation be issued only to natives, ten shares to each native. We have prohibited the alienation of stock in the hands of the natives until June 30, 1992 except for provisions for disposal at death. The stock is exempt from Federal or State estate or inheritance taxes until June 30, 1992. The section makes the Corporation subject to audit by the General Accounting Office until June 30, 1992.

The section provides for a payment to the Corporation of \$500 million to be made over a period of 20 years by the Secretary of the Interior beginning with fiscal year 1972, with a provision for an initial payment to the Corporation of \$1 million as soon as it is organized. An additional \$250,000 is to be paid in the first year to be used to pay the fees of attorneys who handled claims of the Alaska natives before the Indian Claims Commission.

Section 8 of the bill provides that 2 percent of all revenues received from the disposition of minerals in the State of Alaska shall be paid to the Corporation. The 2 percent override will apply to revenues received both on Federal lands in the State as well as lands patented to the State of Alaska. This section will be

applicable until the Corporation receives a total of \$500 million after which time the overriding royalty will cease.

Section 8 also provides that in the event of default by the State of Alaska in making payments due under this section there shall be deducted annually and paid to the Corporation the amount of any underpayment from the share of mineral revenues from public lands otherwise payable to the State. It further provides that in the event the State initiates litigation or becomes a party to litigation to contest section 8, the Secretary shall have authority to suspend State selection under the Alaska Statehood Act for certain lands. Any action brought to contest section 8 must be instigated within one year after the date of this Act or otherwise be barred.

In the final analysis, legislation on this subject represents an agreement among three parties—the Alaska natives, the State of Alaska and the United States Government. We believe it should be clearly understood among the parties concerned that the State of Alaska has an interest and shares a responsibility in reaching an equitable settlement of the Alaska Native Land Claims. The revenue sharing and other provisions of the Administration's draft bill reflect our best judgment regarding the part of the settlement which should be the State's responsibility. Certain of the provisions of the revenue sharing section seek to assure State cooperation and compliance. In any event we believe the contribution of the United States that is reflected in the bill is a fair settlement between the natives and the United States. We do not believe the United States would have a responsibility to increase its contribution now or in the future if the State were to fail to meet the State's obligations as specified in the bill.

Section 9 of the bill provides for the Commission to divide the State of Alaska into 12 geographic regions with each region being composed, as far as practicable, of natives having a common heritage and sharing common interests. The bill sets out that the 12 regions shall, unless good cause is shown to the contrary, be approximately the areas covered by the 12 existing native associations and lists those associations. It provides that any disputes over boundaries of any region shall be determined by the Commission and its determination shall be final.

Section 10(a) provides for the revocation of existing public land orders which have withdrawn all public lands in the State of Alaska. It then provides that except for land for national defense purposes other than naval petroleum reserve numbered 4 and land in the National Park System, each township in which a native village, as listed in subsection (a)(2) of section 10, is located and each contiguous and cornering township shall be withdrawn. Within a period of one year, each native village is to select an area equivalent to three townships from the cornering and contiguous townships withdrawn. At the end of the one-year period all cornering or contiguous townships, except those selected by the native villages and except those in the National Wildlife Refuge System or naval petroleum reserve numbered 4, shall be subject to the provisions of subsection (b) and shall be deemed to have been withdrawn under the provisions of said subsection. At the end of said one-year period, the withdrawal of all contiguous and cornering townships in the National Wildlife Refuge System and naval petroleum reserve numbered 4 which have not been selected by the native village shall terminate.

Paragraph 2 of subsection (a) lists the native villages with the exception of the Tlingit-Haida villages which qualify for withdrawal under the provisions of section 10.

Subsection (b) provides for the withdrawal of all public land, with the exception of land withdrawn for national defense, including naval petroleum reserve numbered 4 and land in the National Park System and the National Wildlife Refuge System, in the contiguous and cornering townships surrounding the townships withdrawn under paragraph 1 of subsection (a) of section 10.

Subsection (c) provides for withdrawal of each section in which a native has his primary place of residence on December 31, 1970, if such place of residence is outside the boundaries of townships withdrawn for the village. Excepted from this withdrawal are National Park System lands and lands withdrawn or reserved for national defense purposes, except naval petroleum reserve numbered 4. Any native who is to qualify for land under this subsection must file his application for a determination of occupancy with the Commission within two years after the effective date of the Act.

Subsection (d) provides for the continuation of present management of land withdrawn under the provisions of section 10 and section 14. This management will continue until the land is either patented or returned to its use prior to withdrawal.

Subsection (e) provides that withdrawals made pursuant to subsection (b) shall terminate 5 years after the date of enactment of this Act except for those lands or interest therein designated for disposition by the Corporation pursuant to section 12 (a), (d) or (e). It further provides that withdrawals made pursuant to subsection (c) of this section may be terminated by the Secretary upon issuance of a patent to the native occupying such land or upon the relocation of such native. Withdrawals made pursuant to subsection (a) of minerals located in naval petroleum reserve numbered 4 may also be terminated by the Secretary prior to the termination of such withdrawal.

Section 11 provides that the Secretary will survey the areas selected or designated for patent to incorporated native villages. He shall monument only exterior boundaries at angle points and at intervals of approximately one mile on straight lines. No ground survey or monumentation shall be required along meanderable water boundaries. He shall also survey within such areas land occupied as a primary place of residence, a primary place of business, or for other purposes.

Section 12(a) provides for patenting to incorporated native villages of the surface of 92,160 acres of land from the withdrawn areas selected by the listed villages. The patenting of 92,160 acres is dependent upon that amount of land being available from the public domain surrounding the village. In the event there is not sufficient public land surrounding an incorporated native village to patent to it 92,160 acres, the Secretary is authorized to patent other land, designated by the Corporation, to such village to make up the difference.

This subsection further provides that upon receipt of patents by the incorporated native village, the village shall then issue deeds to native occupants of land within such area, without consideration, of tracts occupied by them as residences, places of business, subsistence campsites or reindeer husbandry. It also provides that the village will deed to non-natives and nonprofit organizations land occupied by them either without consideration or upon payment of fair market value as determined on the date of initial occupancy without regard to improvements, provided that all in the same general character are accorded similar treatment.

Subsection (b) provides for patenting of the surface of 23,040 acres of land to the Tlingit-Haida villages listed in section 14 of the bill. The provisions for patenting land to natives, non-natives, and nonprofit organizations under subsection (b) is identical to the provisions set forth above under subsection (a).

Subsection (c) provides for the patenting of the surface of 160 acres of land within the sections withdrawn under the provisions of subsection 10(c) of the bill to those natives occupying such land as a primary place of residence on the effective date of this Act.

Subsection (d)(1) provides that within 5 years from the date of enactment of this Act the Corporation shall designate additional land for the benefit of each native village from within areas withdrawn under subsection (b) of section 10. The land designated under this subsection shall total 40 million acres reduced by the number of acres patented or to be patented to individuals or incorporated native villages pursuant to (a), (b), and (c) of section 12. Certain criteria is set forth in this subsection for the Corporation to use in making such determinations. This section will guarantee that the total land settlement provided for in this bill is 40 million acres.

Paragraph 2 of subsection (d) provides that the Secretary will issue a patent to the surface estate for such land designated for the benefit of each native village simultaneous with or as soon as possible thereafter, the issuance of a patent for land to the incorporated native village under subsection (a) of this section.

Subsection (e) provides that contemporaneous with the issuance of the patents to the surface provided for in subsections (a), (b), (c) and (d) of section 12, the Secretary shall, with the exception of those lands located in the National Wildlife Refuge System and land withdrawn or reserved for defense purposes including naval petroleum reserve numbered 4, issue a patent to the Corporation for all the minerals covered by the mining laws and the mineral leasing laws, such mineral patent to be without payment and subject to valid existing rights. Where those villages are located in naval petroleum reserve numbered 4 and the National Wildlife Refuge System, the Secretary shall patent to the Corporation the mineral interest in lands withdrawn under subsection (b) of section 10 as designated by the Corporation equal to the number of acres the surface estate of which is patented to villages located in the National Wildlife Refuge System or naval petroleum reserve numbered 4.

Subsection (f) provides that where prior to the issuance of a patent to any land under this section, a contract, lease, or permit has been issued for the utilization of mineral or surface resources, such patent shall be subject to such contract, lease, or permit and the patent will contain language so providing.

It further provides that all income derived from such lease, contract, or permit shall be paid to the patentee but the administration of such lease, contract, or permit shall continue to be conducted by the lessor, contractor, or permitter.

Section 13 authorizes the Secretary to dispose of all deposits of minerals included under the mineral leasing laws located in Alaska, excepting those minerals in naval petroleum reserve numbered 4, only by competitive bidding.

Section 14 provides for the settlement of the Tlingit-Haida claims. It authorizes in subsection a) the withdrawal of the township enclosing the villages listed in section 14.

Subsection (b) provides that the distribution of funds awarded the Tlingit-Haida in the Court of Claims case and made pursuant to Public Law 91-335, is in lieu of the additional townships awarded the native villages in section 12.

Subsection (c) extinguishes the claims of the Tlingit-Haida Indians including the 2.6 million acres of land referred to in their Court of Claims case.

Section 15 repeals those provisions of law that allow Indian allotments in Alaska. We believe that these provisions should be repealed since this bill makes what we consider to be adequate land provisions for the natives of Alaska.

Section 16 provides that the existing reserves that have been set aside by any means for native use or administration of their affairs are revoked when such revocation is not inconsistent with the provisions of this Act. This provision does not revoke the Annette Islands Reserve because the revoking of such reservation would be inconsistent with the provisions of this Act since the Tsimshian Indians are not included in the settlement made by this bill.

Section 17 provides that the Commission and the Secretary shall submit annual reports to the Congress. On June 30, 1992, the Commission and the Secretary are to submit through the President a joint report of the status of the natives, a summary of actions taken, together with recommendations for the continuation or modification of the Act.

Section 18 contains the authorization for appropriations to the Secretary of the Interior and the Commission of the sums that will be necessary to carry out their functions and responsibilities under the Act.

Section 19 is a publication section and authorizes the Secretary of the Interior to publish in the *Federal Register* such regulations as may be necessary to carry out the purposes of the Act.

Section 20 is a savings-clause provision.

Section 21 provides that if any provision of this Act is held invalid the remainder of the Act shall remain valid.

In the preparation of this proposed legislation, the Department has had the benefit of the advice and views of the representatives of the Alaska Federation of Natives, with whom, not only I, but the Vice President and members of the President's personal staff have been in close consultation.

This consultation is a direct result of the President's and Vice President's interest in seeing to it that Indian and native peoples are informed about and involved in the Administration's treatment of matters which, like this legislation, so directly affect their lives.

The Office of Management and Budget has advised that the enactment of this proposed legislation would be in accord with the program of the President.

Sincerely yours,

ROGERS C. B. MORTON,
Secretary of the Interior.

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, D.C., April 28, 1971.

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

DEAR MR. CHAIRMAN: As you asked, here is the report of the Department of Agriculture on S. 35, a bill "To provide for the settlement of certain land claims of Alaska Natives, and for other purposes."

In lieu of S. 35 we recommend the enactment of substitute bill S. 1571 which has been endorsed by the Administration.

We believe the grants that would be provided by the Administration proposal will adequately meet the particular needs of the Natives in villages within National Forests and at the same time recognize past actions and the special and important values of these public lands. The Natives' needs for hunting, fishing, and gathering around these specific villages can be clearly met within the management policies and practices followed in normal National Forest management.

The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program and that enactment of S. 1571 would be in accord with the President's program.

Sincerely,

J. PHIL CAMPBELL,
Under Secretary.

U.S. CIVIL SERVICE COMMISSION,
Washington, D.C., April 29, 1971.

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

DEAR MR. CHAIRMAN: The Civil Service Commission is submitting a report on S. 1571, a bill "To provide for the settlement of certain land claims of Alaska natives, and for other purposes." We are reporting on S. 1571 in lieu of S. 35 because S. 1571 has been endorsed by the Administration.

Among other things, S. 1571 would establish a temporary Alaska Native Commission which would be in existence until June 30, 1992. Additionally, there would be established an Alaska Native Development Corporation. This Corporation would not be an agency or establishment of the United States Government.

Although the Civil Service Commission does not object to any of the personnel provisions of the bill, we do, for the sake of technical accuracy recommend that the words on line 5 of page 8 be changed to read as follows:

accordance with chapter 51 and subchapter III of chapter 53 of title 5, United States Code.

Attention is also invited to the fact that the reference on lines 3 and 4 of page 49 to "the Administrative Procedures Act (5 U.S.C.)" should be changed to read "Subchapter II of chapter 5, title 5, United States Code, Administrative Procedure" since the subject Act was repealed and its provisions codified in title 5 by Public Law 89-554, approved September 6, 1966.

The Office of Management and Budget advises that from the standpoint of the Administration's program there is no objection to the submission of this report as the enactment of this legislation would be in accord with the program of the President.

By direction of the Commission:

Sincerely yours,

ROBERT HAMPTON,
Chairman.

The CHAIRMAN. Now, we are delighted to have with us this morning the Secretary of the Interior, Rogers C. B. Morton, as our first witness. Secretary Morton, do you want to come forward now and with your own people present to join in our own presentation?

I believe you have a prepared statement and you may proceed in your own way.

STATEMENT OF HON. ROGERS C. B. MORTON, SECRETARY OF THE INTERIOR

Mr. MORTON. Thank you, Mr. Chairman.

Mr. Chairman, I believe the best way to proceed is to read my prepared statement because this is a complex piece of legislation and proposal, therefore I believe that we can handle it in a more orderly way with a prepared statement.

First let me say it is a pleasure to be here before the committee and to join you in working on this very important and complicated measure.

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

I am pleased to appear here today to testify on the settlement of the Alaska Native land claims. The administration, as you know, on April 6, 1971, submitted to the Congress its recommended proposal for settlement of these claims. Our bill has been introduced as S. 1571 and I, of course, recommend its enactment.

All of the members of this committee are intimately familiar with the issues involved in the settlement of the Alaska Native land claims and of the recommended solutions. I, therefore, will not go into a long, detailed discussion of the provisions of any one proposal. I would, however, like to briefly outline some of the major provisions of the administration's bill.

The administration recommends the establishment of a single corporation organized under the laws of the State of Alaska to receive the cash portion of the settlement as well as title to the mineral estate. The Corporation will be owned by all the Natives of Alaska and will be controlled by a 17-member board of directors entirely elected by Alaska Natives. Control of the Corporation by the Alaska Natives is an important element of the administration's policy of Indian self-determination and is a reflection of the President's own interest in strengthening the management by Indian groups of their institutions and organizations of government.

The single corporate aspect is an important part of the administration's proposal. As a means of providing the Alaska Natives with a permanent stake in the future economic development of the State of Alaska, our proposal provides that 40 million acres of mineral rights will be patented to the Corporation. The mineral deposits have not been used by the Natives in the past on a village subsistence basis, as has the land, but instead is included as a part of the total economic settlement. We feel it is very important for the cash contribution as well as the patented mineral deposits to be used for the benefit of all of the Natives of Alaska. As a method of accomplishing this objective recommend the establishment of a single Alaskan State Corporation.

The administration's proposal provides for a total cash settlement of \$1 billion. This is divided between a Federal contribution of \$25 million a year for 20 years and a 2-percent overriding royalty on mineral leases on both Federal and State lands in Alaska up to a maximum of \$500 million. The administration feels that the State of Alaska should contribute to the settlement of the Native land claims and for this reason we recommend the overriding royalty. We do not feel, however, that the royalty should continue in perpetuity as proposed by the Natives but recommended that it be continued until the Corporation has received \$500 million.

The land provisions of the administration's proposal will guarantee that Native villages and individuals will receive a total surface estate of 40 million acres. As I mentioned earlier, the Corporation will receive patents to the mineral estate of 40 million acres. In all cases, except for land withdrawn or reserved for national defense programs, including naval petroleum reserve No. 4, and wildlife refuges, the

mineral estate patented to the Corporation will underlie the surface estate patented to Native villages and individuals.

Our proposal provides for a withdrawal of the township in which each Native village listed in the bill is located plus the eight cornering and contiguous townships (except for Tlingit-Haida villages). Also, the bill provides for the withdrawal, except for villages located in land withdrawn or reserved for national defense purposes, including naval petroleum reserve No. 4, and wildlife refuges, of the 16 townships cornering and contiguous to the original eight withdrawn townships.

Within a period of 1 year each village is to select an area equal to three townships from within the eight cornering and contiguous townships and thereafter receive a patent to the surface estate of the township in which the village is located plus the area selected. The Corporation is then granted the authority to select additional land for patent to the Native villages from within the remaining 21 townships withdrawn surrounding the Native villages.

Lands located in withdrawals or reserves for national defense purposes, including naval petroleum reserve No. 4 and wildlife refuges, are excepted from corporate selection. The total amount of land selected by the Corporation will be 40 million acres reduced by the number of acres patented to Native villages and to individual Natives living outside the village withdrawals. Individual Natives living on public land outside the village withdrawals are entitled to 160 acres each. The surface estate of the land selected by the Corporation will be patented to the Native villages and the mineral estate to the Corporation. An in lieu mineral patent is granted to the Corporation equal to the number of acres patented to Native villages in naval petroleum reserve No. 4 and wildlife refuges.

Tlingit-Haida villages are entitled to only the surface estate for the township in which the village is located with the underlying mineral estate to be patented to the Corporation.

The Department's decision to provide each Native village, other than the Tlingit-Haida villages, with title to the surface of four townships surrounding the village where public land is available is based upon our belief that each village should have the opportunity to select land to protect its immediate environment. Since the villages will receive only the surface, in making such selection they will take into consideration their need for subsistence resources. This will provide each village with a means of selecting the subsistence campsites within the vicinity of the village together with enough land for future growth. In addition, the Corporation is given the authority to patent the surface estate of additional land to Native villages as the needs of individual villages are determined by the Corporation.

Each Native village entitled to land is listed in our proposal. Land available for settlement is then tied to each listed village. This is extremely important since it clearly identifies the land which will be subject to settlement of the Native claims and at the same time allows future development on the remaining lands. Only through this method will the rights of Natives and non-Natives alike be clearly established and the development of Alaska for the benefit of all people be allowed to progress in an orderly manner.

Our proposal also provides that the Natives will receive a legal, enforceable interest in the land made available to them. Subsequent

to the issuance of a patent to either the surface estate or mineral estate, the patentee will have all rights of ownership and no future controls will be retained by the Federal Government. We feel that it is essential that the settlement of the Native claims to be final and not subject to any further action by an governmental authority.

Mr. Chairman, the settlement of the Alaska Native land claims is the last major outstanding claim based on aboriginal title remaining in the United States. Congress has an opportunity to rewrite history in the enactment of this legislation.

The proposal which the administration has submitted is a just and equitable settlement of these claims. It resulted from long and careful deliberations not only within the executive branch but also with the Natives themselves. It provides for a combination of land and cash grants which not only gives the Natives a permanent future in the State of Alaska but also allows the remainder of the State to progress for the benefit of Natives and non-natives alike.

Furthermore, the administration's proposal is structured in such a way so that, to the maximum extent possible, all of the Natives will will share equally in their economic development.

Mr. Chairman, I have by no means described in any great detail the terms of the administration's proposal, however, I believe the members of this committee have all had an opportunity to review our bill and so at this time I will be happy to answer any questions which the members may care to ask. And, Mr. Chairman, may I suggest that we have a map which has been put up on the easel here to my right and if the language of the statement which I just read is not altogether clear, if you would like, Mr. Bracken, our legislative counsel, is prepared to demonstrate with the use of the map exactly where these lands are and make more clear some of the points we made in the statement.

The CHAIRMAN. Thank you, Mr. Secretary.

Mr. Secretary, the land claims bill proposed by the Department of the Interior is greatly different than the bill proposed last year. For example, the bill last year recommended 10 to 14 million acres of surface estate, this year 40 million acres in fee. Last year the Department contended and submitted legal briefs to support the contention that sharing of revenues derived from oil development was unconstitutional, this year the Department recommends revenue sharing. I wonder if you could explain to the committee the Department's dramatic change in thinking on these matters?

Mr. MORTON. I think, Mr. Chairman, this comes as a result of a change in the administration at the top of the Department, I got into this matter very shortly after I became Secretary, in the beginning of this year and began a study of the magnitude of the problem and began to review in my own way and with the help of our staff, the real magnitude of the claim. I feel that the Department's position last year did not fully reflect the President's desire for a settlement of this claim in a more meaningful way as far as the Alaskan Natives are concerned. I felt that from a moral sense the proposal last year did not fully discharge the obligation, based on the general feelings of individuals that I talked to who were very knowledgeable, including members of this committee.

So I think the change is a change in philosophy which is more geared to making a settlement that in fact is a true settlement of the obligation we have to the Native people.

The CHAIRMAN. You will recall that when you appeared, I think in connection with your confirmation on February 18th, and I realize you didn't have a chance to really dig into this problem at that time, you proposed the subsistence use of up to 40 million acres of land, now we have a proposal of 40 million acres in fee.

Mr. MORTON. Well, the reason for this change, certainly it is a change in my own personal feeling that developed from the fact that I don't believe we again would have settled the claim in terms of the obligation we had. The land means a great deal to the Alaskan Native people, possession of the land is a very important thing to them. I discussed this with members of the Congress and other people from Alaska and I changed my mind on the basis that I was convinced that only land use permits would not satisfy the obligations of the claim.

The CHAIRMAN. There are some real problems here, would you agree, in connection with the decision that we made at the time of statehood, between the right of selection on the part of the State of Alaska and—the current proposal for the granting of 40 million acres in fee.

How do we resolve this policy which we laid down in 1958, when Alaska was admitted as a State with the Administration's land claims settlement proposal?

Mr. MORTON. Well, we have attempted, as the map will show, to protect the tentatively approved selected lands and hopefully, as you can also see from the map, that after these selections are made which are scattered pretty well across the whole State, that the State selection process can proceed and can proceed in a way that will protect the State's interest.

There is only so much land there, this is perfectly obvious, and how much of it should be allocated for the resolution of this claim and how much of it should remain to be selected for the State is one of judgment and it is one of judgment that we have tried to make and I am sure it is one of judgment this committee and the other committees involved in the Congress will try to make.

Hopefully, we have struck a middle-ground approach here which will allow the State of Alaska to select valuable lands across the State.

The CHAIRMAN. Does the Department have a statement of the value of the 40 million acres that are proposed to be granted or a breakdown indicating the mineral estate value of these lands?

Mr. MORTON. No, it would be very difficult to have that. As you know, the geological evaluations and surveys in any detail of the whole State are far from complete in any sense and I guess really the value of these lands in this changing world is up for grabs.

I don't know how to go about evaluating it. I think you can go through an elaborate process of coming up with a figure, but I would hate to stake my life on the accuracy of it.

The CHAIRMAN. In the recently transmitted bill to terminate the Santa Barbara leases, the Department proposes to open petroleum reservation No. 4 to exploration.

Who would do the exploration and what plans are there with respect to development?

Mr. MORTON. Who would do the exploration?

The CHAIRMAN. Yes.

Mr. MORTON. It would be done by the Navy, but they could well contract it out.

The CHAIRMAN. It would be done under Navy direction and supervision and in all probability subcontracted out to someone.

Mr. MORTON. I would think it would be contracted out to people who were on the scene that had the equipment to bore the test holes and sample the cores and do all the other things that are involved.

The CHAIRMAN. Returning to the question of the overall proposal for a moment, do you see any problem in the lower 48 States of this legislation setting a precedent by which the Indians could request a reopening of claims that had been pending and had been adjudicated before the Indian Claims Commission?

Mr. MORTON. Well, Mr. Chairman, when you get on the side of making a claim, you always can find a precedent. I hope this is not a precedent-setting piece of legislation.

The CHAIRMAN. You see, it is not the idea, of course, of compensation. My question really concerns to the right of the Indians in the lower 48 States to ask for a settlement based not alone on a cash settlement but in effect to ask for specific performance to the return of land and how do we handle that?

Mr. MORTON. Well, Mr. Chairman, you have directed yourself right to the heart of this whole issue. We have tried to make the bill clearly a non-precedent bill by stating that in the bill. I don't see whether you have this bill or whether you have any legislation of this kind that you can guarantee that there won't be claims made by other native peoples.

Whether those claims are valid or not, we have the mechanism in the Congress and in the courts to make this determination. It is certainly not the feeling in the Department or in the Bureau of Indian Affairs that we are setting a precedent here which will open Pandora's box in the lower 48 for the proliferation of claims of settlement.

I agree with your problem, we are photographing this thing at this particular point in time. It is a very, very complicated proposition and that is why we are dealing with it years later than the claim really was established.

So I think we just have got to face up to what we are doing here and not let it become a precedent and deal with it on its individual merits. But that doesn't mean people are not going to take on the idea that this would open the door for additional settlements in the lower 48.

The CHAIRMAN. As you know, the basic philosophy behind the Indian Claims Commission as it was established in 1946 was to provide for an adjudication of the claims on the basis of cash settlement, prohibiting any settlement on the basis of a land adjustment.

Now, we have a very large amount of acreage owned by Uncle Sam, one-third of all the land in the United States is owned by the Federal Government. I just wonder how we will be able to reconcile some of the proposals here such as this one and one up to 60 million acres, which involves very large land settlements. This concerns me as one who also has been interested in trying to find a way in which we could

provide for a fair adjudication of this entire problem. This committee did the pioneering work here in setting up the corporation and the override to provide revenue.

The committee tried to avoid the mistakes of the past which we are now suffering from where claims were settled, but a new generation of Indians have come along and said, "We had nothing to do with that." So we tried in the bill that passed last year to give sound recognition to the idea of a trust just as prudent fathers or mothers would provide for their family, to make sure that the decision today would show some benefit for future generations.

I think the worst result of the Indian Claims Commission Act is that we thought that by adjudicating these claims we had achieved a final settlement. It is clear in my mind that the younger generation of Indians feel that was no settlement at all.

What I am concerned about is how we handle, in the lower 48 States, an award here which would be larger than anything ever before granted per capita for a native people.

Bear in mind that there is a difference, The rights claimed here are aboriginal, the rights in the lower 48 grew out of the treaty violations in one form or another; improper taking of the land or pressure utilized by the Federal Government. These are things that I think we should face up to. We have already had some requests, as you are aware, for return of lands that are now within national parks, some of the lands are in wilderness areas. These are things that I think the Committee will have to resolve, as we consider this particular proposal. I am sure you would agree with that.

Mr. MORTON. I would agree whole-heartedly with that and we think we have addressed ourselves to this. We have fortunately, in the Department, two very competent lawyers who have studied this proposal and who have been involved for some time in the difficulties of it. I think it might be good for Secretary Loesch to address himself to this very problem, which is the \$64-question, I think, and also our Solicitor who has been involved in this.

So, if they could shed some light on this very problem of whether we are setting a precedent here and whether we are making a settlement that forbodes difficulties in the lower 48, this might be a good time to do it.

The CHAIRMAN. Of course, as you know, saying that the bill is not a precedent, doesn't make it such.

Mr. LOESCH. Very true, Mr. Chairman.

Of course, I think the basis upon which the Department arrived at its position is what you put your finger on a moment ago. The basis of the Native claim in Alaska is different from the basis of the claims in the other 48 States.

The aboriginal claim rather than a treaty violation claim gives a different legal basis. Now, as Secretary Morton said, certainly we can not guarantee that this will not result either in a clamor, or lawsuits to reopen previously made settlements. Under our system of government anyone can go to court. But based on the difference, the treaty with Russia, the organic act, the Statehood Act, the recognition by Congress right along that the Alaskan Natives have a claim to the actual land, I do not believe that in any legal sense this Act as passed would operate as reopening any claim that might be made down here and, as you said, just saying that something isn't

precedent doesn't make it so, but it seems to me we are talking about apples and oranges.

It is really an entirely different thing.

The CHAIRMAN. I would argue the other way now for a moment. First of all, the Indians and the natives in the lower 48 States can not get into court except by special act of Congress, right?

Mr. LOESCH. That is very true, yes.

The CHAIRMAN. You mentioned something about going to court, they really can't go to court. We are the court up here, unfortunately, on some of these things. They come in and say that the settlement in Alaska is just absolutely contrary to the policy established for the first 48 States in settling the claim.

That is, that a settlement would have to be paid in dollars and not in land. Now, we have some claims, I have one in my State where there was a mistake in the survey in connection with the Yakima Indians. A clearcut mistake. The lands involved are in the wilderness area. I believe Senator Metcalf has a problem involving the Glacier National Park. We have a huge public domain that is unoccupied, why shouldn't they come in and ask for a bald settlement here by specific performance involving payment in land especially if there is something going on underneath the land that might give them a particular impetus to move in that direction. Just a question I have.

Mr. MORTON. One of the points, Mr. Chairman, it is not the amount of land that will determine the precedent. The precedent, if you were going to have a precedent, I don't believe necessarily you do. I think the legal difference has been defined, it is the fact that if there is any land are you going to look at it that way as to whether you are setting a precedent?

The CHAIRMAN. You see, Mr. Secretary, some of the Indians were left with no land at all in the first 48 States. The landless Indians. Now, we did make some land settlements but I would hasten to point out that the land they received for the reservations, with one or two exceptions, involved very limited areas. They did in my State. I mean, it is a very small area. Arizona and New Mexico is a little different, but it doesn't even come close to the amount of land involved per capita that we are talking about here.

I raise this question because it seems that there are some serious problems involved on a precedent basis. Not only did we prohibit specific performance of the land but in the Indian Claims Commission Act, as I recall, the basis for determining the dollars involved was total value of the land at the time of the taking.

Well, you know, we were talking about land worth 2 or 3 cents an acre and that is the way the compensation occurred. We are not talking that way now and how do I answer that one?

Mr. LOESCH. Well, Mr. Chairman—

The CHAIRMAN. I thought I would throw a few tough ones out here.

Mr. LOESCH. You are perfectly correct, the Indian claims were made on the basis of value at the time of the taking. The time of that taking was long ago, generally. We are presently, in the view of the Alaskan Natives, right now, today, with the passage of this or some similar bill, in the process of taking.

Now, if you apply the same logic, presumably I am not speaking of the land now, I am speaking of the cash compensation presumably,

since the land was not taken before, you would be applying the value at the time of the taking.

The CHAIRMAN. Well, I don't want to get too technical about it but there was a constructive taking here in effect. Legally they had no right to the land except as the courts have ruled in Alaska, except whatever right that the Congress wanted to confer on the Natives, right?

Mr. LOESCH. Yes, I believe so.

The CHAIRMAN. Now, there is an entirely different question involved with the occupancy of the natives in the first 48 States. There they were just pushed out and they did own the land in the truer sense. We bought Alaska from Russia and the rights that the natives had at the time of the purchase were in effect the rights they had under the Czar. It was an entirely different situation that exists in the first 48 States.

I realize these are hard choices we have to make but there are rumbles, as you know. We have seen the seizure of certain lands, the Indians are restless and some of the other Indians, too. [Laughter.]

So I just put these questions, frankly, I didn't expect answers. I don't know that there is an answer. But I think it is so important that we all understand what we are doing when some of these requests come. There is going to be a headlong clash on some of the claims involving our policy on conservation.

They are going to say, "Look, you turned over 40, 60 million acres in Alaska, why don't you give us part of the wilderness area, part of the national parks. You have all this vast land in the United States that is not occupied. The Federal Government owns one-third of all the land in the United States. What about us?"

Well, think about it a little bit and maybe you can slip me a little piece of paper afterwards that will give us the magic answer to this. A word about the pipeline, Mr. Secretary, which is involved in this problem. What is the status of the Department's review of the application for a permit to construct the trans-Alaska pipeline?

Is there a final timetable for acting on the permit?

Mr. MORTON. Yes, there is, Mr. Chairman.

We hope to have all of the preliminary work done by the end of July and we hope to be able to make a firm decision for the middle of September.

The CHAIRMAN. The middle of September?

Mr. MORTON. Yes.

Senator BIBLE. Is that this year, Mr. Secretary?

Mr. MORTON. This year.

Senator BIBLE. Thank you.

Because I questioned the Secretary on this point a little earlier, that is the only reason I interjected.

The CHAIRMAN. What studies remain?

Mr. MORTON. We have the study of the Coast Guard of the maritime area to be completed, we have an evaluation of the mechanical aspects or the engineering aspects of the line, itself, construction of the line itself, comparison of some of the alternatives available in this area, and the drafting of the 102 statement which gets to be, with all the stipulations involved in it, a rather large task.

We are only recently possessors of the information that this was a requirement that had to be furnished to us by the Alyeska group.

I would like to say this 102 statement can't be completed until we get all the necessary information from the oil companies and a lot of the people that accused us of dragging our feet were not anywhere near meeting their obligations to furnish us with the information that we had to have.

This is a tremendous public works project. This is the biggest public works project or works project that I think we have ever undertaken. If it is going to be built, first it is going to have to work.

Secondly, it is going to have to be compatible with the environment. The construction of that pipeline is going to have to be safeguarded in many, many ways. We, I think, are doing this job as fast as it can be done within the limits of the resources we have available.

The CHAIRMAN. Can you comment on the purpose of the trip of Mr. McCracken? General Lincoln? They are up there on some kind of an inspection trip?

Mr. MORTON. Both Mr. McCracken and General Lincoln are involved in our oil policy studies and our energy policy studies. I was invited to go with them but the schedule didn't work out that way. I am going up in the latter half of June, I hope, to take a hard look at the corridor and particularly the maritime aspects of this because then we will be ready to get into the decisionmaking process.

But I think they went there to familiarize themselves with the total proposition of the pipeline and I believe they wanted to visit the north slope to see for themselves the size and scope and the general aspects of the problem.

They are deeply concerned and heavily involved in the assessment of our energy requirements over the foreseeable future, both from a short-term and long-term point of view and they have been studying the supply situation to meet those requirements.

The CHAIRMAN. Are they looking at the Canadian alternative, too?

Mr. MORTON. If they are, it would be as a matter of interest. The Canadian alternative has been looked at by the Alyeska group itself, it has been looked at by a couple of oil companies not in the Alyeska group and it is also being studied by those who are interested in the development of a gas pipeline that will bring gas from the oilfields to Canada.

I have had several meetings with our Assistant Secretary of State, Mr. Trezise to learn from him what has been going on in Canada. I have had no direct negotiations or correspondence with Canadian officials because the scope of our work here is to deal with the applications on our desk.

The CHAIRMAN. The Department of Interior has not been directly involved in the so-called Canadian alternative other than to inquire through the State Department regarding the possible proposals?

Mr. MORTON. And we have had conversations with the Alyeska oil companies, the principals of the oil companies, themselves. I suggested to them earlier in this round of talks that they go to Canada and explore for themselves the feasibility of a Canadian route as an alternative. They have done that; there are some rugged problems in connection with it, problems of time, problems of cost, and problems of construction and engineering similar to the problems we face in the Trans-Alaska Pipeline.

The CHAIRMAN. In any event, if it were to go through Canada, it would have to run down through the Brooks Range and then go over so it would be running through a substantial part of Alaska in any event?

Mr. MORTON. Yes; and it would run through some significant permafrost and in some cases a more extensive environmental situation than the proposed pipeline would go through.

The CHAIRMAN. Senator Gravel.

Senator GRAVEL. Thank you, Mr. Secretary; after the 102 statement has been filed, a decision will be made by the executive to issue the permit with that knowledge before you; is that correct?

Mr. MORTON. This would be substantially correct. The permit, of course, would be a permit for the corridor and stipulations that would govern the technique of construction, and so forth.

Senator GRAVEL. You presently have an injunction against you by Federal court here in Washington, D.C., not permitting you to issue such a permit; is that correct?

Mr. BRACKEN. Yes, sir.

Mr. MELICH. That injunction is still outstanding and under the order of court, the Secretary is required to give the plaintiffs 14 days' notice before he decides what action he will take with respect to issuance of the permit.

Senator GRAVEL. So the litigants can come back during that 14-day period and quarrel with your decision based upon this statement?

Mr. MELICH. Yes, sir.

Senator GRAVEL. And the judge could continue the injunction if he felt their views were more proper than your views, is that a possibility?

Mr. MELICH. Yes, that is a possibility. Of course, we also have the right of appeal from our decision.

Senator GRAVEL. So the final determining factor will be the decisions by the Federal judge?

Mr. MORTON. There is the whole point, Senator Gravel. Whatever we come up with is going to go right into the courts in the way of a 102 statement, in the way of stipulations, in the way of real background material. It seems to me this is something that is being overlooked by the pressure group that would like to have me just pick up the phone and call the Alyeska group and saying "Build a pipeline." There seems to be a lot of feeling that way. They are going to come headlong up against the Federal courts if I were to do such a foolish thing and they are going to be in the Federal courts until the pipeline may be so obsolete, if I were to do such a foolish thing. That is why we are taking as thorough a process as we can, definitely involving the best talents we can develop within the Government and without the Government as consultants to go at this job so that when we make a decision it will be a decision that has all of the criteria to back it up. The matter then will be an easier matter for the courts to decide.

Senator GRAVEL. I think that is proper except for one area which you are not developing criteria on. I would suggest that your attorneys should delve into this and advise you accordingly because if, as we heard testified before the Interior hearings, the Canadian alternative remains a viable legal crutch, then we could have a situation where everything could be impeded until that were investigated.

I think we would certainly be subjected to severe remonstrances if you and I did not foresee that problem. In your statement that you are only taking up the applications on your desk, I just wonder if we could not go to a broader concept and have the Interior Department begin the negotiations or develop some knowledge of the Canadian proposal so we could provide something when the time comes.

Mr. MORTON. Let me clarify that a little bit, Senator Gravel. The Interior Department, I think, is doing what it should be doing. I believe that the State Department has had some discussions with Canadian officials, the oil companies themselves, this is their money and this is their project. They operate in Canada. All of these companies have foreign operations I have encouraged them, I had a conversation with Mr. Bradshaw of the Atlantic Refining Co. in the presence of other Alyeska officials that in each case you should go to Canada and sit down with Canadian officials and Canadian interests and determine whether this Canadian route is a viable alternative and they have done that.

They are still in the process.

Senator GRAVEL. But that won't satisfy the courts, Mr. Secretary. If the courts say there is no information on this possible alternative and we are to stop the permit from being issued, then we would be derelict in saying, well, the oil companies made an investigation but there is nothing to present to the court.

I think the presentation should be made by our Government and not by the oil companies.

Mr. MORTON. In this case you are interpreting section 102(d) of the act to say the word "alternative" is not an alternative from the point A to point B, but an alternative system to the entire system that is being presented and this is a question.

Senator GRAVEL. I would give it that interpretation. I am not an attorney, but I think if 6 months from now that pipeline is stopped because of an alternative is not interested, we are all going to be pretty much in our cups.

Mr. MORTON. Well, there are other proposals. There was the extension of the railroad that now exists in Alaska as an alternative.

Senator GRAVEL. I don't think the environmentalists will be offering that as a legal argument in Federal court. But they have given notice before the Interior Department in testimony that the Canadian proposal should be looked at. If we don't look at it and they go to court and use that as their major wedge, we are going to be in trouble.

Mr. MORTON. It has been looked at. I think what you are asking me to do is to be sort of the coordinating agency to bring together that information. I think this gets me into the field of international relations, which I think presents some difficulties.

Senator GRAVEL. Well, Mr. Secretary, I am sure you can do that.

The CHAIRMAN. I have one other question I wanted to ask, this relates to the nonresident Alaska people.

What benefits will be available under the Department's bill to non-resident Alaska Native people?

Mr. MORTON. I would ask Mr. Bracken to give you that.

The CHAIRMAN. Do they receive corporate stock?

Mr. BRACKEN. Yes, Mr. Chairman.

The CHAIRMAN. The same amount?

Mr. BRACKEN. Right.

The CHAIRMAN. Do they receive land?

Mr. BRACKEN. No, they would receive no land if they were living outside the State.

The CHAIRMAN. Do they have a right to participate in mineral revenues?

Mr. BRACKEN. Yes; though the corporation. The stockholders will each own a proportionate share of the assets of the corporation.

The CHAIRMAN. This is a very important question, you know, it is not a minor one because there are thousands of Natives living outside of Alaska. Explain how their rights, living outside of Alaska, would be different in every respect from a Native living in Alaska?

I think all of us have heard from our constituents who are Natives of Alaska but do not reside here and, as you know, in the initial bill, there was no provision for this. The committee put it in on the basis that nonresident Natives have certain rights. The fact that they move around should not be reason for a penalty. After all, they are citizens of the United States and they should not be deprived of their property rights, whatever property rights are conferred, by reason of having moved out. Some of them are in the room here and live here in Washington, too.

Mr. BRACKEN. Under the terms of our proposal, Mr. Chairman, we define an Alaskan Native as an individual who has a quarter degree Eskimo, Aleut or Indian blood or an individual who the Commission determines to be an Alaskan Native. Assuming an individual living outside the State of Alaska qualifies as an Alaskan Native, the qualifications for that individual are the same as somebody living either in Anchorage or one of the Native villages, he then will have his name listed on the roll prepared by the Commission. Upon his name being listed on the roll, he will be entitled to 10 shares of stock in the Alaskan Native Development Corporation. He will receive 10 shares, as will a Native living in Anchorage or a Native living in one of the villages or outside the villages.

So with respect to the ownership of the Corporation, all of the natives of Alaska, whether they are living in Alaska or outside Alaska, will receive 10 shares of the corporate stock.

Now, with respect to the land provisions, the individual living outside of the State will receive no land under our proposal. The land provisions in our proposal are patented to the Native village and to the Natives living outside the village, withdrawals in an isolated 160-acre tract. But the Native living in Anchorage or the Native living in Washington or Seattle, will receive no land under the provisions of our bill.

The CHAIRMAN. Well, could the Native come back?

Mr. BRACKEN. If he moves back into the village, then he could get a patent from the village for whatever land the village wants to give to him.

In other words, the village under our proposal will get four townships minimum. The village then is to patent to the individuals living within those four townships the land they are living on. If he moves back and is living on the land within the four townships, he would get a patent from the village.

The CHAIRMAN. How long does he have to live there to be eligible?

Mr. BRACKEN. Under our proposal, we don't have any limitation. The only limitation we have on occupancy is that if he lives outside of the four townships and he is trying to qualify for 160 acres, he has to have lived there on December 31, 1970 and also be living there when the bill is passed.

So he could not move back and live outside of one of those townships surrounding the village and qualify. He would have to be living there by the end of 1970.

The CHAIRMAN. If we are trying to provide a settlement to people, it seems to me they should be entitled to 160 acres of land whether they are residents or not.

Mr. BRACKEN. I think our philosophy is that the surface is a subsistence use patent and if the individual is living there he should be entitled to the property he is living on. But if he is living in Anchorage, there is no justification for giving him 160 acres of tract someplace out in the State.

The CHAIRMAN. You are relating that to the surface?

Mr. BRACKEN. Yes; we are only talking about surface. It is the reason why we are recommending a single statewide corporation and recommending that the mineral deposits be patented to this corporation, so that the individual living in Anchorage, Miami, Washington, Seattle, wherever, will share on the per capita basis in the mineral deposits as well as the cash.

The CHAIRMAN. How many nonresidents roughly are involved here, Native nonresidents?

Mr. LOESCH. Mr. Chairman, I think it is anybody's guess, but somewhere in the neighborhood of 10 to 12 thousand, I believe.

The CHAIRMAN. Are they represented on the board or eligible to be on the board?

Mr. BRACKEN. The board of directors, as we propose, is made up of 17 members, one from each of the 12 regions, the other five would be elected by the stockholders at large so they would be able to qualify for one of the other five slots.

The CHAIRMAN. But you don't have a slot for nonresident members?

Mr. BRACKEN. Not specifically, no.

The CHAIRMAN. If you have that many Natives living outside of Alaska, shouldn't there be some representation on the board?

Mr. MORTON. The Natives themselves can determine that, because all of the directors are to be elected and there is no requirement that they be Natives, necessarily. But the stockholders themselves will elect the directors and these offshore people or people outside of Alaska will certainly—

The CHAIRMAN. I think that is rather remote, Mr. Secretary, because all of the Native proposals left out the Natives living outside of Alaska. We had to write it into the last bill. Shouldn't the Natives in view of the fact that they do represent a substantial percentage of the total, be assured some representation in connection with their interests?

Mr. MORTON. If the articles for incorporation provided for a cumulative voting they would have representation.

The CHAIRMAN. I am trying to decide the basic ground rules under which they are to work. I am suggesting another district here in effect which represents the thousands of nonresidents.

Mr. MORTON. We would have no problem with that.

The CHAIRMAN. You wouldn't object to that?

Mr. MORTON. No.

The CHAIRMAN. Senator Jordan?

Senator JORDAN. I yield to Senator Stevens.

Senator STEVENS. Mr. Secretary, I congratulate you and your staff for the work you have done in presenting a viable alternative to the Senate bill and the House bill. As I understand the proposal of the administration, it is basically a bill designed to meet the requests that were presented by the Federation of Natives to the Congress last year; is that correct?

Mr. MORTON. I think I would like to ask Mr. Bracken to answer it because he was involved in both proposals, to make sure that the answer to your question covers it in the detail that you want.

Mr. BRACKEN. Certainly, as far as the land provisions are concerned, the Natives last year proposed 40 million acres and our proposal this year is for 40 million acres.

Senator STEVENS. With the exception of the royalty provision being limited to \$500 million instead of being perpetual whereas your bill recommends a single corporation rather than the regional corporation, you have met in effect or in substance, the demands that were presented to the Congress last year, have you not?

Mr. BRACKEN. That is right, Senator.

Senator STEVENS. I think the chairman has asked a considerable number of difficult questions regarding the difference between the situation of our native people of Alaska and the Indian people of the south 48 and whether there is any precedent value. I wish we could take the time to have you outline the total impact of the land provision of the administration's bill. As I understand the basic differences, the land involved in this bill would in fact be given to existing Native villages—to the areas they are now occupying spread throughout an area one-fifth the size of the United States. If we did not confirm this occupancy now, we would be creating a claim against the United States by the taking of those villages that are being occupied pursuant to the 1884 Act. If this bill does not confirm those titles, the taking will be now, because their lands have never been taken—they never have been moved out of their villages.

Would you agree with that difference, Mr. Loesch and Mr. Melich and Mr. Bracken?

Mr. LOESCH. I would agree with it. It was a distinction I tried to draw a minute ago, Senator Stevens. I agree with Chairman Jackson, certainly, that these are very hard questions and that there is no definitive answer. They represent hard choices. But I do agree or I do believe that the taking would be now if we didn't confirm the 1884 act.

Senator STEVENS. I would like to review some of the lands that had been reserved for Federal purposes, Naval Petroleum Reserve No. 4 and the wildlife ranges. Now, at the time those were created, the Native people who were occupying their villages were not moved out of those areas, so you did not claim exclusive surface title in creating the reserve or ranges, did you?

Mr. MORTON. That is correct.

Senator STEVENS. So this bill seeks to confirm to the people who have been living in the general area of the range; that is, the areas within which they would have the right to deal with the land, the

title to the land and land they claim as their own, which in fact they have been doing under the 1884 act since that time.

Mr. MORTON. Yes, the difference is in the leasables and the locations.

Senator STEVENS. Within those areas reserved for Federal purposes, you are giving only a surface title but there is an in-lieu right for minerals for a similar amount of land outside of reserves; is that correct?

Mr. MORTON. That is correct.

The CHAIRMAN. The Indian lands—the land to which mineral title is granted—still must be within the area specifically reserved under the terms of the bill in the 16 townships around the village; is that correct?

Mr. MORTON. The village is outside of the area.

Senator STEVENS. So the genius of your suggestion is that we don't need a land freeze in Alaska and the State can go ahead with selecting the land that Congress gave us in the Statehood Act in the areas outside of the 25 townships surrounding each village.

Mr. MORTON. That is correct.

Would you like Mr. Bracken to explain this on the map which has all of these reserves?

The CHAIRMAN. Please.

Mr. BRACKEN. Thank you.

If we could briefly summarize and point out our proposal, the proposal as far as the land provisions are concerned that we are recommending, as soon as the bill is passed the freeze that is now imposed on the State will terminate.

At the time the freeze is terminated——

The CHAIRMAN. Is it possible to locate the map up against the wall so the audience can share in your presentation?

Mr. BRACKEN. All right.

Upon the passage of the bill we recommended, after the freeze expired, 25 townships surrounding these villages that are shown here——

Mr. MORTON. Excuse me, Frank.

First explain the color code, what the different properties are and then I think you will get it in your mind very quickly.

Mr. BRACKEN. If I could modify that with a minor point, the color codes I think that are important here are the green which represent naval petroleum reserve No. 4 and the wildlife and park withdrawals, the dark blue which represents the State TA land, the red which represents State patented land, and the orange which represents the pipeline utility transportation corridor.

Our proposal——

The CHAIRMAN. And the yellow?

Mr. BRACKEN. The yellow is approved classification, the light red are Indian reservations, the brown are State selected application, the light blue are State selections pending.

The CHAIRMAN. Could you provide that map in color for the record?

Mr. BRACKEN. Yes, sir.

(The map referred to was retained in the committee files.)

Under the terms of our proposal, excluded from public lands are the State TA lands which are in dark blue, the State patented lands which are in red, and the utility transportation corridor which is in

orange. The withdrawals, then, as soon as the bill is passed, would be for 25 townships surrounding the listed Native villages which are shown here on the map. For the villages that are located in the wildlife refuges and in Pet 4 there is a nine-township withdrawal and for the villages located in the national forests, particularly the Tlingit-Haida villages, there is a one-township withdrawal.

So immediately upon passage you have these withdrawals. These are both for surface and for mineral rights. Within a period of a year each Native village is entitled to select three townships contiguous to the township in which the village is located. After the year the remaining townships withdrawn in Pet 4 and the wildlife refuges are terminated and go back to the status prior to withdrawal.

For the remaining townships withdrawn surrounding the villages, the remaining 21 townships, the corporation as an additional period of 4 years to select the amount of acreage, the surface of which will be patented to villages which will arrive at a total of 40 million acres.

The 40 million acres is made up then of the area selected by the villages which will include the three surrounding townships and the townships in which they are located. The 160-acre tracts which I should mention here and the balance to be selected by the corporation in order to arrive at a total of 40 million acres.

At the end of the 5 years all the land that hasn't been selected by the corporation and the villages is reverted back to its status prior to the withdrawal under this legislation.

Senator STEVENS. The location of your villages is the determination to where the land must be located, correct?

Mr. BRACKEN. The villages must be listed in the bill as we propose and the withdrawal is the withdrawal of the 25 townships surrounding the list of villages. So it is identified with each listed village and the surrounding township.

Senator STEVENS. Keeping in mind that the State can only select land that is vacant, unappropriated and unreserved, your proposal makes available to the Native people for settlement of this claim a portion of the land that would not be available to the States for selection; would it not?

Mr. BRACKEN. Yes; under some rough arithmetic that I did, roughly 115 million acres will be withdrawn surrounding these villages, of which 40 million will ultimately be passed.

The balance of the State, as soon as the bill is passed, will be free from any Native claims and the State will be free to proceed with selection.

The CHAIRMAN. That freeze on that 100-some-odd million acres will last for how long under your triggering mechanism?

Mr. BRACKEN. For a period of 5 years. That is surrounding each village. The only land we are talking about, if you can see from where you are sitting, are the lands within the black squares here which surround the villages.

The CHAIRMAN. That is to scale?

Mr. BRACKEN. All I did was multiply by 200 the number of acres within these areas.

Senator STEVENS. Before that is misunderstood, a substantial portion of that is already withdrawn because the villages are already in existing reservations or classification areas; are they not?

Mr. BRACKEN. You are talking about Pet 4?

Senator STEVENS. In Pet 4, the Izembeck Range and the others?

Mr. BRACKEN. Yes.

Senator STEVENS. And I am also saying that your proposal if enacted would not withdraw an additional 115 million acres. It would withdraw an additional 50 million acres, as I recall?

Mr. BRACKEN. Yes.

Senator JORDAN. Suppose the villages are closer together than 25 miles, would there not be an overlapping of their selection and what do you do in that case?

Mr. BRACKEN. There are a number of instances where we have exactly that situation and under this proposal where you have that type of situation the Commission, which we recommend as a three-man commission, would determine occupancy rights for the individual villages where you have an overlap. There definitely will be villages that will have an overlap as far as township withdrawals. The individual townships withdrawn from this village and adjoining villages. In the overall area, in every instance, there is going to be enough land here for each village to receive a minimum of four townships patented.

Senator JORDAN. Who sits in judgment of which village gets the choice first?

Mr. BRACKEN. A three-man commission to be appointed by the President.

Senator STEVENS. We are hopeful some of those will consolidate as this proceeds. But as I understand your proposal you have drawn, regarding the reservation under the bill, you withdraw around the outside perimeter of the area that would have been withdrawn if each village had been separate; is that correct?

In other words, you would——

Mr. BRACKEN. Yes.

Senator STEVENS. In other words, where there are two villages near each other and they overlap, you only have 30 townships instead of 50?

Mr. BRACKEN. That is right. As far as the conveyance, the patent section of our proposal, in the green areas, the wildlife refuges and Pet 4, we are conveying surface rights only.

The Secretary mentioned in these areas the corporation will be entitled to select an in-lieu mineral selection for the number of mineral acres lost here. These selections have to be made within these other townships withdrawals. In other words, the selection will come from within the 25 townships surrounding the identified villages. The 40 million acres—the surface of the 40 million acres will be patented to the individual listed villages and to the individuals who can establish occupancy at December 31, 1970, and on the date that the bill is passed living outside of these withdrawn areas. The mineral estate underlying these village surface patents and the 160-acre patent to the individual living on isolated tracts are patented to the statewide corporation.

The CHAIRMAN. What if you have no legally organized village?

Mr. BRACKEN. Under our proposal, the village will have to incorporate in order to receive the patent and they have a period of 20 years to incorporate. At the end of the 5-year period when we finally identify the 40 million acres, the withdrawal will continue until the land is patented to the village or the expiration of 20 years.

Now, looking at the blue areas, there are some villages bordering on the TA State land. Under our proposal these villages will get either

land available—for example, this village up here on Prudhoe Bay is surrounded in the north and in the east by TA'd land and on the west and south by Pet 4, so it would be entitled "Surface estate in Pet 4."

There are a number of villages either in or bordering on TA that would be limited as to the way the townships would be withdrawn. In other words, if the TA land is to the east, the withdrawal for that village would be to the north, south, and west, and so on.

As I have looked on this map, it roughly appears there are five or six villages completely surrounded by TA land. In those instances, the villages will receive four townships but the four townships, of course, will have to be outside the TA area.

Senator STEVENS. We are hopeful we will get an exchange provision. I have one last question that I would like to ask the Secretary, if I may, going back to the pipeline comment that you made, particularly concerning my colleague's reference to the Canadian situation.

Has there been a legal determination of whether the alternative that must be explored under section 102(d) would have to be legally available and within the power of this Nation to grant with particular reference, of course, to the Canadian pipeline and whether or not an alternative exists there? As I understand the situation, Canada said it would not receive an application for a pipeline from any company now and we would have no legal right to say that a pipeline could go through Canada.

Now, has it been determined among your lawyers and the Department of Justice as to whether under 102(d) there must be a legal opportunity to turn to an applicant and say "You have a viable alternate available to you?"

Mr. MORTON. I understand the question. Let me ask the solicitor to address himself to that and I may have some comments, too.

Mr. MELICH. Senator Gravel raised that question in his discussion with the Secretary. This is a very troublesome problem to us in the Solicitor's office. We have not prepared a formal opinion on the question but it is my view at this point that I don't believe Congress intended under section 102 or NEPA that an executive in the Department of Interior or a Cabinet officer in any Cabinet position had authority to suggest an alternate routing in a foreign nation outside of the continental boundaries of the United States.

I think we are limited in our alternate suggestion or proposals to those areas under the jurisdiction of the particular Cabinet officer or the continental limits of the United States.

If the authors of that legislation can be helpful to us, we would appreciate any advice from them. But it is not conceivable to me to think that we have any authority to suggest to a company that has made a discovery of oil in the continental United States that it would build a pipeline outside of the continental United States.

The CHAIRMAN. If I could just continue on that basis, that is probably correct and I am sure we could agree on that. Now, what will the Federal court do, that is the \$64 question? If we can't anticipate what the Federal court will do, then I would suggest that although the law doesn't encompass this, just being provident and having some amount of foresight, I would hope the Secretary of Interior would begin to develop some negotiations or discussions with the Canadians and maybe they would find it to their interest

to come forward with a plan and we would have a plan on the table visible to all.

But unless some initiative is taken, I think of course, everybody would be playing the cards too close to their vest and if the judge so ruled, we would have an additional year's delay on the pipeline. Or however long it would take.

Senator STEVENS. I might suggest that to base a permanent injunction against the actions of a Cabinet officer on the possibility that there was a route available, it would seem to me that the proponent of such a suggestion to obtain an injunction would have to show there was such an alternative available. It is one thing to be in the preliminary injunction situation as you are in now. It is entirely different to have a person propose a permanent injunction against a Cabinet officer based upon the availability of a separate route. The availability would have to be proved by the proponent of the injunction, I believe.

I would urge you to do the research and I have every confidence in the Solicitor's Office, as you know, Mr. Melich—

The CHAIRMAN. I am not sure, does my colleague agree with me, because I think we may have a plurality, the Secretary won't know which way to go. Does my colleague agree with me that it should be pursued or are you suggesting that the attorneys rest and I say this in quotes, "smugly with their opinions that this is extraterritorial and we don't have anything to worry about"?

Senator STEVENS. My suggestion is that the Secretary has the obligation in the 102 statement to discuss the alternates that are available. However, in order for him to act, he must act on the application in front of him or on the basis of an alternative that is within the jurisdiction of this country to act upon.

If there is a proponent who seeks an injunction against the Secretary based upon a Canadian alternative, that proponents would have the duty to show that the alternative is available. I would not suggest that the Secretary start drilling holes in Canada.

Mr. MORTON. May I just interject for a second on that, Mr. Chairman?

I think what we have done will provide testimony before that judgment. We have asked the oil companies to go to Canada, to sit down with the Canadian officials and to determine the feasibility of constructing a pipeline through Canada. They have returned and reported back they have done this. So as the witness before this same court that we are now talking about, this evidence will be brought forward. The question is whether the Department of Interior or the Secretary of Interior should testify as to this, the Department of State should testify as to this, or the people who are actually building the pipeline should. I think this is the question. I have the same feeling exactly, Senator Gravel, as you did.

That here was an alternative system. Not an alternative to the particular application, but an alternative system of putting oil from the North Slope of Alaska into the continental marketplace. There are many aspects to this as to what guarantees the Canadians would require for participation in the use of that pipeline. How much of the oil flow would they want?

In other words, what piece of the action they would require of this common carrier within their country. Many, many other considera-

tions that are of an international nature. I don't believe that counsel will have any trouble in developing the testimony that they would require in order to make judgment on the feasibility of a Canadian pipeline as an alternate system to an American pipeline system.

Senator GRAVEL. Very good.

Senator BURDICK. In discussing these alternatives, other than the Canadian pipeline, you mentioned railroads and you were going to suggest some other alternatives. What other alternatives are there?

Mr. MORTON. The only other alternative is one off in the future because the technology is not here to do it. That is to develop a maritime system that would be a perfection of the attempt made recently with the icebreaker tanker. This would be a new type of tanker, a tanker that would be partially submerged and would have the capability of breaking ice with the portion of the vessel that was above the water. There are many, many complications here. This is really an idea more than a completely engineered proposal.

There is that as an alternative but certainly we would have to be looking in the time frame of the 1980's, possibly the 1990's before such a system could be developed. There are many environmental difficulties involved in it that perhaps are much more sensitive and difficult than the pipeline presents.

So actually, you have either surface transportation by rail or truck or a pipeline as the three principal alternatives to bring the oil from the North Slope to an ice-free port in Alaska.

The only other alternative is an entirely different system that would involve another country, Canada. This would also involve considerable construction of a pipeline within the State of Alaska, itself.

Senator BURDICK. Have you explored the possibility of a gas pipe and oil unit with installations, gas being cold and the oil being hot?

Mr. MORTON. No, we have not investigated it, perhaps, to the extent it could be and the reason we haven't is because the gas ends up in a position where it can't be used and this would require further processing of the gas to transport it then into the American marketplace if this is a gasoline pipe ended up in a maritime port in South Alaska. This alternative has not been offered. We have thoroughly studied, however, the problems of the heat exchange that exists and all of the methods of construction over the permafrost that have been considered. From an engineering point of view, feasibles have been looked at and this is what is taking the time and stretching the patience, I think, of a good many people who feel we are taking an undue amount of time to study this.

This is a very complicated proposition.

The CHAIRMAN. Is your agency the leading agency to coordinate all of the other agencies of the Government?

Mr. MORTON. That is correct.

The application for the corridor is with the Interior Department.

The CHAIRMAN. So when you act, it will be concurrently covering all the facets of the Federal Government?

Mr. MORTON. I hope that is true, I don't know whether I can guarantee that or not.

The CHAIRMAN. Well, if they need some river crossing permits, will your Department cover that?

Mr. MORTON. We would try to coordinate that with the Corps of Engineers which would be the agency involved and we have a working agreement with them and the Coast Guard which is also involved.

Senator GRAVEL. Well, I think we have a division between my colleague and myself and I think we will leave it up to your leadership to exercise whatever discretion you choose. We will be able to Monday morning quarterback it next fall.

Mr. MORTON. Well, we might involve some of the committees of the Congress who deal with our international relations. As you know, a great responsibility for the development of our international relations rests in the Senate. I feel the close communications we have had with the State Department and with the oil companies have covered the aspect of an alternate system. Let me look at it again and see if I in good conscience and through what method I can perceive to ameliorate your apprehension that we are going to run into a court problem here. The whole reason we are taking the time is twofold.

One, to finally determine whether or not we can build this pipeline and make it compatible with the environmental values that are necessary to protect.

The other element is to bring before a court all of the work, all of the criteria that led to our decision. You have raised the question of the international alternative, this presents a very difficult situation for us because there undoubtedly cannot be a pipeline that would be mutually used across another country unless there is either a treaty or agreement or international resolution of some kind. I have urged that the department of government which is involved in that, explore it to make the necessary determinations and describe the national interest. I felt that we had covered that in that effort. So you sort of put two hats on my head when you ask me to go to Ottawa and I am not sure of my rights to do this.

Senator GRAVEL. I am not asking you to go to Ottawa; one, I am asking you, with your legal resources, to make a determination if this could be a stumbling block in the court and two, if that is so, require from the oil companies the data they used in deciding against that alternative so that a compilation of that data can be used by yourself in juxtaposition with the court's opinions.

I am suggesting this may be a problem area. I don't know if it is or isn't, but it is something that should be determined.

Mr. MELICH. Senator Gravel, I want to assure you my office is making every effort to satisfy the question you are raising. We are carefully reviewing all of the recent decisions of the courts on NEPA and trying to interpret what the court is saying to us and what it is asking a Cabinet officer to comply with when he prepares his final 102 statement where he takes an action such as will be required under the application for the issuance of that permit. We want to be prepared when we enter the courts that we understand what the court is saying under this very difficult act, which I think many of us are surprised at some of the interpretations the courts have been placing on us. It has been helpful to us that we have some of these decisions and we will try to grind those into our thinking and the Secretary's thinking as to what he should do.

Senator STEVENS. I must say I concur in the last statement of my colleague, the last statement, but I assume the conclusion is going to be that which I previously stated.

Senator GRAVEL. As an attorney I think you are entitled to do that, as a lay person I will wait to see what happens in the court.

Very good, I have a question that goes to land planning, I assume you have had a chance to examine my bill, I find it certainly not contrary to the views of the President in his environmental views. I am asking the Secretary of the Interior to lead in this task and call upon the Federal agencies that are appropriate to deal with the planning agencies in Alaska. I have gone to specifics and have proposed a joint Federal/State commission. First of all, what are your views on this commission for land planning in Alaska and resource planning?

Mr. MORTON. As you know, we are under direction to develop a land use plan for Alaska. We have requested this, I think, overdue exercise, and I am delighted to have the responsibility in this area. We are, in our 1972 budget request, requesting the funds for this job and it will be a pretty good sized one.

As we get into the actual exercise, I would certainly want to then meet with this committee and go over the scope of that operation. We have also, before the Congress, land use planning legislation which involved a subsidy to the States or matching grants to the States in the order of \$100 million, \$20 million a year for 5 years that hopefully will produce land use plans for the States that then can be coordinated and folded together.

I have proceeded along that course and I don't think I—I know very candidly I am not in a position to really evaluate your approach, the approach of your bill as an alternative to this procedure. So I will be very happy to do that and I in the process of reporting on your bill will cover that subject as thoroughly as I can.

Senator STEVENS. Mr. Secretary, would the incorporation of S. 1329 require the continuation of the land freeze in Alaska until the land plan is completed?

Mr. MORTON. I think I will ask Secretary Loesch to answer that question. I think it is a legal question, my off-the-cuff answer is that I don't think it would, but he can probably clarify that or take exception to it based on his legal knowledge.

Mr. LOESCH. Mr. Secretary, I am sorry to say I really don't know the answer to that because I don't know what the provision of S. 1329 is, I don't have a copy of it with me.

Senator GRAVEL. It would be somewhat like a planning commission and it would be an on-going thing.

Senator HANSEN. Well, I was just curious to know what the Secretary's opinion might be. If I may, I have several questions that I would like to ask and I do appreciate that there may not be time enough to take them all up.

I have one about the competitive leasing provision within this bill, under section 13, and I have reviewed the testimony that you gave, Mr. Secretary, when hearings were being held on February 18. I am not certain your position at that time on competitive leasing, and your position now on this legislation are entirely consistent.

I would like to have the privilege of submitting a few questions in writing to the Secretary, and ask that your responses might be included as part of the record.

Senator GRAVEL. Yes, that is very good, I think that would be very proper. The staff will additionally have questions to submit.

(The information referred to was not supplied in time to be included in the record.)

Senator GRAVEL. Senator Anderson.

Senator ANDERSON. Mr. Secretary, did the Russian's agree to buy that area or agree to sell it?

Mr. MORTON. Agree to sell Alaska?

Senator ANDERSON. Yes.

Mr. MORTON. Yes, sir; I think they did.

Senator ANDERSON. Did the Federal Government agree to buy it?

Mr. MORTON. Yes, sir.

Mr. ANDERSON. Have you tried to compare the two transactions?

Mr. MORTON. No. Frankly.

Mr. ANDERSON. I think it is important.

Mr. MORTON. Well, I think there was an agreement to buy and an agreement to sell and those agreements were fulfilled by the exchange of some coin of the realm. If I understand the history of it. I believe \$7,200,000 was the price.

Senator ANDERSON. In one area they proposed to build a new dam and all of the water was to drive the powerplants in the area of Alaska. I think we ought to know whether it was buy and sell in that area?

Senator GRAVEL. He makes a suggestion that the transaction be analyzed and I can only add that I have always heard of the legal theory, caveat emptor.

Mr. MORTON. I thought maybe he was trying to determine whether the price was right and it looks to me we have done about \$7,200,000 worth of work, I think, on this particular bill. I think the price was right. If the question is raised as to whether it was a valid transaction, I think history has made it very clear that it was.

Senator GRAVEL. I have one additional question. On Pet 4, Senator Jackson brought up the point that you have now opened up Pet 4 for exploration. What is happening there?

Mr. MORTON. No, this is not the case, Senator Gravel. We have before the Congress, hopefully, a solution to a very knotty problem in the Santa Barbara channel. Without getting into the details of that plan or that proposed solution and legislation covering it, I would simply say this, that in that package there is the concept that some funds from the Naval Reserve at Elk Hill will be authorized for use by the Navy for further exploration and determination of the reserve values in Pet 4.

The CHAIRMAN. Very good. I think that would be a noteworthy even so that we actually know what we have.

Mr. MORTON. It is a large block of land. It occupies a lot of the State, we know there is oil there, I think it is in the national interest to better define those reserves. We have included a method by which that can be done.

Senator GRAVEL. I want to compliment the Navy on that effort.

Mr. MORTON. I hope the Navy will make the effort, we are providing them the opportunity.

Senator GRAVEL. Very good. I was very surprised with the administration bill and the size of the settlement. I have been known to criticize the administration, but I want to take this opportunity to say that I think the administration came forward with what I think is a very sizable bill and I think it will provide an outreach, a broadening of the parameters for Congress.

Thank you all gentlemen.

I would like to hear from Mr. Wright at this time. Certainly some of our colleagues might want to stay and listen to Mr. Wright.

Thank you, Mr. Secretary.

Mr. MORTON. Thank you.

The CHAIRMAN. Mr. Wright, you may take the stand, and begin as you wish.

STATEMENT OF DONALD R. WRIGHT, PRESIDENT, ALASKA FEDERATION OF NATIVES

Mr. WRIGHT. Mr. Chairman, and members of the committee, it is a pleasure to be here today, but I do want to say that I am rather disappointed that we don't have the full committee here or at least a representative group of them.

The Natives have been patient, we have worked hard on looking for a fair and just settlement of the resolution of this problem, as you all know. I don't have a prepared statement, however I have other witnesses who will testify.

To my right is Brends T. Itta, an Eskimo from Point Barrow, formerly an employee of Senator Gruening. Next is Frances Degnan, elective secretary of the Alaska Federation of Natives, on the far left is Ed Weinberg, the attorney for the Alaska Federation of Natives, and next to me is Andrew Isaac. Andrew is 73 years old, born in 1898, hereditary chief of the United Crow Band of Alaskan Indians in the interior of Alaska.

His village is among those tentatively selected lands by the State. I think, because of the circumstances, I will ask first of all Mr. Andrew Isaac to make a statement to the committee and he will bring into prospective the feeling of his people insofar as the selected lands in and around these areas are concerned.

STATEMENT OF ANDREW ISAAC, JANACROSS, ALASKA

Mr. ISAAC. Mr. Chairman, my name is Andrew Isaac. I came from Janacross and I have come here a long way, coming to this hearing.

The property that we have is close to the Canadian border. We are under the TA land. We don't know what to do, us Native people. You must understand we have been living there all my life. I was raised in that part of the country. My old people out there who were chiefs long before me, long before I was born. I understand this TA land. My Native people can't understand it. They don't know what it is about. They are angry. I was down in Anchorage and I asked some delegates there what they were going to do, have the State take it over? He said they have to move you. This is part of the plan, to move. That is our home where we live. I don't think my Native group are under the TA land. As far as I understand some of these folks can't move because it is our home. In our State they are beginning to have a town. We have a high school, our children have to go in there. Still we have trouble with this TA land. I heard here about one township. Through the BLM people I know this a long time, a couple of months ago. I had a meeting with Mr. Crum in BLM in Burbank. Other TA land, us Native people, we have to move. I am feeling bad about our Native people. One township they explained to me what we are going to do with this one township. Right on this meeting here now I heard

four townships. Still not enough for us Native people. This is our land. A little while ago the Secretary said they bought Alaska. Yes, I understand that. As far as I understand, Russians came in to Alaska.

They put buildings up through the Bay up to where they have their town. They sell their property to the United States. That is how we Native people, we belong to the United States. We figured that, we are citizens, us Native people. No other way. Right now this land should be settled long ago. We filed our land claim back in 1950. I asked for it many times. I have statements backed by Bob Bartlett. They are supposed to have a copy right here in this town. This is the headquarters here, this is where we get the copies back from. We can't move, no way.

I came to bring my statement and I am here for my people to explain to you people who for a long time have been fighting about this land. No question about it. Our U.S. flag, Alaska flag, already go together. Under them us human. I don't know why we don't do like what our flag says. Our Native right, State right. I can't see no difference. We have to go along together, as long as we are citizens.

That is just what I figure. Our latest—Don Wright here to my right, his grandfather's people chief down in Tanacross. Throughout the area his great grandfather's people living there. The trouble is his grandfather's people chief all through there. I understand. I understand our Native people. We have our right to have enough land to use.

It is too bad, I come here, this is our headquarters, Native and white. Through this hearing right here I sit before you guys, I hope our Native right to set it aside. We don't need much money. Less money, all the land we need. Our Native people, we know how to use it. That is why we make our living. That is how we raise our children just like you people raise your children in this way. In your tribe. So that is why I make long trip to visit with you in this hearing. Twice I did, once in Burbank, once in Andrews. I got a copy back a month ago. I am glad I will be here about the land claim. Our land claim we would like to set aside. I wanted our Senator right here in this hearing. Someway, somehow, I hope you move this TA land in our villages. We buy land before, file land claims back in 1950 and in 1962 I protest against this. That is how I finally went to work for my land claim first to set aside our land and buy that town. I depend on my people, my Senator. I tried to put aside enough land for the people I buy out today, the State land is just about to get the patent now. We ain't going to get something. OK, they give us four townships, we should jump over. Outside of the State land, knowing we can get the land for. Where we are at now, that is our main use place, all the time. Our villages, our Peace Camp, our living place. We got both, we got way to move across now. But we really use and here we are, we are under this State land, the TA land. I find out we can't do very much, the State gets through taking over, we have to move.

My way, no, I want to stay right there where I am at. Because I have my father's graveyard, my grandmother's graveyard, I have no where to move. That is my home.

Thank you.

Senator GRAVEL. Thank you.

Senator STEVENS. Mr. Isaac, you said you filed a claim in 1950?

Mr. ISAAC. November 30; yes.

Senator STEVENS. Could you identify that? We have had extensive correspondence, I don't recall the 1950 filing. What was that?

Mr. ISAAC. That was the file at that time. I gave it to David Paul, President Kahn, who first came in my place. I worked with President Kahn back in 1932. I am sorry, I can't write, I can't answer you if you speak big words, I have to have somebody explain to me before I answer. This land claim we filed. We get a copy back from Bob Bartlett right here in this town, Washington. BLM office. He has a stamp in one corner. This paper here, I just keep it here after a while, I can pass it around.

Senator STEVENS. Could I ask you one more question? Did you file that claim for the United Crow Band?

Mr. ISAAC. Yes.

Senator STEVENS. Was there any specific village listed as your location for the claim, do you recall? We are going to try to find that piece of paper and I wonder if you can identify it any further for me?

Mr. ISAAC. Yes, I have a copy of it at home.

Senator STEVENS. Can you send us a copy of that?

Mr. ISAAC. Well, I have it here. Bob Bartlett sent us that copy and we asked for it.

Mr. WEINBERG. The attorney for Alaska Native Village Services, Mr. Fleischer, has just handed me a xeroxed copy on the letterhead of the Department of the Interior, typed on there, and it is a petition for the rights hearing reservation, addressed to the Secretary of Interior and signed by the Natives of Tanacross, and it is dated November 26, 1950. Or maybe November 6, 1960. The attached petition to the Secretary of Indian Affairs is dated November 6, 1950, signed by David Pall, president of the village council, Tanacross, Alaska, and it also has appended to it a map.

Senator STEVENS. Mr. Isaac, if the bill that we passed would give you title to land that you could exchange with the State, so that the State would be able to give you back your land that had been tentatively approved for the State, would that meet with your approval? Would that be sufficient as far as you are concerned?

Mr. ISAAC. Yes.

Senator STEVENS. Thank you.

Ken Bass.

Mr. BASS. Senator Stevens, I think there is one very important point in this exchange consideration which you raised and that is some way of guaranteeing that any exchange that would be entered into would include the village sites on the TA lands, not exchange for others. I think rather than assuming that villages like Tanacross are located on TA lands, would negotiate with the State for the exchange of their lands, the bill itself should take care of that problem. It is a problem that should have been taken care of before the act was passed and I don't think it would be wise again to defer the problem from a directional standpoint and depend on future negotiations.

Senator STEVENS. I certainly hope the attorneys who are advising these people keep in mind the total problem the Congress has with regard to creating new rights against the United States in terms of the rights effected under the Statehood Act pursuant to the tentative approval clause.

Although not in any firm, written commitment, I am informed we have been given assurance that the State would work out a system whereby the lands, that were tentatively approved which were village lands, would be exchanged with the Native people for lands to be given under this formula that was provided in both the Senate bill and the administration's bill.

If I understood the position of the attorneys for the legal services, they would like to have Congress disturb the tentative approval concept. It is not just as simple as that. Almost all of the property rights that have been created since 1958 have come through the tentative approval provision in the Statehood Act. There have been very few rights in the State of Alaska created otherwise. If we were to disturb that provision, and, I think we all agreed on that last year, we would be disturbing the whole system of private rights in the State. Just as under the Taylor Grazing Act or under the Forest Reserve Act, there are exchanges authorized by Congress which have worked. They have worked in other areas under the new legislation for other use. For instance I was familiar with, and I am sure Mr. Weinberg is familiar with perhaps more so than I, some of these exchanges. I think the exchange route has to be the way we go.

I am hopeful, as one of the Senators from Alaska, that the State will voluntarily commit the State for the exchange of at least the township within which the village is located. As I understand his comment, that would be satisfactory.

Mr. WEINBERG. I would like to comment on that particularly in view of the reference to the advice being given by attorneys. The Ninth Circuit Court of Appeals has held that the Department of the Interior was without right to give tentative approvals without first determining the validity of the claims of aboriginal use and occupancy.

Senator STEVENS. I would have to correct you on that. The 9th circuit held that the district court should have made that determination. Now, it has not held that the Department of Interior was wrong. But beyond that, we have a problem of trying to prevent the creation of further rights against the United States in this legislation.

I think that the attorneys, who represent the native people, must realize the total national interest in seeing to it that we not do create further claims against the United States while we are attempting to correct the wrongs of the past.

Mr. WEINBERG. Well, Senator Stevens, we are not suggesting that there be further claims created against the United States, we are asking that Congress fulfill the responsibility that it reserved in the Statehood Act and we are asking that the Natives not be panelized because the Bureau of Land Management and the Department of the Interior in which I served was derelict in its duty at the time these claims were pressed before it.

Because the reason we are in this situation is that the Department of the Interior took the position that Native use and occupancy was not or did not deprive land of the status of vacant, unappropriated and unreserved land.

The courts have held that was a wrong position. Now, we are not suggesting that every land title in the State of Alaska be upset. The Native—the Alaska Federation of Natives has at all times taken the position that patents should not be upset. Even patents to the State

where the State still holds the land. But we do believe that the TA land problem can be met and it should be met by Congress. We are not at this moment—we are now talking about villages that are on TA'd lands. What to do about the North Slope is another problem. All of these problems have somewhat different connotations. But there is no reason on earth why Congress cannot provide that villages on TA'd lands get the same land selection rights as any other village.

It will not harm the State of Alaska, the land will be developed, in private ownership which is a basic premise of the system of government which prevails in this country, nobody's private title is going to be upset.

The question is only whether the Natives will get the benefit of these lands or whether somebody else will get the benefit of them and the Native is forced to move or go on bended knee and ask the State of Alaska to take care of another problem.

Unfortunately, much as one hates to admit it, the fact is, as crisis recedes attention to problems recedes. The time to solve these problems is now. Congress has to power to do it. The Natives who live in these villages should not be penalized because of past failures of the executive branch of the United States to carry out the acts of Congress which it is charged to administer.

Senator STEVENS. That was a nice speech, but I wasn't Solicitor at the time that protest was made.

Mr. WEINBERG. Neither was I.

Senator STEVENS. I want you to know that the time to prevent the wrongs which we are trying to correct now was at the time these decisions were made.

Unfortunately, they were made and you cannot upset them now, in my opinion.

Mr. BASS. Well, there is still a valid concept to caveat emptor. The State withheld any claims that might be held by the Native. We are pressing claims that are valid, based on aboriginal title. Any lands that the State has taken tentative approved status to which have a valid claim of aboriginal title are subject to that title as this Congress itself set aside in prior legislation as valid to go ahead and confirm that title now in those lands. If there is any deprivation of rights involved, it is Native's rights. No interference of the State for anybody else who has gone in on leases under State approved lands.

Senator STEVENS. That is another good example. These people are our people and we are trying to assist them in protecting their rights. I happen to believe that they have very valid rights. But at the same time, we are also trying to protect the total rights of the State and all the people of the State. We have offered a very viable solution to this in terms of an exchange provision. I am very pleased to hear that Mr. Isaac would find it acceptable to exchange with the State. I assume, Mr. Isaac will take the obligation on the part of the State to do so with the same degree of integrity and commitment that I would.

Unfortunately, again, the lawyers that are advising these people seemingly want to get them involved in interminable litigation. I think it is unfortunate that you people will not recognize that there is more than one way to satisfy a right other than litigation. Because,

in my opinion, that is where you are going. You are pressing our people into interminable litigation when we offer you a way to solve the problem without the litigation.

Mr. BASS. I would point out as a matter of history that litigation surrounding the Alaska land claims has been initiated in the problem on TA lands, and State selections and I think our legal opinion is if the matter is not settled in this legislation, indeed there will be more litigation.

We are seeking the same end, that I believe the Senator is. We may differ in our professional judgments as to what is the best way to achieve that end.

Senator GRAVEL. Mr. Wright?

Mr. WRIGHT. Thank you. I would like to go into the background of this and I hope that the Senators don't pin Mr. Isaac down on statements made here because I want to, for the record, show he does have difficulty understanding exactly what we are speaking about and we will interpret for him at a later date.

So I won't have the record hold him down to a commitment. He knows what he is talking about, subject to interpretation.

Senator STEVENS. I understand that, of course.

Mr. WRIGHT. We look as Alaskan Natives upon this settlement not as a settlement on the one side of negotiation. We feel truly at this point in history, we in fact are negotiating the final treaty with the U.S. Government on behalf of the Alaskan Native people. We don't look for litigation. We don't want litigation. We want fairness and justice. The Alaska Native people have proven time and time again their patience. They have proven, as Mr. Isaac said, their allegiance to the United States government. It was hard for them to understand what statehood was all about, but they approved of that subject to their rights.

You all remember the Constitutional Convention, the talk that went into that. You all know the arguments before this body when we were arguing for statehood and one of the biggest stumbling blocks to statehood was the resolution of the Alaskan Native Land Claims. We go back on how far back the body deliberated on land claims and you can go back to 1948 when Representative Barker attempted to resolve it. There were extensive hearings before the Senate and House committees. They didn't resolve it. You can go back to the days of Judge Diamond and Judge Wyckersham in the early 1920's when they tried to resolve it and didn't resolve it.

Once statehood was granted, the managers of our State government really greedily expanded for what they thought was the best interest of the people in the State and literally ran over the homes, villages, and graveyards of the Native people.

When the oil interests moved into Alaska, they did the same thing. Prior to that, it was gold and copper. So we are all aware of the extent of abuse and misuse of the human element in Alaska.

This body's obligation at this time is to listen and negotiate with the Natives, not behind closed doors. Not to go into a markup session where we don't know what you are doing with our lives, with our children's lives. A hearing like this isn't really appropriate because you have the record and I know the Congressmen and Senators will really read that record, but they can't understand.

Because their interests are special interests for other people. Their interests are not special interests for the Alaskan Natives. We elected you gentlemen to represent us and we have difficulty getting our message across to you. You came into the country as newcomers. You came into the country and accepted our way of life, in a sense. Yet you defend every man or woman who has any legal problem, except you don't defend the Alaskan Native and his land problem. It just doesn't make sense. I think we should, for the record, point out some of the support the Alaskan Natives have. True support, democratic support under the philosophy of Americanism.

We have national organizations supporting us, labor organizations, AFL-CIO, the Teamsters Union. Certain members of the United Auto Workers. We have the American Friends Service Committee, total support for the Alaskan Federation of Natives position. The Episcopal Church, the Presbyterian Church, the National Council of Churches. We have every independent tribe in the United States supporting us in our position. These are in your records for your consideration. The American Indian people, the first Americans, advising you as to what they think is fair and just.

We tried to pin down our administration in Alaska under Governor Hickel, under Governor Miller, and under Governor Egan. We have difficulty in doing that because they always relate back to how do the rest of the people feel.

So we took the liberty this last trip up to circulate a petition among the house of representatives and among the senate in Alaska. We have a signed notarized petition with the signatures of the majority of both the house of representatives and the senate in total support of the Alaska Federation of Native's position.

The Rural Affairs Commission was created in 1967 in Alaska under Governor Hickel. The appointments were a bipartisan group over the whole State of Alaska, some 48 members. They just had a meeting and they, 48 strong, from all over Alaska totally endorsed the AFM position. I don't know that we are before a court. I don't know that the Congress has the necessary information to really judge which one of these bills is the best. I think the judgment should come from the people. The people directly affected. We are not asking for anything. We are offering the U.S. Government, 84 percent of our property. We are offering them 300 million acres. More than 300 million acres to satisfy the needs of others in the State and to satisfy the needs of the United States in the way of Federal reserves, wildlife refuges, wilderness areas. All we are asking is that each one of those 12 regions you permit us to retain 16 percent of our land in and around our villages, without violating any patent, without causing discomfort to any American citizen that lives in those areas.

We will accommodate them all. We are asking merely to be able to retain 16 percent of our land in each region and we are asking for extinguishment of titles to the other 300 million acres, \$500 million from the Congress, and 2 percent royalty in perpetuity which will be utilized over the whole State of Alaska.

The economic, long-range impact of that will benefit everybody, not just the Native people. Because the moneys that come in and accrue annually will be distributed and spread throughout the United States, it won't be snatched up by the guy who has the most money,

it will accrue to all of the people of Alaska and eventually all the people of the United States.

As one area becomes depleted in oil or other resources, the other areas will share with one another under our bill. Our bill clearly shows the Indian zeal of determination, the intelligence that went into the planning of it and should be the bill that you consider in your markup.

You argue among yourselves how do we resolve this problem or that, you won't have half those problems if you begin with the AFN and let us assist you in your markup. So I would ask this as a request to this committee, that a representative from the Alaska Federation of Natives or representatives be permitted to work on markup. I don't know what the rule is but this would be a question.

Senator STEVENS. The request will be relayed to the chairman. I don't want to mislead you. However, I think it would be a little out of the ordinary for the committee to do that. But, of course, my tenure only goes back 2½ years, so I don't know what the practice was prior to that.

Mr. WRIGHT. This problem is unique in all the history of the Congress. Congress authorized the Governor of the State or a delegation to negotiate with Indian tribes, this is the first time in the history of the United States that we have not had open negotiations. The closest thing to it has been in the formation of the administration's position. We are thankful for that. We think this body should consider open negotiations because we are getting close and there is no reason that we should have any influence on you that would be detrimental to any citizen of America. All we could ever do would be to add constructively to your deliberations. I would ask that we enter into the record several documents which I have here.

Senator GRAVEL. Without objection.

Mr. WRIGHT. These include a paper entitled "Fair Settlement of Alaskan Native Land Claims, the Key Elements, March 15, 1971," "A Critical Analysis of S. 35," a group of amendments that we would like to enter as amendments to S. 835. We have a list of materials related to the administration's bill that we would like to enter into the record, a document entitled "Take Our Land, Take Our Life," a statement by the president of Alaska Federation of Natives at a meeting with President Nixon, a memorandum supporting granting Native villages the right to select contiguous tentatively approved land, and an editorial in the April 27 edition of the Daily News in Anchorage.

(The material referred to by Mr. Wright is in the appendix.)

Mr. WRIGHT. I would like at this time to have Brenda Itta make a presentation.

STATEMENT OF BRENDA TIGOUSIN ITTA, BARROW, ALASKA

Miss ITTA. Mr. Chairman, members of this committee, my name is Brenda Tigousin Itta, and Eskimo from Barrow, Alaska. I'm Secretary to the Greater Anchorage Area Community Action Agency Board of Trustees representing the Alaska Federation of Natives; former member of the staff of our former Senator Ernest Gruening of Alaska.

Mr. Chairman, I wish to address myself now to one of the persons responsible to our State of Alaska and her people, and he is Senator Mike Gravel.

Senator Gravel, you have been elected representative by your constituents in Alaska since 1962. You have known how important and how much the land means to the Eskimo, the Aleut, and the Indian of Alaska. We welcomed you to our State just as we have done the U.S. Government and the State government. We have long been under the care of these governments.

We have stated again and again that we want some independence through the title of our land. This land is ours. The majority of the house and senate in our State of Alaska have endorsed our Alaska Federation of Natives' position on the land claims; they have acknowledged that this land is ours.

I was at the Alaska State Capitol when these legislators signed, proving that the Indians, Eskimos, and Aleuts own legal title to the land. These people are elected by all the citizens of Alaska. Therefore they do trust and have faith in us; faith that we are competent and can do our own business.

This is a very critical time for us who are in Alaska, as the passage of this bill is an answer to what we have lost in the past. There is no more time to be wishy-washy on the decision of this land transaction. We are tired of guessing what might happen. We are tired of being under the mercy of this system we have. There is no time for colors—only the black and white picture must come out now.

There is a wave of a happy and confident feeling, which we have not felt in a long time in Alaska, that our long fight for the land we own is finally being won. This feeling, which you can share, is that the Alaska Federation of Natives bill will pass in your Chambers.

There is a statement often made to those of us with this conviction of seeking independence to exercise our own values. This statement is heard by us from our Native brothers and sisters, and that is: "Don't let them screw us up again."

In other words, see to it that we all go forward to see that the AFN bill passes.

So, Senator Gravel, I rest this heavy responsibility to you, of seeing to it that the AFN bill passes as it is.

Now, Mr. Chairman, I wish to address myself to all of your committee members. You will, after this hearing, go to your executive session. If you need guidance or advice on this issue during your closed session which concerns the Natives of Alaska, I hope you will not overlook the fact that all of the Natives of Alaska—Indians, Eskimos, and Aleuts—are available to help you and would suggest you invite a Native or Natives to your session as we believe we can answer all your questions to completion pertaining to this issue of the land which we own.

Thank you.

Senator GRAVEL. I would only add one thing to your very fine statement. You worked on the Hill here and you know the power to permit people to attend the markup session doesn't lie in my hands alone or those of Senator Stevens. It lies in a decision of the committee chairman and, of course, upon the committee itself.

I generally share your views and appreciate your statement.

Mr. WRIGHT. I would like to introduce Miss Frances Degan.

STATEMENT OF FRANCES DEGNAN, UNALAKLEET, ALASKA

MISS DEGNAN. I am sorry the rest of the members of the Interior Committee aren't here, but I have a prepared statement, it is not too long, so if you will bear with me, I will read it.

I am not an orator. Mr. Chairman and members of the Senate Interior and Insular Affairs Committee, I am Frances Degnan, an Eskimo from Unalakleet, Alaska. I was elected secretary of the Alaska Federation of Natives and serve on the Governor's Rural Affairs Commission in Alaska.

I am not here to plead with you or present reams of written facts about the legal and moral rights of the Eskimos, Indians, and Aleuts to our lands in Alaska as this has already been done by many of our leaders in the many hearings you have held.

I am here to ask our Senator from Alaska, Ted Stevens, just what is his position on the critical issue before us—the final just settlement of the Alaska Native Land Claims.

Senator Ted, you are our Senator. We elected you. I know for a fact that you have been responsive to our many little requests for assistance for our village of Unalakleet. I firmly believe, as all of the people of Alaska believe, that you will face the challenge before you. I know that you are familiar with the root of the problems we Native Alaskans have been plagued with as you have served as Assistant to Secretary of Interior Seaton in the 1950's and served in our State house during the 1960's.

You were elected by the people of Alaska to serve as our Senator in Congress. You have seen and felt the Alaskan Native's need for legal ownership of our aboriginal lands. The decision as to the direction of our lives lies in your hands as you are a part of Congress who has the power to settle our land question. This is your responsibility.

Just last week, April 21 and 22, Don Wright and I, representing the Alaska Federation of Natives, were at our State Capitol to petition our elected representatives on behalf of all Natives to support our position on the land claims. The majority of the legislature signed this petition. This petition documents that they, as elected representatives of all Alaskans, recognize that we are seeking a settlement that is fair to all Alaskans, Natives, and non-Natives.

The other question that I have for you is simply this: Do you truly believe, in your heart, in the 60 million acres of land and the right of the Natives to this land forever?

In closing I want to thank you and I address this statement from the Natives of Alaska to the full committee: We have our position and we will not compromise our birthright any further. I believe that in your wisdom and your deliberations as to our fate, you will seek and include advice and direction from our Native leaders in the final bill which Congress will come out with to finally and justly settle our aboriginal land claims.

I thank you.

Senator GRAVEL. Thank you, Miss Degnan.

Senator STEVENS. Frances, I think that is a very fine statement. The questions you have asked, I would like to answer.

I can only tell you this, since the time I was Solicitor of the Department of the Interior, I have been deeply involved in trying to get this issue resolved.

As a matter of fact, at the time I was Solicitor, the amount of land that people were talking about would have been half, 20 million acres. Last year it was 40 million acres based upon what your people asked for. I am sure every member of this committee will tell you, we were arguing last year for the 40 million acres.

We obtained the passage of a bill last year that would have gone a long way toward settling these claims and we are back here again because the House did not see fit to act on that bill.

Having argued very long and hard downtown, and I am sure Mr. Wright will substantiate this, I find myself in the disadvantageous position of now telling the administration and the Congress that what we sought last year as being your demands are not sufficient this year because they have gone up 50 percent as far as land is concerned.

I think that is the most difficult problem we face—the problem of resolving the differences between positions expressed last year not only by your elected officers but by your attorneys. I remember Mr. Goldberg, Mr. Clark and others, who appeared before us who justified the 40 million acres.

We now have an endorsement of the administration of 40 million acres. For myself, I have no questions and as you asked me, in my heart do I believe you have a claim; I believe you have moral claims against the Federal Government that must be resolved and I would have no difficulty with the 60 million acres being transferred to the Alaskan Native people if you would agree to my formula.

But the problem is trying to find the 60 million acres and also trying to solve the demands of the State and Federal Government, which I think are legitimate demands. I think “newcomers” are also exerting some claims for legitimate land use.

Unfortunately I have not yet seen the AFN come to a position to identify the lands they seek. As I go from village to village, including yours, several times in the last few years, the village people tell me they want their lands.

The AFN bill does not recommend your lands. The AFN wants the right to select lands wherever it wants throughout the State. We devised a system whereby every village would be guaranteed the minimum amount of land, and the excess, up to the 40 million acres, which you asked for last year would be granted in the area surrounding those villages, which areas would receive excess lands would be identified by people such as Mr. Isaac described so well this morning. I think one of the problems has been one of communication between the village people and the Members of Congress. I don't think we have any difficulty in communication between the AFN leaders who can get here and talk to us. I think the real problem is communication with those people at home.

To the extent Senator Gravel and I are capable of doing it, we are trying to represent those people as well as representing you who are here and all the people in the State.

Again, I have no problem with 60 million acres if you follow that formula of surrounding the villages. But the AFN leaders have not indicated they are willing to do so. You tell us not to compromise and you want everything that is in the bill that was drafted this year. That is what we were told last year. We sold that bill, for all intents and purposes, to a considerable number of the Members of Congress. But now this year we have an entirely different bill.

Your attorney will tell you many provisions in that bill have been

changed. It is not the same bill as last year. Now we have a different task and that is trying to resolve the issue not only between the Senate bill, the House bill, and the administration bill, but also the AFN bill of last year and this year. I think that requires a degree of understanding on the part of you who have the ability to lead your people, as well as those of us who have been granted the privilege of representing all the people of the State.

All we ask is the understanding from you people that we have a job to do, too.

You people are doing your job very well and I want to commend all of you on the statements you have made.

Mr. WRIGHT. Mr. Chairman, I would like about 5 minutes up at the map.

Miss DEGNAN. Thank you, Senator Stevens.

Mr. WRIGHT. I would like to clarify the difference between the AFN position on 40 million acres last year and 60 million acres this year.

Last year when we presented our bill to the Congress, we asked for retention of 40 million acres of land based on the population of the various areas. In that case, we would have been looking at some 25 to 40 percent of the congressional corridor. This little stretch of green here will yield 100 billion board-feet of timber. It is one of the richest pieces of property on earth. The central council is the governing group in this region. Had we taken this, we would have had a potential yield in perpetuity to share with all the Natives in the State.

Much of this area of Alaska is rather barren, much of the North Slope is rather barren. In some cases on the North Slope it takes 2,000 acres to sustain one human being outside of the oil. When we reassessed our position, because there was so much criticism coming from this particular committee with regard to the type of lands we were selecting, we compromised once more.

We feel that the 60 million acres in each region, 16 percent of the land in this region, would be the North Slope share of 60 million acres.

Six percent in each region would amount to 60 million acres. So we agreed to take far less valuable land in exchange for the compromise of the bill, just to accommodate members of the committee that thought it was unfair; particularly in the State of Alaska, there was some question as to the fairness of it.

So we really and truly understood the 60-million-acre provision this year will accrue to our people less value than would have been the 40-million-acre bill of last year.

Senator STEVENS. Are you willing to accept the concept that these lands will be immediately surrounding the villages so the village people will have their land and not land of some statewide group, whether it is the AFN or the State or anybody else would select? Would you accept the fact that the land must surround existing villages?

Mr. WRIGHT. We opposed the Senate bill introduced by Chairman Jackson or the administration bill on that concept, we don't want a statewide organization. We want each region to have its own autonomy and the villages within that region to govern.

Under our bill each community will, in fact, receive land up to four townships.

Senator STEVENS. That is not my question. I want to know whether you are willing to agree that the land will be the land immediately

surrounding existing villages and not land to be selected by the AFN or some other organization?

Mr. WRIGHT. Let me point out before I answer directly that we don't want land in and around villages that is disturbing to other people. We don't want to dispossess a homesteader or minor that has the patent to his land. We don't want to dispossess any community. In order to get land around the villages without dispossessing them, we have to go in and outside, in and around the villages.

Now, we have a strong desire to cooperate in the State and Federal Government in land-use planning and any reasonable objective. We want to retain 60 million acres of land where it has some economic worth. We would certainly sit down happily and negotiate with the State and Federal Government on the particular land.

To answer your question, that is the reasonable democratic way to do it. We are not up tight about the exact provisions of the bill. Not one of the bills before your committee is going to be the final product. That is why we ask you to permit us to participate in the markup session. Because we could work out and accommodate successfully all the needs of the Native people, all the needs of the State and the Federal Government. We are confident of that. The only way we can do it is to do it together and not behind closed doors. If you have any other questions in regard to our position, we would certainly answer them if we can.

Senator GRAVEL. I have none and Senator Stevens has none. I just want to say your request for participation in the markup will be relayed by me to the chairman and I will discuss it at length with him.

Senator STEVENS. I don't think the burden is entirely on the chairman, incidently. I am sure other members of the committee will be very vociferous in terms of the proposal and I am sure the chairman will defer the matter to the whole committee.

I have one question. As I understand this proposal of the AFN this year, it has no relationship to population as far as each regional area is concerned; is that correct?

Mr. WRIGHT. Insofar as the retention of the land, each region will retain 16 percent of its land, that is what we are asking, regardless of population. But this mineral estate in each of those regions will be shared on a 50-50 basis; 50 percent retained by the region and 50 percent distributed on a per capita basis to the rest of the State.

This is to guarantee against any poverty pockets. The Native people also believed in sharing and continue to. Any place that depletes on oil production would then be entitled to receive revenues forever from some other source or some other mineral or asset.

Senator STEVENS. Could you also tell us how you divided the land mass of Alaska? How were the regions arrived at?

Mr. WRIGHT. By the villages within each region. The villages within each region have consented to this subdivision into 12 regional organizations. As we envision any revenues we envision 25 percent going to the village, 25 percent to be retained by the region and 45 percent to be retained by the statewide organization to transmit these things and act as an expert on resource center for the benefit to assist in developing communities or regions.

Senator STEVENS. Well, how did you get the geography? How did you break down the State?

Mr. WRIGHT. This was done by the people within the villages. They are rather natural boundaries. Each region has a distinct ethnic background or cultural background. The northeastern Eskimos speak a different language than the southeastern Eskimos. There is actually about 16 to 20 different dialects spoken in Alaska. You could compare Alaska and that land mass with Europe. Europe with 15 countries could fit very nicely in that region of Alaska.

Senator GRAVEL. Do you have any further statements?

Mr. WEINBERG. I would like to make a few comments about the operation of the land provisions of the administration bill. I would like to preface that by saying, as Mr. Wright has said, the total land acreage figure in the administration bill, the 40 million acres is far and away more than any administration up to this point has supported, including the administration which I served. From that point of view, it is a monumental stride and a far stride forward.

Land claims bills, however, are something like insurance policies. Until you read the fine print you don't know what the basic numbers mean. In his transmittal letter of April 5, Secretary Morton stated there were two land objectives being sought. One was adequate subsistence lands for those that gives to those that continue to rely upon them, and the other objective sought by the administration was patents to land and mineral rights which are generous and equitable.

Unfortunately, in the drafting process, by reasons of the exclusions, overlaps and geographic location of many of the villages, substantial revisions would be required in the bill to accomplish that purpose. The reasons are these: The exclusion of TA'd as well as patented lands from withdrawal section 10(a).

The exclusion of Pet 4 and wildlife reserve lands from withdrawal under section 10(b). The restriction of withdrawals in national forests to the townships which include the Tlingit-haida villages.

The failure to provide for lieu withdrawals when lands were unavailable because of exclusions, locations of villages at or near the sea or overlaps as between villages and finally the ineligibility of the corporation to receive surface as well as mineral patents.

As a result of these deficiencies, instead of the 112 million acres of land being withdrawn, I might say the Interior Department made a copy of this map available to us last week, I might say further this is the first time a map has been prepared upon which one could see the effect of these various land provisions.

Up to now every map that has been presented has confused TA'd land with selective lands and they have had a variety of other confusion so that looking at the map one could not tell what land was available, what land was claimed and where one would come out. But instead of the 112 million acres of land being withdrawn out of which the 40 million acres are to be selected, only about 52 million acres are withdrawn out of which all the lands must be selected.

Some 19 villages will not be able to select their basic 92,160 acres out of the lands contiguous to the villages. Those villages will be deprived of lands that are traditionally used and occupied and forced to take distant lands whose value to them will be diminished to a greater or lesser degree because of remoteness. Even where 92,160 acres are technically available for selection. Because of tentative approvals having been given without consideration of Native needs for subsistence are not available.

Mentasta, for example, depends upon the lake for its subsistence. The lake is gone under the administration bill. Some 37 villages are not adjacent to lands withdrawn under section 10(b).

Senator GRAVEL. Mr. Weinberg, are you reading from a text there? Mr. WEINBERG. Yes.

Senator GRAVEL. The chairman wants to call the committee back into session at 2 o'clock and it is 1 o'clock now. So if you would like, you could submit that—

Mr. WEINBERG. We would welcome the opportunity to come back because the chairman engaged in a colloquy with Secretary Morton about the implications of this settlement for claims in the lower 48 and discussed various historical antecedents upon which we would greatly appreciate the opportunity to comment.

Senator GRAVEL. All right, I will give you that opportunity and I know we would like to have the chairman sitting here rather than myself, to engage in that colloquy. So you will be the first ones up with a continuation of what we have right now.

Senator STEVENS. I would like you to be prepared to answer one question I am going to ask you when you come back, whether you are objecting to the technical drafting provisions of this bill or whether you are checking with the administration to see whether the intent expressed by Secretary Morton has not been fulfilled with the language. If it is the latter, I would hope you would take that into consideration in terms of your statement.

Mr. WEINBERG. We would too, and the problem deals with the exclusion in the overlaps.

Senator STEVENS. Well, you are arguing with the map and not with the intent. That is the problem.

Senator GRAVEL. All right. We will have the chairman here at 1:00. I have a commitment myself of long standing for this afternoon but I will peruse the record because I would like to see how you and the good chairman get on in this. So I will recess the hearing until 2 p.m.

(Whereupon, at 1 p.m., the hearing was recessed to reconvene, following lunch, at 2 p.m.)

AFTERNOON SESSION

The CHAIRMAN. The committee will come to order. As I understand it, Mr. Weinberg was in the process of completing his statement at the time the committee recessed?

Mr. WEINBERG. Yes, sir.

The CHAIRMAN. Mr. Weinberg, you may proceed at this time on whatever points you have left.

Mr. WEINBERG. Thank you, Mr. Chairman.

I was addressing myself to the deficiencies in the land provisions of the administration bill as we see it.

We were given the opportunity by the Interior Department to study this map, they kindly made a copy available to us about a week ago.

We, as best we could, made a statistical analysis of how the restrictions and overlap limitations would affect the withdrawal rights under the bill.

I had pointed out this morning, Mr. Chairman, that the bill envisions a basic 26 township withdrawal around each of the 194 villages outside of southeast Alaska.

Now, if the 26 townships were in fact available, there would be withdrawn about 112 million acres of land. But because of the exceptions to withdrawal rights in the form of TA'd land for section 10(a) withdrawals and the exclusion of wildlife reservations and Pet 4 under 10(b) withdrawals, instead of 112 million acres being available for withdrawal, only 52 million acres will be withdrawn, out of which the 40 million acres will be selected. I pointed out also that 19 villages will not be able to select their basic four townships out of lands contiguous to the villages.

The CHAIRMAN. Because of the restrictions?

Mr. WEINBERG. Because of the restrictions and also because of overlaps. Down in the south central part of Alaska the villages are quite close together and when you try to make the 26 township withdrawals, and in some cases even the 8 township withdrawals, the drawals overlap so that each village will not get a full choice. The result will be that while the theory is that each village will receive 92,000 acres around the village, in the case of some 19 villages, that will not be the case. They will have to have some or all of their 92,000 acres taken from noncontiguous lands not adjacent to the village areas.

Thus, in those cases the value to those villages of the lands for subsistence purposes or any other purpose will be substantially diminished because the land being not only far removed from the village in miles but separated by lands to which they have no claim or no title or no right will pose very difficult problems of administration for these villages.

The bill, I might point out, requires title to be in the villages of all the land to the surface. The corporation will receive no surface titles. Thus, the problem of administration of those lands will be very greatly component. Even where you can get 92,000 acres adjacent to a village, in some cases, Tanacross, Dot Lake, Memasta Lake, these villages are so ringed by TA lands that the selection process will be lopsided and the Natives will be left to lands which do not fit their economic pattern, which are the poorer lands and in the case of Mentaska, I am informed by the attorneys for the Alaska Native Legal Service, the lake upon which the village depends for subsistence is surrounded by the TA lands so the village will not have the benefit of the lake.

Then there are 37 villages not adjacent to land withdrawn under section 10(b).

This is the sector which includes Pet 4 and the wildlife reservation lands out of which the balance of the 40 million acres will come and these are the lands selected by the corporation on the basis of such factors as subsistence needs.

Economic use, cultural considerations and so on. But for 37 villages there are no 10(b) lands adjacent. Thus they will be, if they get any additional land, the land will be far removed. The villages in Pet 4, for example. I think there are four to five villages in Pet 4 which do not qualify for 10(b) land. So Barrow, which is at the tip of Pet 4, will be—it will get the four townships to the south, it will not get any additional 10(b) land unless it is given land somewhere south of the Brooks Range or central Alaska, somewhere where it is of no practical value to that village at all.

Then, taking into account also the location of many of the villages on or near the seizure, as well as the exclusions and overlaps, the full 25 township withdrawals are possible in the case of not more than 38 out of the 194 villages listed in the bill.

So the effect of this is that we start with a very restrictive selection area. A selection area which excludes the Natives from access to any of the known mineral or oil-bearing lands in the State, it excludes them completely from the lands that are known to have the better recreational potential and it results, moreover, in lopsided selections and administrative problems of land management which are well nigh insoluble.

Then, in the case of the Tlingit-Haida villages, the 11 villages in the Tongass National Forest, the intent is apparently that each of those villages will receive 20,400 acres of land, or one township. But that cannot be done under the terms of the bill.

The reason that these villages are all located on the seacoast and under the bill, the only withdrawals for these villages are the lands within the township which closes the village. So I doubt that a single Tlingit and Haida village will get as much as 23,400 acres of land. Yet the statement is made in the Department presentation that the Tlingit and Haida villages will receive one township. It just can't be done under the provisions of the bill.

As I say, the cumulative effect of all this is to relegate the Natives to second best and second choice lands. They are excluded from the lands known to be valuable with oil and gas, excluded from the lands having lumber potential and recreation and other developments.

For example, the lands between Cook Inlet and McKinley National Park are denied them. Yet the Secretary of Interior under present law has the right to issue mineral leases in wildlife preserves. While the Natives are prohibited from obtaining mineral interest in Pet 4, the administration proposed to resume extensive oil and gas exploration therein as testified to this morning.

Finally, because the corporation will receive patent to only sub-surface estate, very difficult problems of land administration will be presented. There is one more point I would like to mention in connection with the land selection problem and that is there is a very serious problem whether under Alaska law a village or a municipality can own lands that are not contiguous to it. Yet, as I have said, in many instances, the villages will be required to take land not contiguous to the village in order for the village to get its share of land.

So there is a legal question here as to whether the intent can be carried out

Finally, this is a question as to whether some of the villages may qualify as municipalities under Alaska law. Alaska law, as I understand it, has some very technical requirements for incorporation.

Barry Jackson, who is an Alaska lawyer of considerable prominence, has prepared a memorandum on that aspect to which Mr. Wright put in the record.

The CHAIRMAN. Without objection that will be included.

Mr. WEINBERG. Mr. Wright put it in the record this morning. I just referred to it again.

The CHAIRMAN. All right.

(The memorandum referred to is in the appendix.)

Mr. WEINBERG. There are a number of technical defects as we see it, Mr. Chairman, and we have prepared a memorandum which was also offered for the record this morning which examines all these matters in some detail.

That concludes my comment on the land provisions.

The CHAIRMAN. I wonder if you would comment, because I have another meeting that I will have to attend shortly, on the remarks of

the Department Secretary and others in connection with the question of the precedent. I wonder if you would mind saying something at this time?

Mr. WEINBERG. I would be glad to.

I think Secretary Loesch put his finger on a substantial difference between the situation in Alaska and the situation in the lower 48. In that the Claims Commission Act, and I speak with deference, because I am speaking to the man who was the author of that act, but that act basically was an expression of the American conscience. It was a makeup act. It was an act to remedy old wrongs where the takings had occurred generations before.

The Government of the United States, so far as I know at the time the Claims Act was passed, the only Western civilized government that I am aware of that had ever attempted to do that, to go back and remedy these old wrongs, set up a committee to in effect redo the compensation.

Now, in Alaska we have a different situation. There has never been a settlement with the Natives, by and large. There were some unilateral takings—the Tongass and Chugach National Forest—but, by and large, there has been neither taken nor settlement.

So we are talking about a current transaction. Unlike what happened in the lower 48 we are talking about a time when standards of morality and decency are, I hope, on a somewhat higher plane than they were in the 1820's, at the time when westward expansion in the United States forced, with the best of intentions, but forced the people in control of the Government into taking these unfair actions. We don't have that situation anymore. One can feel the strains to which the people of that day were subject when one reads *Wooster v. Georgia* and *Cherokee Nation v. Georgia* and other cases of that time in which John Marshall wrestled with this problem of conscience on the one hand, how to deal fairly with the fact that the aboriginal people were here and were the owners.

And on the other hand, to provide a legal mechanism which furthered a legal basis for the expansion of the country. But those days are passed and we aren't subject to those strains. The results of those strains are with us. Mr. Chairman, I wish I could tell you that you are not going to have problems of Indians in the lower 48 who felt they were not fairly dealt with and who will not come back. But I don't think that the settlement in Alaska will either eliminate those claims or strengthen them. That it is a historical fact that these people were not fairly treated and we are reaping a historical result. No matter what we do with this bill, this bill furthers the opportunity to set another precedent and that is to do the job right the first time.

The CHAIRMAN. Well, Mr. Weinberg, you know you are very modest because you know the Indian law very well. I would like to observe in connection with the attempt to differentiate between Alaska and the lower 48 the fact that there has been a taking in a sense in Alaska when the cities were built, areas were expanded and the forests were established and the parks were established and so on.

So if the Natives—let's put it this way. If the Natives thesis is correct that all of Alaska belonged to them, that they were the ones in possession prior to the time that the Russians came in, there has been a series of takings, first by the Russians and then by the United States, if the thesis is correct.

Indians, of course, achieved certain settlements which many of us felt were, as a matter of conscience, wrong. Taking unfair advantage of them by duress and other methods that were improper and all recognized, as you say, that in that particular statute. I spent hours and days and weeks with Felix Cohen who was one of the greatest scholars of that period, I am sure you will agree, Solicitor of the Department.

I am still bothered because there has been a series of takings. Without the formality of a treaty, at least they have a treaty. A color of type, shall we say, in the lower 48.

But here we have just legal controversies as to what was going on and it was never resolved until the court said, "Well, it is up to Congress." But I am just bothered how I, as a chairman of this committee, and as a member of this committee, and one who has been involved in trying to reconcile and rectify the wrongs perpetrated in the past on the Indians which was the basis of course for the Indian Claims Commission Act, how I can reconcile possible future requests from the Natives who occupied the 48 States, prior to the white man's entry into the area.

Mr. WEINBERG. It is a tough problem, but there are takings and takings. As you say, there have been takings in Alaska, the Chugach and Tongass National Forests were taken by Executive order. There are, of course, the establishment of the cities. But nevertheless, that still encompasses a small part of the land and the Natives are not here asking for a deed to Anchorage.

Monetary compensation stands in part for the takings and in part compensation for the balance of the land in which they are proposing that their claims be extinguished. But my point is that in the climate of our civilization and our development today we have a somewhat different situation than what prevailed in the early days of our century and this history of the Nation.

When there were land settlements, too. George Washington signed treaties saying that the Indians would never be removed from their land. But they were removed from their land and then the job had to be done all over again. I would suppose that we have reached a point in time where this time the United States can keep its word because the pressures which forced that drive for expansion room aren't present anymore. If the Government needs land the land to which the Indians would receive the paper that the white man's law regards as title, as a deed or patent, is as much subject to the law of emanent domain as any other land in this country. If the Government needs lands for parks and seizures and it has divested itself of title, it can acquire it, it condemns it and pays compensation. The Natives of Alaska are asking for equal treatment.

The CHAIRMAN. The question that bothers me is how far we can go in specific performance, to use an old equity reference. We made the conscious decision in the Indian Claims Commission Act to damages and we set a pretty low level of damages when we named the value of the property at the time of the taking.

But you have made some very good points here. I am sure you, being a very fair person, are as troubled as I am in trying to reason out in my own mind some of the situations that I can conceivable see coming up where there is a lot of Federal land available and why wouldn't there be a reconsideration in connection with a possible award of land, above and beyond just a settlement for damages in cash.

Mr. WEINBERG. I would like to make one more comment out of my experience, Mr. Chairman. The American people including those in the Government when they have to deal with this problem, are very versatile people and very imaginative. One way or another they find ways to remedy these old wrongs without upsetting our civilization and our needs. I have a very vivid recollection of what happened when the Army started to build the dams on the Missouri River back shortly after World War II and they discovered all of these dams were located on Indian reservations.

What did the Government do? The Government paid a standard of compensation which was fair and above what it would pay on a straight, clear market value taking. They paid relocation expenses, they paid educational grants. They paid all kinds of these things.

Now, why was that done? It was done because we all knew that the Indians had been robbed in the first place and this was a way of making it up.

That really is the explanation for those things. That is the way it is going to be done down here. We are not going to give the country back to the Indians down here, but we are asking that some of the Indians and Eskimos and Aleuts be allowed to retain some of that which is theirs in Alaska.

The CHAIRMAN. Well, I appreciate your fine response. I do have to go to another meeting, and I will ask Senator Stevens to take over and preside.

Senator STEVENS. Senator Jordan?

Senator JORDAN. Mr. Weinberg, you elaborated at some length on the point I brought up this morning, that this matter of overlap and the fact that you are faced in a regular pattern at least with intervals of less than 25 miles between them there is going to be an overlap.

Mr. WEINBERG. You are correct, there is a shortage of townships because of the overlaps.

Senator JORDAN. That raises the problem of who is going to be the Solomon to say who gets what?

Mr. WEINBERG. As there is nothing in the bill that provides for that.

Senator JORDAN. There is no alternative selection or form provided for equity in those instances?

Mr. WEINBERG. That is correct, Senator.

Senator JORDAN. Is there any provision made for the fact that some villages were up against the sea and there is no provision to go east to pick up townships because where the ocean is on the west, you can't get an eight-township and 16-township doughnut around these villages?

Senator STEVENS. Again, if you consider the language, the language is clear that they intended to provide a minimum of four townships for each village and also to provide additional acreage which would satisfy 25 townships around each village. In drawing the map, I agree with you. It doesn't look that way. But the map isn't the bill we are going to enact.

Mr. WEINBERG. I did and it says it would draw on each township which is contiguous to the township in which it is located and it is also withdrawn. The townships contiguous to, and corner upon, the townships which surround the village. Now, you can't make the English language any clearer than that and unfortunately they did not provide for any lieu lands.

Mr. WRIGHT. The AFN bill proper provides for that, it would be no problem at all.

Mr. WEINBERG. Now, we recognize, we are not totally blind to what people call the facts of life that the green withdrawal there on the North Slope, the TA'd land is in a somewhat different category than the four townships surrounding the village which happens to be TA'd land but I want to point out that we have had no opportunity to negotiate.

I would like to say a word on Mr. Wright's behalf in connection with his suggestion that AFN be afforded an opportunity to be in the markup discussions. This is very unusual, it is unheard of in my experience, too. But in the context of history, it is not such an unreasonable request. Until 1872 settlements with the Indians were made by treaty. Congress abolished the treaty system in 1872 but they did not abolish the negotiations system. Commissions were appointed or in some cases the Secretary of the Interior or the Secretary of War would send a representative and they would go out and negotiate with those people. It was those agreements that presented no problem.

Now, in effect, this is a real estate transaction that is involved here. Everybody knows it, the committee knows it, I know it, the oil companies know it, the State of Alaska knows it. But it is very difficult to hammer out a real estate transaction in the formalities of sitting at a witness table with the committee sitting in back and with the State of Alaska which has an interest in this matter not even present and also not able to participate in the discussion. They are as much inconvenienced and discommoded by the rigid form in which we must carry on what should be the subject of negotiations as are we and as is the committee. So there is something to be said for everybody getting into a room and trying to hammer out an agreement in the give and take of negotiation.

It makes a lot of sense.

Senator STEVENS. Are you finished, Mr. Weinberg?

Mr. WEINBERG. Yes, that is all I have.

Senator STEVENS. Mr. Wright.

Mr. WRIGHT. I would like to introduce into the record also addressed to Chairman Jackson, dated April 29, 1971, a letter from the Secretary of Interior Udall in regards to "Land Freeze." I would also like to introduce for the record a comparable analysis of the proposed Alaskan Native land plan which encompasses the two bills here and the two House bills. It is a very comprehensive comparison and I would like to have these two documents introduced into the record.

Senator STEVENS. Without objection, that will be done.

(The letter referred to follows. The analysis was retained in the committee files.)

ENVIRONMENTAL CONSULTING CORP.
Washington, D.C., April, 29, 1971.

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

DEAR MR. CHAIRMAN: According to my understanding, a question has arisen in consideration of the pending Alaska Native Claims Settlement bills as to the impact upon the Natives' land rights of tentative approval by the Secretary of the Interior to a land selection by the State of Alaska pursuant to the 1958 Statehood Act. I am writing, therefore, in order to clarify for your Committee the position I took on this question during the period 1961-1969 when I served as Secretary and thus was ultimately responsible for the issuance of all tentative approvals for State land selections.

At the outset I wish to point out that, even while the Department still was processing State land selections, we knew that substantial portions of Alaska were the subject of Native claims based upon traditional patterns of use and occupancy, including subsistence hunting, fishing and gathering, and, indeed, many State selections in fact were the object of specific Native protests. In giving tentative approval to some State selections, I can assure you that I, as Secretary, did not intend to prejudge these Native claims or in any other way to foreclose the Natives from showing their entitlement to the land. I then took the position, as I do now, that proof of Native ownership would bar the issuance of a patent to the State, regardless of whether or not the State's land selection had been given tentative approval.

As a positive indication of the Department's views during my term of office, I need cite only the case of *State of Alaska v. Udall*, 420 F. 2d 938 (9th Cir. 1969), in which the State attempted to force me through a mandamus action to issue a patent to a tentatively approved selection of land which also was claimed by the Native Village of Neana. The Federal Government vigorously resisted Alaska's contention that tentative approval materially changed the legal status of selected land and that the Natives' claims could or should be overridden, and our position was sustained by the United States Court of Appeals for the Ninth Circuit. I do not see how any other result could have been reached in view of Section 4 of the Statehood Act under which Alaska disclaimed 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 . . ."

Finally, I wish to note that the Natives' protests against State land selections never have been determined within the Department, but rather have been held in abeyance during the "land freeze." Thus, if the proposed Settlement Act prevents Native villages from obtaining title to tentatively approved State land, selections in all cases, as several of the bills would provide, Congress will, in effect, have legislatively decided such protests adversely to the Natives without a hearing on the merits.

I hope the foregoing information is useful to the Committee, and would appreciate your making this letter a part of the record on the pending legislation.

Sincerely yours,

STEWART L. UDALL,
Chairman of the Board.

Mr. WRIGHT. Thank you very much.

I would like to redirect the committee's attention to some of the specific efforts made in the past to negotiate settlements with Natives in Alaska. I would like to refer back to the fact that the Organic Act of 1844 left the burden with the Congress in view of treaty negotiations.

However, the attempt by Representative Bartlett in 1947 to resolve this issue is reflected in the testimony on record in 1948 by Undersecretary Warren and others.

At that time Dr. Dewey Anderson, who is living down in Mineral Park, was involved in Alaskan problems and the recommendations outlining those hearings indicated clearly the right of the Interior Department at that time to negotiate in fact on large land grants to Native people if they so desired.

So I think we truly are in a state of negotiations and I think it would be very helpful to all parties concerned that we should work this out. I would also like to say that I have talked with Indian leaders across the United States and they assure me that this would not in fact set a precedent that would reflect on treaty rights in the past.

Their specific problems are specific within their regions and they would view them as handling it on the merit of each case.

They advise me it is reasonable for this committee to recognize the fact that this issue in Alaska should be strictly on its merits and shouldn't be tied in any way to any land claim settlements or treaty negotiations by other tribes across the nation.

I think that is sound advice and worth commenting on at this time. If you have any other questions of any of us, we would be happy to answer them. I have nothing further at this point.

Senator STEVENS. Well, thank you very much. We appreciate everyone's testimony, and I am sure the committee will give it thorough consideration.

Thank you.

The next witness is Hugh Fleischer, Alaska Legal Services Corporation.

Mr. Fleischer, would you identify the gentlemen with you?

STATEMENT OF HUGH W. FLEISCHER, ALASKA LEGAL SERVICES CORPORATION

Mr. FLEISCHER. On my right is Mr. Gordon Stein and on my left Mr. Arthur Haakanson, a member of the village council of the village of Ouzinkie, Spruce Island, Alaska.

As you know, Senator, we are here on behalf of nine villages and the Kenai Peninsula Native Corp. with respect to one issue.

That issue is the right of these villages and nine other villages to select the land contiguous to the village site as well as the township on which the village is located on the same terms and basis as all other villages in the State of Alaska are going to do, notwithstanding the fact these villages are included within townships that have been tentatively approved to the State of Alaska.

We have submitted a brief to the committee, that sets forth the legal basis for our position. Our clients are, of course, in support of the Alaska Federation of Natives bill, Senate bill 835, feeling that is most consonant with their interests.

But the basic principle and view which these villages have is that they deserve the right to select the land on which their villages are located and the surrounding townships to their village site. These lands as you certainly know are those most important to the villages. These are the lands that have received most intensive use and occupancy. These are the lands that they indeed are entitled to under any equitable claim settlement. I have submitted a formal statement for the record and feel that that adequately states our position but I would like to say one thing further before Mr. Haakanson speaks.

That is that we—Alaska Legal Services Corp., with respect to the representation of these villages has made every reasonable effort to work with the State of Alaska in attempting to resolve this problem and attempting to have the State settle this matter on their own grounds and on grounds that would be satisfactory with our client villages.

We, of course, recognize the fact that the prior two State administrations have stated such villages as these deserve to be on equal footing with the other villages in the State and in my prepared statement I alluded to Governor Miller's specific statement that these villages will be afforded that treatment.

We have not been successful as of yet in getting the present State administration to confirm that agreement or any comparable agreement that would insure that these villages are afforded equal rights, equal footing to all other villages in the State. For that reason we are here today and have been attempting to find a resolution to this problem in the prospective Federal legislation.

I would also like to say, Senator Stevens, that with respect to Chief Andrew Isaac's statement, I think it is quite clear that the chief did not intend to limit the interest of the United program or his own judgment, the rights to that township only in which the village is located. I think there is further evidence of that fact. It should be noted that the chief's own village, Tanacross, is not located in a township tentatively approved, but rather they are adjacent, contiguous townships.

Senator STEVENS. I understand that. I was talking about the proposal that was made and his indication that he would agree to the exchange of selected lands for township lands. I had no intention of tying him down to one township. But, on the other hand, I gather he would be agreeable to an exchange concept, if it could be worked out.

Mr. FLEISCHER. There is no question about the fact that our client villages would be satisfied if in fact they have a firm commitment to those lands in which they bear interest.

Specifically those lands that they would otherwise be allowed to select from under whatever Federal legislation is enacted.

Senator STEVENS. I think it is incumbent upon the State to work that out. The State is the beneficiary of the TA lands and I think they have that duty.

Mr. FLEISCHER. We think there is an argument that they have the duty and of course as set forth in our brief and as we feel is very firmly and soundly stated, this Congress has the authority and we feel the duty to insure these villages do have those rights, both under the terms of the aboriginal rights as well as the actual procedures followed vis-a-vis these villages and the terms of the State selection. I would like to introduce Mr. Arthur Haakanson, who is a member of the council of Ouzinkie, who is going to speak on these things and we are going to place a map up of Spruce Island, if we can. Following that, we would like to show a video tape which was filmed in our Montasta Lake. It was taken of a meeting of the villages of the United Crow Band 2 weeks ago. We feel it would be helpful to have this on the record as well as the opportunity for you to see this.

Senator STEVENS. What provision have you made here to make sure this goes on the record? What do you want to do? That will be done afterward and the reporter will be told who the person is making the statement so that the record can be properly complete.

STATEMENT OF ARTHUR HAAKANSON, OUZINKIE, ALASKA

Mr. HAAKANSON. I am Arthur Haakanson and I am a member of the city council of the village of Ouzinkie. This is my testimony in relation to tentatively approved lands around Ouzinkie on Spruce Island and the nearby shores of Kodiak Island.

Spruce Island is a small island, 9 miles long and 3 miles wide. We use our land, our grandfathers and fathers before him.

Last fall the realization came to us that there was the possibility that we may lose this land. It started with what they called an "Open To Entry" land program on Spruce Island on the northeast side of the island and across a nearby portion of Kodiak Island. The "Open to Entry" land program was opened without our knowledge while we were all away fishing and some of our people in the community went to harvest their gardens as they do in the fall period only to find there were people already there staking off 5-acre lots of land,

claiming that the land was rightfully theirs and they were allowed to stake these claims under the open to entry land program.

They were right in a way as far as the State went. But in looking further we found out that there were three serious irregularities in what the State had done.

One, they didn't hold a public hearing in the city of Ouzinkie which is a fourth-class incorporated city and a public hearing should have been held there instead of Kodiak since it was closest to the open to entry land program and two, they did not hold a field examination to see if the land was occupied or in use for hunting, fishing, or for gardens. They just opened the land without the field examination.

Three, they didn't post any advance notices to prepare the people for this so they, too, may make preparations in filing for the land. On all these three counts as we took it to court, the open to entry land program was closed down on Spruce Island.

Now, we thought everything would be all right there for a while until we came under the realization that we were tentatively approved land. Our whole island and nearby Kodiak Island.

Now, this island is a small island as I said, and we use it for hunting, fishing, trapping and in fact we have some Russian church grants there, we are going to have a shrine there, we have two very holy places there. In fact, last fall one of our priests who died about 100 years ago was canonized as a saint, that was Father Herman.

This was done last August 9 and there is another holy man buried there, Father Gerasim and the people are proposing to build a shrine there for people from all over the world to come and pray.

Now, as far back as 1950, Ouzinkie people have been leery and aware of losing their land so they sent a petition to the Secretary of Interior saying they use the lands on Ouzinkie for hunting, fishing and gardens and the nearby shores of Kodiak Island. All of this had been used for drying fish, smoking salmon, hunting and other subsistence use.

Now, we were wondering why the State had tentatively approved lands in Ouzinkie, I think it said somewhere where the land was appropriated, not in use, they could do so. But as the State should have known this land was not vacant and was in fact being used.

It is still being used and we would like to continue to do so.

There are about 16 other villages in the same predicament we are in. Many of them didn't come under the realization either until we saw these maps where the land was tentatively approved or State selected. I don't come under the realization until one of the people in the village filed for a Native land allotment for 116 acres with the saying this was tentatively approved land. Also it was under a cattle grazing lease.

I found out later you can file on a grazing lease and you might be able to just have it on the record that you do file for non-tentatively approved land.

I didn't come here to antagonize anyone but to reason and try to make you see that we do use this land.

Thank you.

Senator STEVENS. Thank you very much. I have looked over the brief and your counsel has well prepared your memorandum. I think we recognize this problem and I would hope negotiations would continue with the State. But I ask you, Mr. Fleischer, in behalf of the committee, to let us know if there is any change on the position of the State with regard to this exchange concept?

Mr. FLEISCHER. I will certainly do that, Senator. As you know, Governor Egan is planning to testify, before the House Interior Committee on Monday of next week and we do intend to talk with members of his staff at that time.

So we should know that soon as to whether or not there is a change in the position of the State.

Senator STEVENS. In all fairness to the administration, there has been an activity going on in Juneau known as the legislature—and they haven't had all the freedom they should have to explore questions like this. I hope you would renew it as the tribe I used to belong to leaves Juneau and goes home.

Would you like to show the video tape?

Mr. FLEISCHER. Yes, if we may. We have also distributed photographs that you could view, they are all photographs of Ouzinkie and Spruce Island.

Senator STEVENS. Yes, I know, and I am one of those guys who trespasses. I go over there and hunt once in a while.

(Whereupon, a video tape was presented.)

Senator STEVENS. Mr. Fleischer, I want to compliment you, and I am sure the chairman would join me, on your presentation. I am familiar with the background of these matters and I hope you will understand our reluctance to in any way disturb the validity of tentatively approved lands.

But I will say this, and I can only speak for myself on this. I understand you have a dispute with the State about how much land ought to be exchanged. Nevertheless, if the State doesn't at least agree to take care of the village area, I would be more than willing to present your amendment to be sure that we invade the TA lands for that purpose at least.

Don't you have a dispute about the amount of land you want to exchange?

Mr. FLEISCHER. Senator, we haven't been able to reach an agreement on State legislation that would deal with this problem. We have discussed with Attorney General John Havilock and others in his office the problem of villages located within or surrounded by tentatively approved lands.

Our proposal, or the proposal the villages have asked us to submit, is that they be allowed the right to select from the township in which they are located as well as contiguous townships on the same basis of other villages not withstanding tentative approval.

Of course the most blatant and serious problem is the township in which the villages are located as well as the adjacent townships. But they, of course, would wish to be on equal terms with the other villages under whatever legislation Congress enacts.

Senator STEVENS. You understand, as we discussed previously, that the State could not convey minerals to your client because of the constitution of the State of Alaska? It could not.

Mr. FLEISCHER. We think they may well be a basis for conveyance under the Slinger provision as well as the other considerations we set forth in our brief but our client villages would be amenable to a solution that would give—at least would be willing to seriously consider the possibility of surface rights to those contiguous rights and in lieu subsurface rights in other lands.

They do very much feel and we certainly feel that we have adequately set forth a sufficient basis for giving to these villages the full rights they would have but for the tentative approval.

That would be subsurface as well as surface rights of tentatively approved contiguous lands. Given the fact that we not only have the Slinger provision but serious problems in the State selection as it pertains to the village sites and the surrounding lands. The things Mr. Haakanson discussed, the things some of the people of Mentasta Village and other villages discussed, a lack of notice about the selection procedure, in terms of publication, as well as hearings and statement.

These things all go to the question of whether or not Congress has the authority to allow selection from within tentatively approved lands themselves as to both surface and subsurface rights. We think the facts would give a firm basis for that legislation.

Senator STEVENS. Did any of your villages protest the State selection before the selection was approved?

Mr. FLEISCHER. Well, Tanacross, as you know, had submitted a specific petition to the Secretary of the Interior regarding the lands a full 9 years prior to statehood.

Senator STEVENS. Since State selection was published in each instance, did any of the villages specifically protest the selection?

Mr. FLEISCHER. During the actual publication period there were no protests filed. We would submit as in the case of Ouzinkie, as in the case of the interior villages, the villages were not aware of the fact that their villages were under selection procedures. The newspapers used for publication on Kokiak Island and nearby Kodiak Island were the Anchorage newspapers, rather than the Kodiak Mirror. The newspapers used for the interior villages were those in Fairbanks. Similarly, for all the other villages involved there are serious publication problems. I would further say insofar as the subsurface rights question, neither the States nor the Department of Interior have in any way asserted that there are mineral interests in the village sites or the contiguous village lands. It appears clearly the selection itself was made for recreational purposes rather than development purposes.

Senator STEVENS. I would agree. That would apply to similar villages located throughout the State and there are several in the mineralized area.

I assure you that this committee will be very sympathetic to your problem. You have done a credible job and reflect very well on your organization, which is doing a great deal to help our people in the rural areas. We are grateful to you for coming.

We will keep you advised concerning the considerations.

Mr. FLEISCHER. Thank you, Senator.

Senator STEVENS. Mr. Borbridge, do you have a statement to present?

Mr. BORBRIDGE. Yes, sir.

Senator STEVENS. I think everybody should know we are in session and we are subject to a point of order anytime anybody wants to cut us off. I do hope we get the hearing completed. There is a considerable controversy taking place on the floor right now, I understand. Therefore, I don't expect many of my colleagues will be returning. But I hope you gentlemen will understand the importance of making the record. John, we are happy to have you here today.

Would you introduce for the record the people who accompany you?

STATEMENT OF JOHN BORBRIDGE, JR., PRESIDENT OF THE CENTRAL COUNCIL OF THE TLINGIT AND HAIDA INDIANS OF ALASKA

MR. BORBRIDGE. Yes, thank you, Mr. Chairman.

On my far left is Mr. Ed Churchill of Wrangell, Alaska. To my right is Mr. James Edenso. Mr. Edenso, in addition to being a Tlingit-Haida, recently graduated from San Francisco State with a B.A. in finance and management and was employed in San Francisco as a systems analyst.

He is presently a planner in the central council in our office of developing planning.

On my immediate left is Mr. Richmond Allan, partner in the firm of Weisbrack & Weisbrack who is under contract to the council.

My name is John Borbridge, Jr. I am president of the Central Council of the Tlingit-Haida Indians of Alaska. I am grateful to the chairman and members of this committee for according me the opportunity to present some of the views of the Tlingit and Haida Indians on the several bills that have been introduced in this Congress to settle the historic claims of the Natives of Alaska.

And, again, I want to express my thanks to the members and staff of this committee for the great interest and truly prodigious effort they have already invested in this legislation. I am keenly aware that without the impetus provided by this committee, the business at hand would not be nearly so far advanced. As far as Alaska is concerned—Native and non-Native alike—there is no more important business.

Particularly, I again want to thank the chairman for his deep personal commitment to the task of securing a just settlement of our claims. He has labored in this vineyard harder than any man with no purpose other than to do a job that desperately needs doing.

The Tlingit and Haida Indians number about 15,000 and constitute roughly one-quarter of the total Alaska Native population. Our homeland is what is known as southeast Alaska, or the Panhandle.

The central council, which is the general governing body of the Tlingit and Haida Indians, is a member of the Alaska Federation of Natives, and supports the position of the federation with respect to the basic provisions of legislation that would affect a just and equitable settlement of the claims of the Alaska Natives.

Because I was informed that Mr. Wright, the president of the Alaska Federation of Natives, would present the views of the Alaska Natives generally on the several bills to settle our claims that have been introduced in this Congress and referred to this committee, I propose to confine my comments primarily to certain matters of particular interest and concern to the Tlingit and Haida Indians.

First, I will say that, among the bills before the committee, we are convinced that S. 835 is far and away the best, both substantively and technically, and, on behalf of the Tlingit and Haida Indians, I respectfully urge the committee to use it as the basis for further deliberations.

Because I am informed that others have or will undertake a comparison of the provisions of S. 835 with the other measures before the committee, for the purpose of demonstrating why this bill is funda-

mentally more fair, more sound, and more desirable than any of the others, I will not expand the record with repetitious comments, except I would stress that S. 835 is the only bill now before you that provides meaningful Native land retention rights and the kinds of administrative organs that the Natives need and want.

I am confident that I can say without reservation that all of the Natives of Alaska are deeply committed to the propositions: (1) that their retention rights, particularly those related to their villages, cannot in justice or equity carry less than full ownership, or be subordinated to any other interests, Federal, State, or private; and (2) that the primary mechanisms for administration of the benefits of the legislation must be regional organizations.

I would ask your permission, Mr. Chairman, to enter into the record at a later time further materials that describe the nature of our organization and some of the present activities in which we are engaged.

Senator STEVENS. You submit it to the staff and they will make the determination as to how many will be entered into the record.

Mr. BORBRIDGE. To continue with my prepared statement, I would turn now to consideration of the proposal that Secretary of the Interior Morton recently submitted to Congress on behalf of the administration, particularly as it would affect the Tlingit and Haida Indians. I believe this proposal has now been introduced in the Senate as S. 1571.

First, I want to say that I believe President Nixon and Secretary Morton in preparing this new administration bill were motivated by a sincere desire to bestow more just and equitable Native land retention rights than have previously been proposed by any bills other than those sponsored by the Alaska Federation of Natives. I want to express our appreciation to the President and the Secretary for the new thinking, at their levels, that I believe S. 1571 reflects.

I feel, however, that the aims and intentions of the President and the Secretary relative to Native land rights were seriously undercut and compromised in the drafting process.

As submitted, the administration bill subordinates the land retention rights of the Natives that it ostensibly bestows not only to State selections that have gone to patent, but to those that have merely been tentatively approved, as well. It further subordinates the Native land rights to the utility and transportation corridor recently imposed upon the face of Alaska by the Department of the Interior and, in substantial respects, to other Federal reservations such as Naval Petroleum Reserve No. 4, and the national parks and wildlife refuges.

In short, the rights of the Natives are treated in this bill the way Native interests frequently are when they are in competition with other interests and are committed to the Department of the Interior for resolution.

This is to say: Last.

As many Native villages are completely surrounded by TA'd lands and lands included within Federal reserves, not to mention water, the provisions of the bill would effectively preclude such villages from (1) retaining anything like the quantity of land to which they are ostensibly entitled, or (2) retaining any lands to which they are historically, socially, economically or geographically appertinent.

What the draftsmen of this bill obviously preferred to ignore is that the Native villages did not impose themselves on the State selections and the Federal reserves. The villages were there first and have always had preeminent possessory rights. Fairness requires that the Natives' rights to retain land in the vicinities of their villages be paramount and not subordinate to State and Federal interests which in most cases did not come into existence until centuries after the villages were established.

The bill discriminates against the Tlingit and Haida Indians of southeast Alaska in ways that make it unacceptable to us. Under its provisions, the average amount of land that each village outside of southeast Alaska ostensibly would be entitled to retain is in excess of 200,000 acres. Each of 10 Tlingit and Haida villages in southeast Alaska ostensibly would be entitled to retain a maximum of 23,040 acres, about one-tenth as much land as villages elsewhere.

As the only land that would be withdrawn that would be subject to the selection and retention rights of Tlingit and Haida villages would be those in the single township enclosing a particular village and as many of these townships are composed almost entirely of water, the amount of land our villages would be eligible to retain under this bill would in fact be very substantially less than 23,040 acres each.

While the Tlingit and Haida recognize that we have already been compensated for some, but by no means all, of our aboriginal rights, we do not regard as equitable a settlement that allows us to retain less than one-tenth of the quantity of land permitted all other Native groups.

We have the best aboriginal title that exists in Alaska to 2.6 million acres of land in the northern part of the panhandle. It is the best aboriginal title because it is the only aboriginal title that has been judicially established in Alaska to date. We also have presently justifiable claims to the fisheries and submerged lands adjacent to southeast Alaska. These claims are presently justiciable because we filed suits on them before the Indian Claims Commission while it was still possible to do so. These suits are still pending.

In short, the Tlingit and Haida have extensive and valuable existing rights which we will be called upon to surrender as part of the settlement, and there is no rational basis for discriminating against us in the way the administration's bill would do.

In the case of the Tlingit and Haida Indians, the bill extinguishes, without limitation, "any and all claims" belonging to us. In the case of all other Natives the bill extinguishes only claims based upon aboriginal right, title, use and occupancy of land in Alaska, and upon certain acts of Congress. As a matter of fact, we now have claims pending before the Court of Claims based upon current mismanagement by the United States of money that belongs to us. These claims are contemporaneous. They are not founded on aboriginal rights and certainly should not be extinguished by the settlement legislation.

The administration's new bill in its present form is not acceptable to the Tlingit and Haida Indians, nor, I believe, to many other Native groups. Without doubt, the best bills produced so far are S. 835 and H.R. 7039. I hope the Congress will focus its attention on these proposals.

I would add very briefly the following comments not contained in my prepared statement.

With respect to the possibility that the settlement of the Alaska Native land rights issue would set some precedent, I would like to state specifically that we are herein dealing as you pointed out with unextinguished aboriginal or Indian title and I am frankly not aware of analogous situations with respect to the south 48 Indian tribes.

As you and other members of the committee pointed out we are occupying these lands today and what we seek is confirmation of this state of occupancy. This is the primary difference between our situation and other situations as wherein it was determined that treaty negotiations produced an unconscionable settlement that should be resolved in the courts in order to make them right.

I would also like to point out that the Alaskan Natives were not pushed out or conquered or losers of their land by treaty.

Further, in the case of the Tlingit-Haida, that Indians versus the United States it was held the treaty accession did not affect the rights of the Natives to their land.

There is one final point, Mr. Chairman, with your permission, I would like to make. I note very often the case of the Teaton Indians is cited as the authority wherein it is pointed out that the plenary power of the Congress is such that it must resolve the extent and nature of the land rights that the Alaskan Natives have.

It is further pointed out very often that it is the same case which points out the fact that the Congress has the plenary power to extinguish the Indian title of the Indian tribes and Alaskan Natives. I would like to quote the following and this also comes from the case of the *Teaton Indians v. United States* 348 U.S. 271955. In this case, which involved lands in Alaska, the Supreme Court held that Indians' title unaided by statute did not give rise to a compensable right to the United States but acknowledged it had been "the policy of the Congress continued throughout our history to extinguish Indian title through negotiations rather than by force." And that the Indians had "the right of occupancy which the sovereign grants and protects, against intrusion by third parties."

I believe this will at least help to straighten the record in a more complete sense as to the significance of the particular case in hand.

That completes my prepared statement and I thank you, Mr. Chairman.

Senator STEVENS. Thank you very much. Would you give us a map delineating this 2.6 million acres of land, Mr. Borbridge, so we can be sure what you are identifying in that regard? I know it somewhat but I think it ought to be in the committee's record.

Mr. BORBRIDGE. I will make this available, Mr. Chairman.

Senator STEVENS. Mr. Churchill, did you have any comments you would like to make?

Mr. CHURCHILL. No comments, Senator, thank you.

Senator STEVENS. Well, it is very nice for you to come in.

Mr. Edenso, did you have any comments you would like to make?

Mr. EDENSO. No, I didn't, Senator.

Senator STEVENS. I am sorry more of my colleagues aren't here today. I appreciate your stand and I know they will read the record. We have Mr. Phil R. Holdsworth to follow you gentlemen.

Mr. BORBRIDGE. Thank you for hearing us out, Senator.

(The material referred to by Mr. Borbridge follows:)

CENTRAL COUNCIL,
TLINGIT AND HAIDA INDIANS OF ALASKA,
Juneau, Alaska, May 7, 1971.

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

DEAR MR. CHAIRMAN: During my testimony before your Committee on April 29, 1971, on S. 835 and other bills to settle the claims of the Natives of Alaska, I referred to the fact that all of the Natives are deeply committed to the proposition that the primary units for the administration of the proceeds of the settlement ought to be regional organizations. In connection with this statement I asked and was granted permission to submit for the record, or for the files of the Committee, a sketch of the organization and accomplishments of the Central Council of the Tlingit and Haida Indians. After I had testified it was called to my attention that a piece I wrote entitled: "Alaska Native Land Claims and Past Settlement Planning", has been included in the appendix to the printed record of the hearings on S. 35 and S. 835 held on February 18 and March 16, 1971. As the material on the Central Council that I proposed to include in the sketch is largely presented in that piece, I have concluded the sketch I proposed to submit when I testified on April 29, 1971, would serve no purpose and would needlessly expand the record.

The Central Council is an example of an existing Native regional organization with a proud record of accomplishments. It demonstrates what Native groups can do when authorized to organize along natural social, cultural and economic lines.

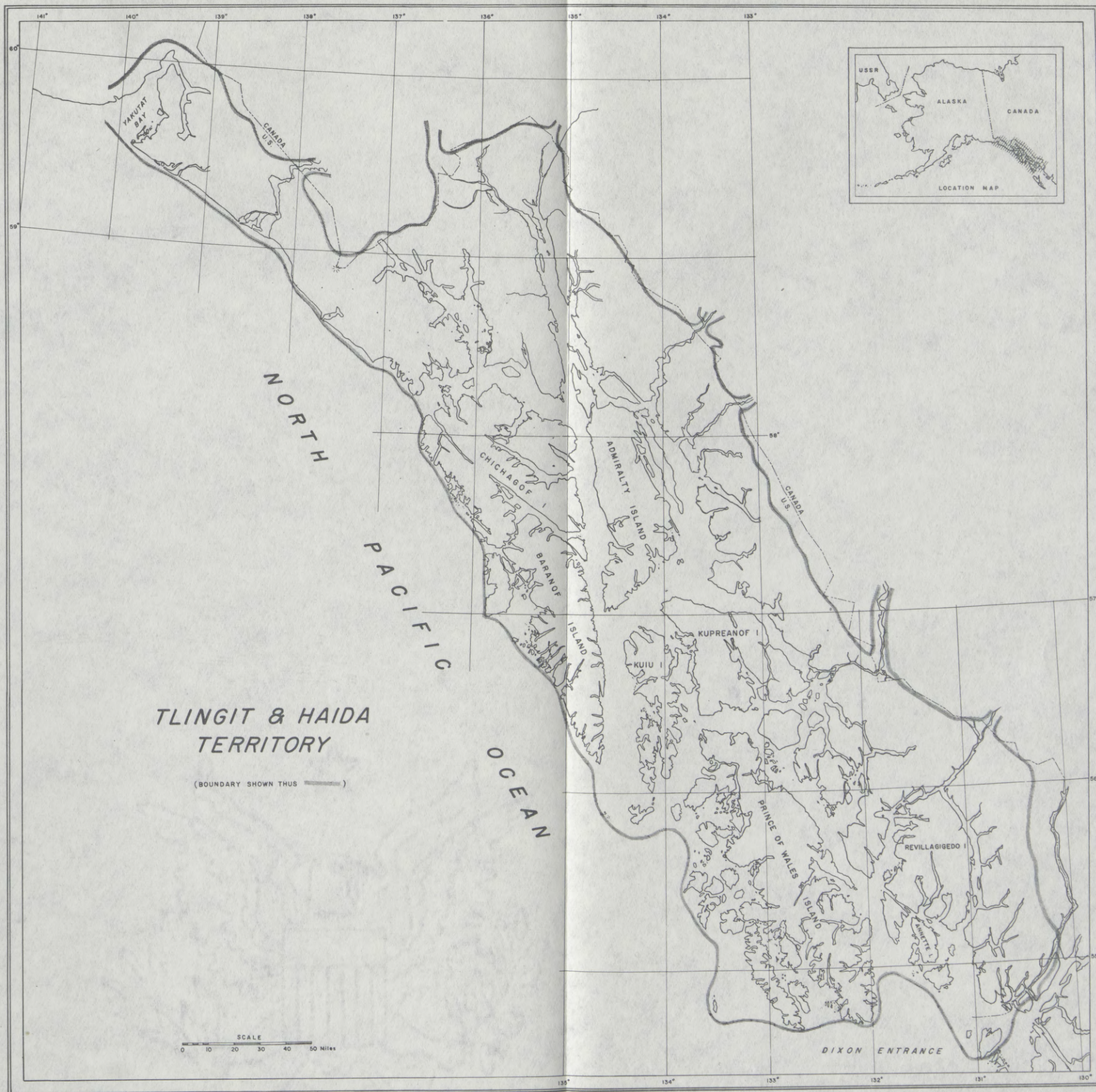
During my testimony I also stated that there is no rational basis for discriminating against the Tlingit and Haida Indians as the Administration's new proposal (S. 1571) does. I pointed out that, among other extensive and valuable unextinguished aboriginal rights that we will be called upon the surrender incident to a legislative settlement, we have the best aboriginal title that exists in Alaska to approximately 2.6 million acres of land located mainly in the northern part of the Alaska panhandle. I characterized our aboriginal title to this land as the "best" that exist because it is the only such title that has been judicially defined and determined to date. *Tlingit and Haida Indians v. United States*, 182 Ct. Cl. 130, 134-135, 313 (fndgs. 281 & 282), 389 F. 2d 778, 782 (1968).

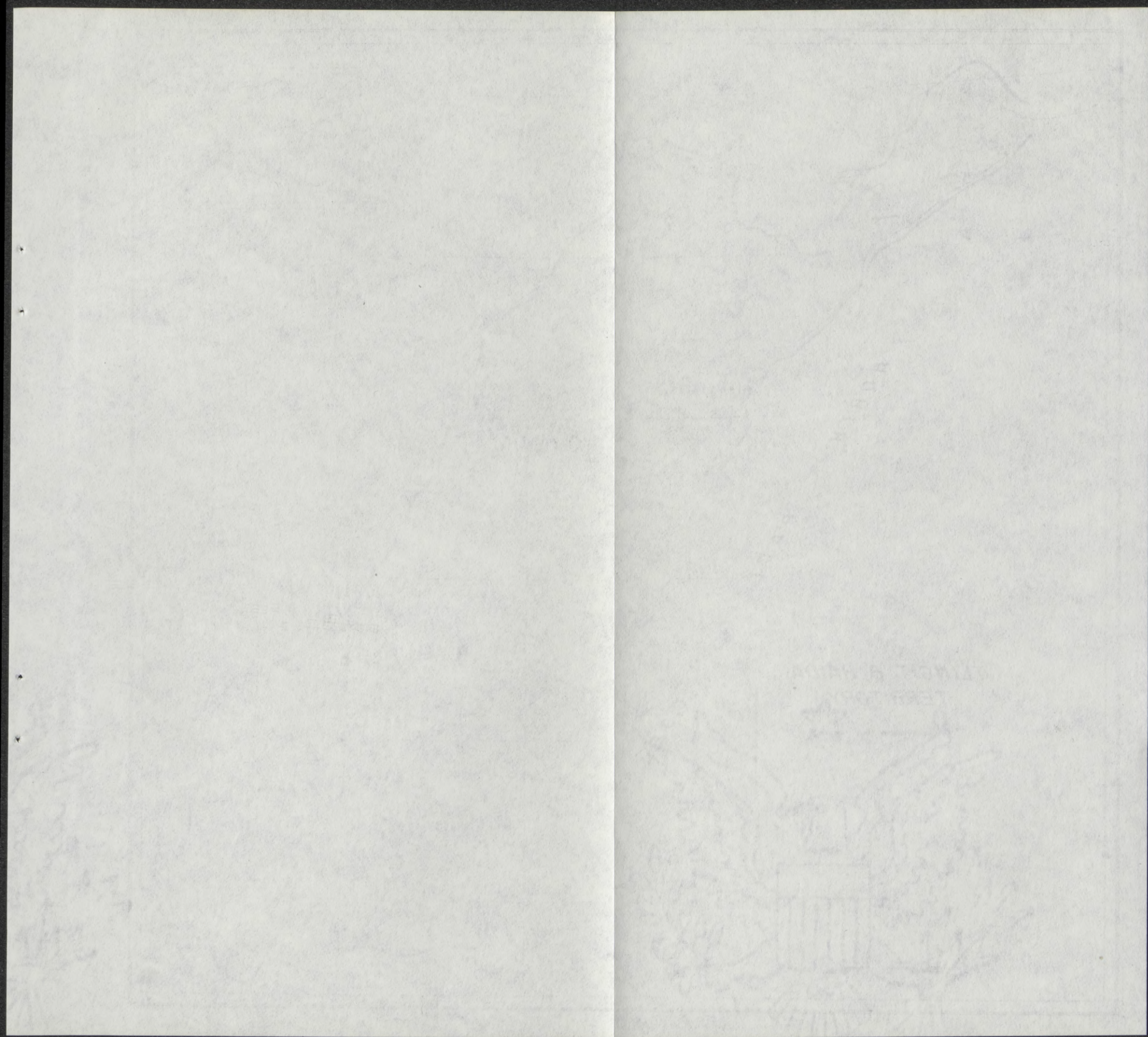
Senator Stevens, who was chairing the hearings at the time I testified, asked that I submit a map showing the areas making up the 2.6 million acres that the Court of Claims has determined we still hold by aboriginal title. A copy of such a map is enclosed. Also enclosed is a copy of a map showing the exterior boundaries of the land and water areas that the Court of Claims determined had been aboriginally owned by the Tlingit and Haida Indians. *Tlingit and Haida Indians v. United States*, 147 Ct. Cl. 315, 329, 384-385 (fndg. 57) (1959). The Tlingit and Haida Indians presently have claims pending before the Indian Claims Commission involving the tidelands, the submerged lands, and the fisheries within the boundaries depicted. We will, of course, be called upon to surrender these claims too, incident to a legislative settlement.

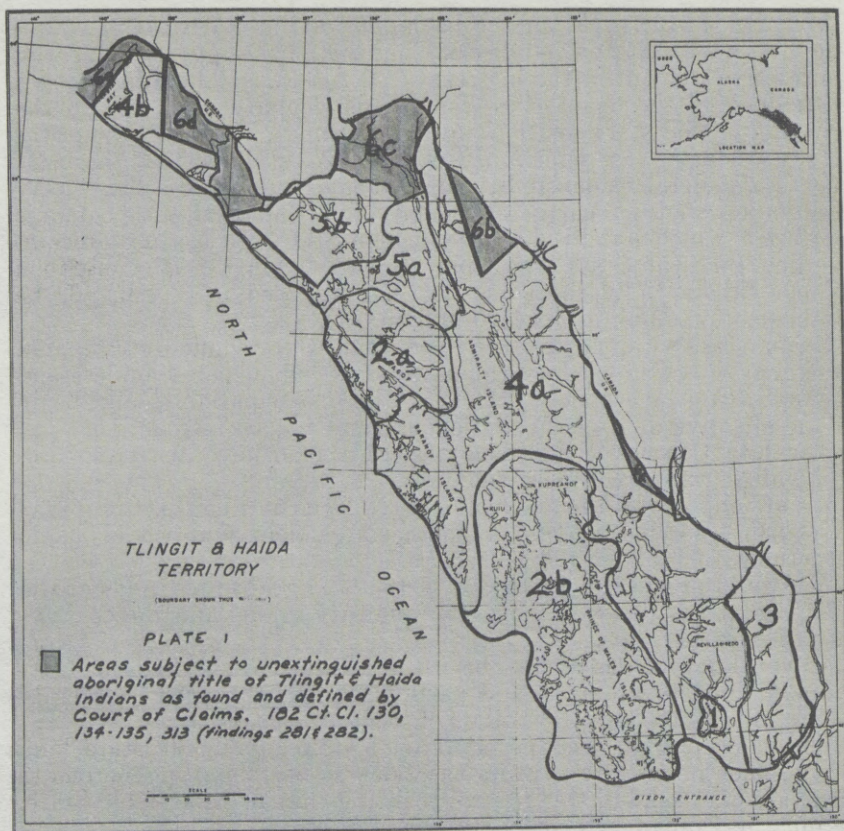
I deeply appreciate the personal interest you have taken in the matter of settling our claims and the courtesies you have extended me and other Native representatives in connection with our presentation of the Native position. I remain ready to assist the Committee in any way I can.

Sincerely yours,

JOHN BORBRIDGE, JR., *President.*







STATEMENT OF PHIL R. HOLDSWORTH, ALASKA STATE CHAMBER OF COMMERCE

Mr. HOLDSWORTH. Mr. Chairman or acting chairman, for the record my name is Phil R. Holdsworth, chairman of the Native Land Claims Task Force of the Alaska State Chamber of Commerce. I served for 7 years as territorial commissioner of mines, 9 years as Alaska's first commissioner of natural resources; am presently mineral exploration manager for Inexco Mining Co. in Alaska, and have been selected as spokesman for the business community.

I have submitted to the committee in advance copies of this prepared statement and also copies of a letter by Robert T. Anderson, president of the Alaska State Chamber of Commerce addressed to Senator Jackson, chairman of the committee and attaching two maps marked "Exhibits 1 and 2."

Senator STEVENS. We will print the letter from Mr. Anderson in the record following the completion of your statement.

Mr. HOLDSWORTH. Thank you, Mr. Chairman.

I could waive reading this prepared statement, but I think it would be to the interest and the benefit of those who have testified previously if they did hear this.

Senator STEVENS. I think you are right.
Please go ahead.

Mr. HOLDSWORTH. From the beginning of the Native land claims issue, the Alaska State Chamber of Commerce has supported an early, equitable settlement in the interest of all Alaskans. There has been a "softening" of the chamber's position, particularly in regard to the State's financial participation in a settlement, since S. 1830 was introduced in the last session of Congress. We still feel that the basic issue is a Federal responsibility, but after experiencing a long delay in any hopes of an early settlement, and the resultant economic depression which has hit business in the State, we are now recommending that the State participate financially in a settlement in a manner substantially the same as that proposed in S. 35 and the administration's bill, up to \$500 million.

I would like to apologize, Mr. Chairman, throughout the prepared statement we refer to the administration's bill, which I understand now is S. 1571. We believe, however, this participation should begin on the effective date of the settlement, and not be retroactive to an earlier date, thus involving moneys already paid into the State treasury, which some of the bills would do.

We are opposed to the open ended provisions on this point proposed in S. 835 wherein the State's financial participation would be in perpetuity.

We would urge a serious review of the land grant provisions of the bills presently before you, not as to quantity grants and the conveyance of mineral rights.

As you know it has always been the position of the Federal Government that all resources, and particularly the subsurface minerals, belong to all the people regardless of location.

This concept has been perpetuated historically in all State land grants, and the Congress, in its wisdom was particularly generous to the State of Alaska in this regard, realizing that to be a viable State, we must have management of these resources.

In spite of the large land area of Alaska, much of it is either unavailable or unsuitable for selection to satisfy the land grant provisions of the Alaska Statehood Act. Excluding present Federal reserves, and those lands above the 3,000-foot elevation which are of little value, there remain only 90 million acres to satisfy the 103-million-acre statehood grant and the 40 to 40-million-acre proposed Native grants. It appears to us that the proposed legislation could create a competitive "sovereign power" in the State of Alaska, representing less than one-fifth of the population but controlling over half of the valuable land, including the subsurface minerals.

When Alaska became a State, most of us felt that we really had an opportunity to set an example in handling the problems previously faced by other States in the treatment of Native groups. The Natives in Alaska were well integrated into the political, social, and economic life of the State. For half a century they had been extended the rights and privileges of citizenship enjoyed by non-Natives. In fact, they have for years enjoyed special privileges and services not available to the non-Natives of Alaska.

Throughout the early history of Alaska the Natives' livelihood did not appear to be dependent on ownership of the land, and the Federal agencies responsible in this area apparently felt the same way. Under the Indian Allotment Act of 1906 only 175 allotments covering 15,216 acres had been granted by May of 1968. Attempts by the State to encourage the exercise of allotment rights prior to State selections,

or to get away from conflicts, failed miserably. Of the 178 village townsites recognized by the Bureau of Land Management only 61 had been surveyed, and deeds issued to only 28, by 1968.

We would like to quote here from a little-known report by the first Indian Commission created by section 12 of the act of May 17, 1884. John H. Kinkead, Governor of Alaska, Munson C. Hillyer, and Andrew T. Lewis made up the Commission which was charged with the following:

. . . to examine into and report upon the condition of the Indians residing in said Territory, what lands, if any, should be reserved for their use, what provision shall be made for their education, what rights by occupation of settlers should be recognized, and all other facts that may be necessary to enable Congress to determine what limitations or conditions should be imposed when the land laws of the United States shall be extended to said district; . . .

The resulting report to the Secretary of the Interior was made June 30, 1885, and the Commission adjourned, sine die, August 31, 1885. The report reads in part as follows, and I have excerpted from this report which is about 19 pages long; those portions having specifically to do with land and I quote:

This report on the Condition of the Indians must necessarily be confined to those residents within the Alexander Archipelago, no means of transportation being available to reach any other portion of that District.

Members of the Commission have, as often as opportunity offered visited the several tribes residing therein. These comprise a total population of about seven thousand (7,000) divided into eleven (11) separate and distinct communities.

Mr. Chairman, an aside at this point: I note that most of the legislation proposed designates today 11 villages in southeastern Alaska which would qualify under the special provisions in those bills. This is 1885, 11 communities. To quote again:

. . . The General Land Laws of the United States should be extended over the Territory as early as possible. The Natives claim only the land on which their houses are built and some garden patches near their villages; they ask and expect nothing more. A deed for their lots in severality would be a very highly prized document by them . . . they ask only the same rights and protection given the White Man.

The majority of the houses here (Sitka) and in other places owned and occupied for many years by Russians, Creoles and others do not carry with them the fee to the land. The title in these cases, we think should be perfected by the Government without cost to the owners.

The lots are of little present value, and the occupants are generally very poor.

We believe it the interest of the General Government to encourage by liberal enactments the occupation of the country by bona-fide settlers that will open and develop its resources.

Timber lands should be open for sale in large tracts at a price not much above the cost of surveying. These lands are generally situated on high, precipitous, mountains, expensive to utilize and a considerable portion of them useless for lumber.

Coal Lands should also be sold at a low price. The difficulty and expense attending the development of this important industry needs every encouragement by the Government.

In brief all limitations and conditions imposed by Congress, when the Land Laws of the United States are extended to this District should be of the most liberal character. Very respectfully.

When Alaska was granted statehood in 1959, and its land grants totaling over 103 million acres, the Congress had still not made a final determination as to the Natives' rights to land. The Interior Department accepted land selection applications by the State, and approved them if not in conflict with actual use and occupancy by Native or other peoples. It was evident that actual physical survey of

the exterior boundaries of State selections would not be accomplished for many years.

In fact, the very important selection of the Prudhoe Bay district is still not selected, so it was agreed the State was given tentative approval—management authority over the land—pending actual survey and issue of patent.

The chamber supports the definition of “public lands” in S. 35 and the administration’s bill which acknowledge “tentative approval” of State selections as equivalent to transfer of title. To date, of the 26 million acres applied for, the State has received patent to slightly less than 6 million acres, and tentative approval of an additional 8 million acres.

Once oil was discovered on the Kenai Peninsula, however, there was a sudden interest in land ownership which might include the mineral rights. A solicitor’s opinion that the Tyoneks owned the minerals in the 26,000 acres withdrawn by Executive order in 1915 for the Bureau of Education, set off a rash of claims by other groups. As we all know, land business has been at a standstill since the first “freeze” in 1967.

The several bills before you contain differing provisions on nearly all the major issues. The chamber suggests that land grants be closely tied to existing villages and areas of individual occupancy or use, with sufficient additional land for village expansion. Although there has been a marked trend toward movement from the villages to the larger communities, there will always be those who wish to remain “in the bush” and continue the old way of life. We feel these people should not be disturbed in their continued use and occupancy of the land.

We also feel that the concept of “subsistence” lands, as contained in most of the proposed legislation, is unnecessary. Under existing State laws and regulations special subsistence hunting and fishing licenses are available.

The Alaska Department of Fish and Game has the authority to control the type of hunting and fishing allowed in various areas of the State. The needs of the subsistence licensee are thus protected. Under this type of management program no lands need be set aside specifically for this purpose.

Should your committee agree with the chamber’s recommendations on the type of land grants justified—for villages and individuals, but not for “subsistence”—it will become evident that there would be no need for the 5-year “land freeze” proposed in both S. 35 and the administration’s bill.

Land business could proceed “as usual” in those areas away from established villages.

The chamber supports the concept of management by a statewide corporation with a majority of Native members, with early transfer of this management to the local area. It is our feeling that if the benefits to be derived from this settlement are to be enjoyed by individual Natives, the less complicated—and hence less costly—the management organizations, the greater the benefits to all the Natives.

The chamber is strongly opposed to the “all competitive” leasing provisions for public lands in Alaska as proposed in section 17 of S. 35, and section 13 of the administration’s bill. We believe this is a subject for treatment under the general public land laws of the United States, and has no bearing on the Native land claims issue. Any such pro-

vision should apply equally to all the public domain lands throughout the public land States.

There is one provision, common to all bills, to which the chamber takes exception. Section 18 of S. 35, section 14 of S. 835, and section 8 of the administration's bill all provide that should the State of Alaska contest the right of the United States to compel revenue sharing by the State, certain reprisals against the State would result. We question the constitutionality of this provision, as apparently did those who drafted it.

Of course this question was raised earlier in the hearing. This does not mean, however, that we are opposed to State participation. We believe this is more properly accomplished by State legislation, and the chamber has urged both the Alaska Legislature and the Governor of Alaska to take such action to the extent proposed in S. 35 and the administration's bill.

To summarize briefly, on the three points in the chamber's position, (1) State participation in a monetary settlement to the extent of 2 percent of the proceeds from bonuses, rentals, and royalties derived from the disposition of leasable minerals brought into production after the passage of a settlement bill, but not exceeding a total of \$500 million and excluding revenues from State tide and submerged lands.

This position is supported by the chamber. We also support (2) the position that land grants should be closely tied to village areas or existing homesites or campsites, subject to all valid existing rights and the integrity of national forest reserves.

(3) The establishment of a statewide agency with a majority of Native members to handle initial management of funds received under terms of the act, with early transfer of management responsibility to the local area.

Mr. Chairman, it is sometimes advantageous to be the last witness, because you can have an opportunity sometimes to answer questions previously raised and I would like to make a few points in that regard.

In particular this conflict between village lands and tentative approvals. As commissioner of natural resources for the first 9 years of the statehood, I was directly involved in this problem and I am well aware of it.

The problem is this, basically:

In the early 1950's many of these villages did file claims on lands around the village area. These found their way into the records of the Bureau of Indian Affairs. They never reached the Bureau of Land Management, never became a part of the land record and when the State selections were submitted to BLM there appeared to be no conflict of interest in these areas because of their records, tentative approval was granted without an actual survey on the grounds.

This is the fault of both State and the Federal Government in that this was not done and I also agree with the previous witnesses that the State should have viewed these areas and advised the local people before this program was ever entered into.

The Alaskan Federation of Natives has made a request to your committee that they be represented in the markup sessions of the committee. I believe with this sort of request, it would be quite proper if the 250,000 non-Native Alaskans asked for equal rights.

However, knowing how your committees work and realizing this is an unusual request, I would merely suggest to the committee that it appears from Secretary Morton's letter of transmittal to the Presi-

dent submitting S. 1571, that the Alaskan Federation of Natives took full part in working out the terms of this bill and that they had a big hand in it to the exclusion of the others, anybody else and we know full well the other two bills, S. 835 and the one in the House are considered the AFN bill.

I would think on this basis I would suggest the committee should consider they have possibly had full participation in the legislation before you. I might suggest, also, to the committee, that your staff review these early 1950 village requests or claims for lands, that are of record in the DI office and compare them with the size of the claims at the present time.

This would be quite interesting to your committee. I have to sympathize with the Mentasta village situation. Forty years ago I operated a mine a few miles from there and we employed several of the people still living in that village and I believe I recognized, not having been in that village for 40 years, and I believe I recognized one of the witnesses being Kitty John, who I think you should know for your estimation, at my age she is 60 or 61, worked for the State as a maintenance person of two of the campsites owned by the State in that area, having some 17 dependents beginning at the age of 37 on down and these are the kind of people you have there.

They are responsible, hard workers and certainly their lands and their rights should be maintained and protected. Particularly against the tentative approvals which are not reviewed on the grounds and the conflict as it is developing.

That is basically all I have, Mr. Chairman, unless you have any questions.

Senator STEVENS. I have a couple of questions, Mr. Holdsworth. You say the chamber urges the legislature and Governor to take action with respect to the administration's bill and S. 35. Could you tell me if this pertains to revenue sharing?

Mr. HOLDSWORTH. Right.

Senator STEVENS. I am not up to date as to what happened in the last weeks of the legislative. Has there been anything done in that regard?

Mr. HOLDSWORTH. No. There has been one resolution passed that suggested that the legislature would be representative to this sort of approach but nothing specific.

Senator STEVENS. As I understand Mr. Wright's presentation, the majority of the legislature endorses the AFN bill.

Mr. HOLDSWORTH. In that regard, I think it only proper to submit for the record a copy of a newspaper item which appeared in the South-east Alaska Empire, April 26, 1971, it is an AP release out of Juneau and the headline is "Legislatures Surprised, Endorsement Included in the State Oil Reserve Lands."

This is a report, interviews with the various legislators who signed the petition and are having second thoughts. They express the opinion that they did not understand what they were saying.

Mr. STEVENS. I want to commend you and also request that you tell the Alaska State Chamber of Commerce that we do appreciate the position they have taken, which agrees with the principle of an early settlement. We also appreciate the fact that they have gotten specific in terms of State participation and future revenue sharing.

I think this is a substantial change in position by the State chamber.

We have all heard the problem, expressed by the TA lands, and I must say you demonstrate your own wisdom that sometimes 20-20 hindsight is pretty good.

Would you have any suggestion as to how we could take care of the TA conflict with the villages other than an exchange program?

Mr. HOLDSWORTH. TA's lands, of course, the patent did not issue until physical survey is made.

Senator STEVENS. The State could voluntarily relinquish the selection, however. It is not necessary to take possession of it. In fact, I understand in some cases you did relinquish it.

Mr. HOLDSWORTH. That is right and I would say just the State before the survey is concluded and any title is passed as early as possible these conflicts could be resolved and the State could withdraw their requests for those lands.

Senator STEVENS. That could be accomplished before any legislation or an exchange program. I would also urge you to take that up with the State chamber and see if you might assist as an advocate for these villages in order to see if we can get the same treatment. I think it is imperative that we try to get equal treatment for all the villages so there is no resentment to this settlement on the basis of unequal treatment as a result of the legislation.

We certainly thank you very much, Mr. Holdsworth. We appreciate your coming.

(The letter referred to earlier reads as follows:)

ALASKA STATE CHAMBER OF COMMERCE,
Anchorage, Alaska, April 27, 1971.

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

HON. WAYNE ASPINALL,
Chairman, House Interior and Insular Affairs Committee,
U.S. House of Representatives, Washington, D.C.

Gentlemen: The Board of Directors of the Alaska State Chamber of Commerce approved the following position in regard to a fair and equitable solution for all Alaskans of the Native Land Claims issue.

The Alaska State Chamber of Commerce recognizes that settlement of the Native Land Claims in Alaska is a federal question; however, in the interest of a prompt settlement and extinguishment of Native Land Claims, and the orderly development of the natural resources of the state, we feel:

1. The federal government should be responsible for a monetary settlement in the amount of \$500 million appropriation from the federal treasury.

2. That the state should be willing to participate in a monetary settlement to the extent of consenting to the payment of 2 percent of the proceeds from bonuses, rentals and royalties derived from the disposition of leaseable minerals brought into production after the passage of a settlement bill, but not exceeding a monetary settlement of \$500 million and excluding revenues generated from federal outer continental shelf lands and state tide and submerged land.

3. Support the position that land grants should be tied to village areas or existing home sites or campsites subject to all valid existing rights and the integrity of National Forest Reserves.

4. Support the establishment of a statewide agency with a majority of native membership to handle initial management of funds received under the terms of the Act with early transfer of management responsibility to the local area.

The following will explain in more detail the reasons leading to the conclusions set out above, and the Chamber's position relative to specific provisions of the bills presently before Congress.

It should be stressed that the basic issue is strictly a federal government responsibility. However, that in order to achieve a prompt settlement to allow "business as usual" in the development of Alaska, the state should participate.

It is suggested that the State's monetary participation be in the form of 2 percent of the proceeds derived from the mineral leasing of state and federal uplands *after* passage of a settlement bill—not to exceed a total of \$500 million. This means that revenues from present production would not be involved in the settlement and would continue to be paid into the state treasury. Also, all bonuses and revenues derived from leaseable minerals prior to the enactment of a settlement bill would not be affected.

No acreage figures were mentioned in the Chamber's position on land grants. The general concept is that existing uses be recognized and any additional land grants be confined to expansion of existing villages. No "subsistence" land grants were considered necessary. Under existing laws and regulations subsistence hunting and fishing licenses are available, and the Department of Fish & Game may close areas to other than subsistence use.

Based on this general concept, there would be no large "floating" acreage of land grants of unknown location—hence no need for the proposed 5-year "land freeze." State land selections, and other land business could proceed in those areas away from the villages.

The Chamber is opposed to several of the provisions in the various bills now before Congress as follows:

1. Opposed to the "corporate bureaucracy" set up in S 35. The Chamber believes that the benefits to be derived directly by individuals would be far greater under the provisions of H.R. 3100 where a statewide agency with a majority of native members would handle the initial management of funds received—with early transfer of management to the local area.
2. Opposed to the "all-competitive" leasing of minerals for Alaska, without regard to procedures in other public land states, as proposed in Sec. 17 of S 35. This is a policy matter for the Public Land Law Review Commission and has no bearing on settlement of the native land claims.
3. Opposed to the 5 year "land freeze" provision of Sec. 24 of S 35 as being unnecessary under the Chamber's position on land grants.
4. Opposed to any provision precluding the State's right to consent the validity of mandatory financial participation in any settlement, including suspension of the State's rights of land selection, such as is contained in Sec. 8 of H.R. 3100 and Sec. 18 of S 35. In this connection the Chamber acknowledges that the State, itself must enact legislation supporting any financial participation in a settlement.

Enclosed for your information are two maps of the State of Alaska which show the current and proposed land situation. Exhibit 1 depicts:

1. Lands not available for State Selection.
2. Lands not available for State Selection, except for Administration Sites.
3. Federal Reserve areas that Natives cannot select.
4. State Patent & Tentative Approval lands not available for selection by Natives.
5. Federal withdrawals.
6. Federal pipeline corridor not available for selection by Natives.
7. 3,000 foot elevation contour line.

The exhibits show the unallocated and unappropriated lands available below the 3000 foot elevation contour. The State is intitled to 103,550,000 acres as provided under the Statehood Act of which it has selected approximately 24,660,000 acres. The remaining 79,000,000 acres will undoubtedly be selected from available lands lying below the 3000 foot elevation. It is apparent extensive native land selections, if granted by a settlement bill, would be in direct competition for these available lands.

Of greater concern, however, is that an exceptionally large grant of lands together with a substantial cash settlement could destroy the viability of the State of Alaska by creating a state within a state—a society within a society.

It is hoped the position and thoughts expressed herein will aid you in the resolution of this complex native land claim question which will be fair and equitable to all Alaskans.

Very truly yours,

ROBERT T. ANDERSON,
President, Alaska State Chamber of Commerce.

(The exhibits referred to were retained in the committee files.)

Senator STEVENS. Are there any other persons here that would like to testify in regard to this matter today?

Mr. WRIGHT. Mr. Chairman, I would like to just make one comment in response to the petition I circulated in Juneau for the record, there

has only been one person that has contacted me on second thoughts and not specific at all. You have 16 out of the Senate now out of 20 and 26 out of 40 in the House.

Senator STEVENS. I note Mr. Stroecker, Mr. Gavora, and Mr. Wavgaron are here from Fairbanks. Does the Fairbanks group have anything they want to present?

I want to know that if you have any comments to make in the record while we are here, I would be very interested to hear you.

Mr. STROECKER. It was my understanding when we came back here that testimony wouldn't be accepted, otherwise than those scheduled.

Senator STEVENS. I didn't know I was going to be acting chairman, Bill.

Mr. STROECKER. The thing that concerns me as a businessman and an individual and as a lifetime resident of Fairbanks and Alaska is that it is apparent there is a limited amount of land.

The figures mentioned is 90 million acres. If the 40 million acre figure as contained in the administration bill becomes a reality, it is obvious that the 90 million figure is below the 3,000 foot level, which ordinarily is timberland.

If this figure is correct, and 40 million acres is deeded fee simple to the Natives, that the State of Alaska still has 90 million acres to select, that the non-Native or let's say the individual including Natives then will have no right of selection or that there won't be any acreage left to homestead or T. & M. sites or other types of land acquisition by the individual.

So what I am concerned with is what is the future for the individual Alaskan, his children and for the individuals who will be coming to Alaska in the future?

After the land claims are settled and if the State then goes underway on an economic expansion, where is the land coming from to expand the city of Fairbanks, the city of Anchorage, and perhaps even the communities that haven't come into existence?

Senator STEVENS. According to my understanding, there is a proposal providing that almost half of that land would come out of the Federal reserves. Some 132 million acres, which was the figure presented to me last week were reserved by the Federal Government today in Alaska, and approximately 20 million acres of that total is included in the bill outlined by the administration.

The committee bill envisioned that a portion of the land transferred to the people would come from lands not available to the State.

So, while the area of 90 million would be reduced, it would not be reduced by the full amount of the 40 million acres. These are the things we are trying to work out, including the actual geographical distribution of the lands included in the settlement.

Mr. STROECKER. One other thing that concerns me is the freeze. Senate bill 35 contains provision for a 5-year withdrawal, properly known as a freeze. The administration bill contains a freeze—

Senator STEVENS. No, the administration bill has a withdrawal around each village which continues—a portion of it could continue up to a period of 5 years. It need not continue. It depends on the selection process. But only those areas that are specifically withdrawn are covered by the administration bill. The committee bill and the administration bill last year contained a provision for restriction on transfer of any Federal land pending the process of identifying the land that would be transferred to Native people under the settlement.

Mr. STROECKER. Under that withdrawal, 25 townships is 900 square miles and as was previously testified, that is almost 115 million acres.

However, it won't be that much if an overlap occurred. But 900 square miles, and let's use the example of Fairbanks, the village of Enana would be included, so the land halfway between Fairbanks, all the way past the missile retention site, would be cleared and that land would be withdrawn.

Again, looking at a map, most of the villages are below the 3,000-foot level. The majority of the villages were in the southwest region and the lower Yukon. I presume the village of Anaktuvuk is above the 3,000-foot level. But if you take a map and project the 900 square mile withdrawal on that map, you will see there is in effect a land withdrawal contained in the administration bill that would approach that contained in the Senate bill 35.

Now, in 1966, the date of the first freeze, the reason for the freeze was to settle the Native claims and the reasoning of myself and others in Fairbanks is that if Native land claims are settled, what is the reason for an additional freeze if the freeze to begin with was to settle Native land claims? Are we going to be denied the right to go ahead as other states have, simply because we were the 50th State or are we going to allow ecological groups and other legal matters to detain us from going ahead?

Senator STEVENS. I hope you will stop by my office, I will show you the three proposals in scale on a map in my office.

Mr. STROECKER. I was curious, I prepared a map of my own. It is up in Fairbanks and I would have brought it if I thought I was going to testify.

Senator STEVENS. Well, I know you weren't prepared, but I thought perhaps you might want to add something to the record. I am happy you did.

If anybody else wishes to do so, I will be happy to listen to you at this time. If not, we will keep the record open for ten days and any interested person may file a statement pertaining to these bills. It will be up to the staff to determine whether or not it will appear in the record.

Mr. WRIGHT. Do you have a time frame for markup?

Senator STEVENS. I would only emphasize I am the acting chairman for another 2 minutes, Mr. Wright.

If there is nothing further, the hearing will be adjourned and the record will be kept open for 10 days.

(Whereupon, at 4:05 p.m., the committee adjourned.)

(Subsequent to the hearing the following statements by Senator Muskie and Governor Egan were received:)

STATEMENT OF HON. EDMUND S. MUSKIE, A U.S. SENATOR FROM THE STATE OF MAINE

Mr. Chairman and Members of the Committee:

For nearly all of its history under the American flag, Alaska has never had the opportunities for growth and development shared by the original 48 states. Until Statehood, Alaska was little more than a ward of the Federal Government, continually forced to come to Washington for funds that were never sufficient.

As a result, a great and potentially rich portion of the United States land mass was retarded in its growth. Those who lived in Alaska suffered that neglect and mounted a campaign that finally achieved Statehood and right of self-determination a short decade ago.

But there is one last piece of unfinished business. We have not yet, as a nation, settled our debt or made our accommodation with the original Alaskans.

There can be no controversy over whether the Alaska Native Land Claims are valid or whether an early settlement with the Natives is necessary. By prior action, the U.S. Senate and the Federal courts have recognized the obligation of the United States Government to settle accounts with those who possessed Alaska at the time of the Alaska Purchase.

There can be no controversy over whether this century-old bill is due. It is long overdue. And now, a united Alaska, Native and non-Native alike, has petitioned its government to come to terms.

The one remaining question is the framework of settlement. I believe that settlement must be fair and just for lands already taken. But even more important, we must recognize that most Alaska Natives still utilize the land for subsistence purposes. They depend upon the fish and game resources. They require the same freedom of access to the land that they have historically enjoyed.

More than a payment—however generous—for land taken, the settlement must guarantee that land will be preserved.

"Take our land, take our life."

Mr. Chairman, this rallying cry of the Alaska Natives is much more than a slogan—it symbolizes the very wellspring of the Natives' existence. Perhaps more than any other native Americans, the Alaska Natives depend upon the fragile resources of a rugged and uncompromising land. Simple justice demands that this Congress recognize the legitimate claims of the Natives to preserve their way of life by acknowledging their legitimate land claims.

I have joined in co-sponsorship of S. 835, a measure that reflects the collective judgment of the regional associations that comprise the Alaska Federation of Natives. This bill is the product of years of intensive effort of AFN representatives. It alone would give the Natives title to the 60 million acres requested by the AFN. This is itself a compromise among many conflicting ideas and claims.

It is not necessary for me to discuss in detail the provisions of S. 835 or to enumerate its differences with the other Alaska Native Claims bills pending before this Committee. These measures all seek—in varying degrees—to compensate the Alaska Natives for lands that have been or will be taken.

I support S. 835 because I believe that its passage would best provide Alaska's Native people with a secure land base to develop their own economic and cultural opportunities and protect their traditional use of land as a source of subsistence. It is the only fair settlement before the Senate.

Mr. Chairman, the Alaska Natives are in a great period of transition. I believe that S. 835 best accommodates their traditions of the past and needs of the future.

The Eskimos, Indians and Aleuts of Alaska have been patient long enough—the time for settlement is here: Settlement on a basis that permits the people of the North to live their own lives free at last from dependency upon hand-outs; free to make their own future, with tools that will permit them to build for themselves and their children the kind of opportunity all men seek and deserve.

STATEMENT OF HON. WILLIAM E. EGAN, GOVERNOR, STATE OF ALASKA

A settlement of the Native Land Claims now is a vital necessity in order for the State to progress and develop its human resources and natural resources.

The issue is so deeply felt by so many Alaskans and has been studied by so many different people having great personal stake in the results—that, already, many different bills have been introduced on the subject, illustrating a wide range of views. Other valid points of view have not been reduced to legislative formulation.

No one view represents absolute justice. Justice must be man-made in the end and will represent a balance of competing interests.

The Congress has been asked to weigh the equities and balance a large number of considerations in doing justice, not just to the Native people of Alaska, not just to the non-Native people of Alaska, but to all Americans—though the interests of those who now live in Alaska must be weighed more heavily as they are so vitally affected.

The interests of those whose lives are rooted in the Alaskan soil, both Native and non-Native, are entitled to priority recognition.

In giving proper recognition to the claims of the Native people of Alaska, we must be ever mindful that the State has a never-ending responsibility to provide services to all its citizens, whether or not they are claimants in this settlement.

A settlement which significantly diminishes the ability of the State to provide revenues needed to pay for the services which people in Alaska have a right to expect from Government does injustice in the long run to Native and non-Native alike.

The specific proposals being presented here by the State today are conveyed with the understanding that they are relative.

Some Alaskans think that any kind of settlement is too much. Or . . . at the other end of the spectrum, that anything less than total agreement with the proposals made by the Native claimants is too little and unacceptable.

There are a number of general welfare interests which the State must speak to in the interests of posterity. These must also be given recognition along with the legitimate claims for justice of the Alaska Native people.

Among these considerations is the need to assure that Alaskans remain one people. We must avoid becoming a segregated society of divergent interests. A divisive settlement would impede the State's progress toward a society in which each individual's human fulfillment is the basic goal.

There are serious disadvantages in any form of settlement which discourages commerce between Natives and non-Natives. The State's chief interest is in promoting a settlement which brings the Native people closer to economic parity with other Alaskans and full participation in the economic life of the community.

The State opposes:

1. Any restriction on alienation of land or interests in land which prohibits the transfer of that land except for a limited period of time;
2. Any reservation status or extended special Federal jurisdiction beyond that now in effect;
3. Any protectorate which impinges upon or displaces State jurisdiction;
4. The establishment of tax exemptions applicable to developed lands or improvements.

On the other hand, termination of special Federal obligations to Native people should not take place without the consent of the Natives.

In the interests of one Alaska the State opposes any limitation on the authority of the State to perform its social functions such as the right of access for roads, schools, etc.

The right of the State to condemn for public purpose should not be impaired. And adequate rights of way and public service sites in the public domain should be preserved to public use.

A form of settlement which creates substantial disparities in access to, or advantage in, the economy between one group of natives and another is adverse to Alaskan social policy.

Though the State, in the Native claims, can recognize that the historic basis of the claim is entitled to recognition, a claim which gives economic assistance to those who need it most is more congenial to the objectives of State policy, in that State policy seeks to protect the less-advantaged elements in society.

For similar reasons, a settlement which discriminates against urban Natives or unduly hampers the freedom of those who choose the non-village way of life is not in keeping with the optimum objectives of State policy. At the same time, the enjoyment of the land and those fruits of the land which are the product of the labor of those who work it inure to those who choose to follow a way of life close to the land.

The social objectives of the State require that a settlement be devised which does not unduly encourage speculation or random or unplanned development of oil or gas or other resources, whether public or private, Native-controlled or non-Native controlled.

The State's interest is in a settlement which would allow the steady and regulated development of oil lands preferably as one cooperative unit, including co-operation with the State.

The State is concerned that effective safeguards be established assuring that sound accounting practices are followed in the administration of the settlement. The grant of resources to the Natives should not be reduced or depleted by excessive awards such as, for example, might be entertained in working with attorneys or consultants. The Congress should make separate provisions for such third parties for services in aid of achieving the settlement.

The form of claims settlement must be consistent with sound land and natural resources management policy. No Native claim to this land should be immune to the "zoning" of the State, from jurisdiction over fish and game, water or air quality, or other policy, natural resource or environmental regulation.

Oil and gas rights in the land stand in different relationships to the need and uses of people than other natural resources or surface or subsurface uses in land. Oil and gas resources are less important for the direct employment they provide, which is minimal after the drilling stage, or for the fulfillment of the individual in relation to a natural resource, such as salmon, or even minerals.

It is overwhelmingly important for the immediate cash wealth which it provides, and the capital it brings permits in a large measure the funding necessary to development of human and other natural resources.

Conversely, surface rights and subsurface rights other than oil and gas which create local employment are bound up with the future of the people who live in an area, and rights in resources should be reserved to those people.

In order to protect the way of life of those who wish to follow the traditional hunting and fishing economy, some lands must be set aside for the primary and exclusive use of such purposes so long as such lands are used for those purposes. In these areas there must be a right to veto development from the point of view of the people who follow it consistent with this way of life.

Today, the Congress stands ready to do justice to the Native people of Alaska. All legislation on this subject before the Congress represents bona fide attempts to do justice.

Any legislation must also do justice to the State of Alaska. Without substantial revenue from the natural resources of Alaska, the State is ungovernable. This was recognized at the time of Statehood through the grant of priority rights to the State for selection of 103 million acres of public domain.

Alaska has not rushed, as it might have, to greedily seize 103 million acres of the choicest land but has move cautiously, utilizing sound conservation and development policies.

The Congress should support the policies of conservation pursued by the State of Alaska and should recognize the promise of Statehood as set out in the Statehood Act.

Just as rights and corresponding Federal and State obligations are asserted by the Natives, the passage of the Statehood Act and the solemn entry of Alaska into the Union created rights in the citizens of Alaska generally and both moral and legal obligations to them incumbent upon the people of the United States.

The position set out in HR 7432 (the Administration Bill) does not do justice to the State.

Other Native Claims Bills have recognized that the obligation of a Native claims settlement was primarily a Federal obligation and that 103 million acres of useful land was an essential ingredient of Statehood.

During the past several years the conscience and duty of Alaskans one to another, as an ingredient of the settlement, has emerged. The concept that the United States would share this burden has been accepted by the State.

HR 7432 is a departure from that concept in that it provides that an overwhelming proportion of the settlement should be derived from dipping into resources previously thought to have been pledged to the common interests of all Alaskans under the Statehood Act.

The 2 percent overriding royalty by the State up to \$500 million matches 50-50 with the \$500 million appropriation of Federal monies. With this the State agrees. However, the land settlement is taken almost wholly out of the State's selection rights.

There are only a certain number of acres with known financial value in Alaska, perhaps less than the 103 million acres allowed in the Statehood Act.

In giving the Native people sweeping priority selections, the Administration proposal is essentially and in effect attempting to annul that selection right which was granted to the State of Alaska to bring it into the Union on an equal footing with the rest of the States of the United States.

Rather than running roughshod over the promise of the Statehood Act, the Federal Government should keep its part of the bargain and the State pledges to act in concert.

The ownership of land in Alaska is overwhelmingly Federal and the plan ultimately is for twice as much land to remain in Federal ownership as the State could possibly own. The obligations for settlement of the claims should be determined correspondingly on a two to one ratio.

The means of providing appropriate sharing by the United States in the claims settlement is at hand largely though the utilization of the twenty-three million acres of Petroleum Reserve Number 4. The reasons why PET 4, as it is familiarly called, was set aside in reserve are no longer valid.

PET 4 was set aside at a time when it was thought the Navy might need a petroleum reserve from which to develop fuels for the fleet in the event of a prolonged war. The nature of the Navy and the nature of modern warfare have now made that reserve concept an anachronism.

On the contrary, considering the time lag in development, there is now an urgent need to start development now of this American energy resource to avoid a potentially crippling dependence in the American economy on foreign oil during the period while a safe power system using another energy source is developed.

The known resources in Prudhoe Bay and related fields will be more than enough to utilize fully the capacity of the proposed Prudhoe to Valdez pipeline.

The development of PET 4 calls for starting planning now, also for a second pipeline providing access through Canada to feed the energy needs of the American Midwest.

However, the subject of a pipeline or pipelines is extraneous to the subject before Congress and can only confuse the main issue. Accordingly, I recommend that the matter of a pipeline or pipeline corridor not be part of a settlement bill. It should be treated, if it really is needed, in separate legislation.

Having outlined the considerations which must be weighed by you and by a responsible Governor of Alaska, and now having listened to the various differing proposals supported by different groups of Alaskans these past several years, and knowing that you want my personal opinion on this were I in your position to judge, I would now like to state my personal feelings on the ingredients of a fair and just settlement.

In doing so I remind you again that there are many roads to justice and that by outlining a view based on my own personal experience and observation, I do not mean to say that some other arrangement in the balancing of interests may not also constitute an acceptable form of settlement.

I have already testified that in keeping with the notion that a settlement of the claim is a joint moral responsibility of the State and the United States, as well as the legal responsibility of the United States. The State of Alaska agreed to relinquish a 2 per cent overriding royalty in oil and gas to the aggregate of \$500 million, matching a Federal appropriation in the same amount. The question of other interests in land must be weighed and should be handled on a shared basis with the Federal Government contributing on no less than a two to one basis.

Justice for all concerned will be found between the needs of all the people, and the claim of history.

Some kind of dominion by the Native people of Alaska has been exercised on occasion and from time to time over at least 60 million acres of Alaska.

A more frequent and general dominion has been exercised over lesser included acreages, and intensive dominion for settlements has been exercised over a substantially more limited included acreage.

This historic variation in use should now be recognized in the grants of title in contemporary terms, there being no modern equivalent to the ecologically defined title of the aboriginal way of life.

As I have indicated previously, any grant of lands on the unrestricted, vacant unreserved and unappropriated Federal public domain of Alaska, beyond grants of land actually and immediately occupied as villages or homesites by Alaskan Natives, impairs the selection rights of the State under the Statehood Act.

Any unilateral action of the United States which substantially enlarges Federal reservations or withdrawals, or grants title to third parties, warn the State to exercise its entire selection right at once, regardless of sound management principles or cooperative planning with the United States.

Otherwise it will see its selection rights whittled away by Federal pre-emptive action.

Since Congress would not have intended to precipitate such a race, surely the Congress, in adopting the Statehood Act intended that the Executive consult with the State through a joint planning process in which desirable land use patterns would be established and the Native claims resolved.

The State and the United States should also cooperate in contributing to the settlement of the Native claims according to their interests, which, after State selection is exhausted, will be landowners in Alaska in the rough proportion of two to one, Federal to State.

As its contribution to a resolution of the very troublesome land question, the State is now prepared to contribute land based on any formula and acreage allowance which places no greater burden on State revenue than that set out in S. 35, which some estimate may run as high as twenty million acres. Any greater

allowance of preference grant would impair the State's ability to function effectively and render essential social services.

However, that formula may be insufficient alone and the contribution is imbalanced in that in great measure the lands used to settle the claims are taken from those subject to State selection.

In keeping with the ultimate ratios of land ownership, the Federal Government should contribute at least twice as much from Federal reserved lands in providing adequately for a claims settlement. The utilization of at least Petroleum Reserve Number 4 for this purpose is reasonable under the circumstances, particularly considering the continuance of PET 4 is an anachronism and in addition, another 17 million acres could be contributed from other Federal withdrawals which surround existing Native villages. This solution provides an aggregate of approximately sixty million acres of which up to twenty million are, in effect, contributed by the State.

With regard to subsistence lands, the State agrees to establish such wildlife and subsistence reserves on State lands as appear appropriate and to hold the same inviolate for so long as they are necessary for subsistence purposes together with other Federal acreage made available for the same purpose.

The State recognizes that a problem exists with regard to lands actually occupied by Natives which have been selected, tentatively approved or patented to the State already. I have introduced legislation to withdraw one township per village and to recognize and grant title to individuals through the State when that individual would have been entitled to an Indian allotment but for the selection or patent.

Pending this legislation to make permanent the withdrawal, the withdrawals have been accomplished by administrative action. In addition, the State already has laws on the books designed to enable it to trade lands when acquired by Natives under the claims to allow villages to increase their holdings in the immediate proximity.

In the administration of the claims and the division of the settlement, I prefer a distribution which gives all Natives equal rights. On the other hand, the principle of self-determination is entitled to great weight.

I have concluded that the regional formula proposed by the leadership of the Alaska Federation of Natives is an acceptable balance of historic and regional interests with equitable principles.

No one can foresee with complete certainty what the impact of the settlement will be upon the Native people of Alaska and how it will affect their need for social services. Certainly this settlement should have and will have no effect in reducing the responsibility of the State to provide such services on an equal basis to all its citizens. Development brings with it attendant social service costs and government revenue needs.

Though the mere transfer and possession of the cash appropriation and rights in land should not be taxable, land which is used for development purposes and income and assets purchased from the investment and utilization of the money settlement should be taxable to the same extent as other commercial interests.

The Federal Government also has special responsibilities to the Native people in the rendering of social services. The adoption of the settlement should not be used as an excuse for terminating such services so long as the need continues.

In conclusion, I can only express satisfaction on behalf of myself and the people of Alaska that this Committee has recognized the urgency of this measure by giving it such early consideration. Your action is an important step towards the early enactment of a law which all Alaska waits for.

Thank you.

HOUSE BILL No.—

IN THE LEGISLATURE OF THE STATE OF ALASKA, SEVENTH LEGISLATURE—
FIRST SESSION

A BILL For an Act entitled: "An Act relating to the protection of certain village lands in Alaska; and providing for an effective date."

Be it enacted by the Legislature of the State of Alaska:

SECTION 1. AS 38 is amended by adding a new chapter to read:

Chapter 35. ALASKA VILLAGE LAND ACT

SEC. 38.35.010. WITHDRAWAL.—(a) The commissioner shall withdraw from entry or disposal under the law of the State of Alaska, subject to valid existing

rights, all unappropriated public lands of the state within the township as shown on protraction diagrams of the state,

(1) which enclose any village listed in sec. 13(c) of S. 35 of the 92nd Congress; or

(2) which, though not enclosing a village listed in sec. 13(c) of S. 35, nevertheless enclose a village which

(A) has 25 or more permanent residents; and

(B) was in existence on the effective date of this chapter; and

(C) is not of an urban or modern character as determined by the commissioner;

(b) The commissioner shall also withdraw from entry and disposal any lands received under its selections from the public lands of the United States after the effective date of this chapter and which qualify for withdrawal under the provisions of this section.

SEC. 38.35.020. VALID EXISTING RIGHTS.—Notwithstanding sec. 10 of this chapter, the commissioner may process to approval or rejection any entry under the public land laws of the state made prior to the effective date of this chapter.

SEC. 38.35.030. SUBSTITUTE LANDS.—Notwithstanding a withdrawal commissioner, request and receive the withdrawal of substitute lands. No additional lands may be withdrawn by virtue of the substitution. The commissioner may consider granting a request for a substitute withdrawal if a withdrawal under sec. 10 of this chapter

(1) would exclude from withdrawal a relatively substantial amount of the lands used by the village;

(2) would, because of the proximate location of other villages or lands unavailable for withdrawal, deprive the village of an entire township; or

(3) would result, because of the location of the village on a bay, river, lake or other body of water, in the loss to the village of a substantial amount of land.

SEC. 38.35.040. MANAGEMENT OF LANDS.—The commissioner shall manage any lands withdrawn under this chapter.

SEC. 38.35.050. SELECTION OF SUBSTITUTE LANDS.—In the event the public lands of the state withdrawn under sec. 10 of this chapter are not determined to be sufficient under sec. 10 and sec. 30 of this chapter, vacant, unreserved and unappropriated public lands of the state may be selected in the order of their proximity to the village to satisfy the withdrawals authorized under this chapter.

SEC. 38.35.060. DEFINITIONS.—

(1) "Public lands of the state" mean lands which have been or which may be selected by the State of Alaska under the provisions of Public Law 85-508.

(2) "commissioner" means the Commissioner of Natural Resources.

SEC. 2. This Act takes effect on the day after its passage and approval or on the day it becomes law without approval.

[By the Rules Committee, in the House, by request of the Governor]

HOUSE BILL NO. —

IN THE LEGISLATURE OF THE STATE OF ALASKA, SEVENTH LEGISLATURE—
FIRST SESSION

A BILL For an Act entitled: "An Act relating to the grant of state lands; and providing for an effective date."

Be it enacted by the Legislature of the State of Alaska:

SECTION 1. AS 38.05.035(b) is amended by adding a new paragraph to read:

(6) grant patent to state land where the occupant or user of the land, except for its selection by the state, would have been entitled to receive title to the land under the federal public land laws. No patent may issue pursuant to this paragraph without a determination by the director that (A) the occupancy or use relied on would have entitled the applicant to apply for and receive a patent or its equivalent under federal law; (B) the occupancy or use relied on predates the selection by the state of the particular land applied for and the land has not been abandoned; and (C) no application for the land made to the United States Department of the Interior has been adjudicated adversely to the applicant. Applicants for patent under this paragraph shall pay the actual value of the land as of the date of selection by the state is determined by the director unless the director determines that a lesser payment or no payment would have been required under federal law.

Sec. 2. This Act takes effect on the day after its passage and approval or on the date it becomes law without approval.

(At the request of Senator Mike Gravel of Alaska, the following letter by Governor Egan to Representative James A. Haley, Chairman, House Subcommittee on Indian Affairs, is included in the record at this point:)

STATE OF ALASKA,
OFFICE OF THE GOVERNOR,
Juneau, Alaska, May 12, 1971.

Hon. JAMES A. HALEY,
*Chairman, Subcommittee on Indian Affairs,
U.S. House of Representatives, Washington, D.C.*

DEAR CHAIRMAN HALEY: The following points are offered, as requested by the committee, as a supplement to my testimony last week on the Alaska native claims.

1. Chairman Aspinall's opening statement. The state of Alaska is in general agreement with the basic legal principles set out by Chairman Aspinall. Following the paragraph enumeration of Chairman Aspinall, the following comments are offered by way of amplification:

1. We assume that, at least as the issue would be considered by a legislative committee, the legal obligation of proof of exclusive use and occupancy does not exclude proof of joint use by contiguous native groups.

2. In concurring with Mr. Aspinall, the State emphasizes its disagreement with testimony to the effect that the only reason the claims are to be settled legislatively is that recourse to the courts is time consuming. Time alone would not be a sufficient reason. Among other substantial reasons why legislative solution is particularly appropriate, is the significant risk that some claims might not be recognized by a court due to failure of proof, for lack of a tribal basis, for procedural defects, or for many other reasons. In addition, the need factor in the claims is peculiarly susceptible to legislative analysis.

3. The second assumption, that the natives may have a valid claim to some of the lands of Alaska, does allow wide latitude for consideration of factors regarding the equities involved which would not be considered by a court of law. This the State encourages. It is a characteristic of legislative bodies that they are more suited than courts to evaluate these factors. Such factors include the general economic condition of the claimants and their present ways of life and future prospects, and the impact of various forms of settlement on those people and their neighbors. As Mr. Wright testified, the Alaska Federation of Natives reached its conclusion on the amount of direct monetary settlement based on considerations of need. The State supports such a rationale.

4. An additional possibility, based on a purely legal rationale, is that the claims were extinguished piece-meal, as various withdrawals or grants of privilege or right, were made between 1867 and the present by the United States.

II (a). The subsistence economy needs of the Alaska Native are not the sole factors to be considered in determining the land portion of a settlement. It is also appropriate to consider actual present uses and probable future uses of such lands and the natural relationship of the Native people to them. In doing justice, the Congress is not limited to fee title as the sole style of conveyance.

It is possible for the Congress to recognize interests in Natives in oil and gas rights and non-contiguous acreages whose significance to native need may be purely financial. However, Congress should give consideration to the practical effects of such conveyances and the problems of absentee control. The Congress may consider the grant of beneficial or royalty interest or undivided fractional interests and future interests in such lands as a method of assuring additional non-depreciating capital for Native needs over a period of years without jeopardizing sound management practices.

II (b). As implied by our comment on II(a), the land and money issues are not so easily separated since some interests in land are important for their money. The rationale for the amount of money is need, as testified to by the claimants. On the other hand, from the point of view of the Congress, the amount of appropriated moneys contributed is bound to be influenced by, among other things, competing demands upon the federal treasury. Not only can money be considered as in lieu of lands, but some interest in lands can be considered as in lieu of money. In considering need, the Congress should also consider the State role as the source of satisfaction of basic social responsibilities and the need to give the State a revenue base to finance such duties. The settlement should not contemplate a separate system for the delivery of basic social services.

II(c). A distinction should be made between administrative organization on the one hand, and apportionment of benefits on the other.

As to administration, the prominence of regional organizations, and within them, village organizations, reflects the political and economic choices of the claimants. The predominance of one large corporation would bring with it the problems of monolithic organization including the tendency to be more remote from the people. A per capita distribution *ab initio*, as an administrative technique, would set a pattern of random and disorganized expenditure and possibly greater risk of waste.

As to apportionment of benefits, great care must be taken in assuring that adequate recognition of equitable principles is not foreclosed accidentally through the choice of administrative organizational form. There are substantial differences in the population sizes of villages. The Congress must consider the consequences of treating a village of 25 persons or of 400 persons or of 1800 persons the same in the grant of interests in land of financial value. The Congress must consider also that the population of the regions varies substantially. The Congress must consider that as a practical matter and as a matter of probability, the distribution of natural resources of value at any given time will vary considerably from one region to another and from one acre to another.

This leaves open the possibility of geometrically increasing inequity in the distribution of benefits. For example, to the extent that villages of 25 persons and 400 persons are treated identically for purposes of distribution, a potential discrimination risk ratio of sixteen to one is introduced. If, at the regional level, populations of 1,000 and 8,000 are treated alike, another eight to one factor of potential discrimination is introduced. And if, in fact, the resources per acre of one unit are twenty times as great as another, a discriminatory factor of twenty to one is introduced. A provision that half the benefits of a resource are distributed to one unit and the other half divided among the other twelve (or two hundred) does not have a very great impact on the differential ratio. The one which gets the half will still be close to twelve times richer than each other unit which gets only one twenty-fourth. Since wealth will vary from region to region, there is a possibility that the varying degrees of distribution of wealth among claimants will produce a very great spread in relative prosperity among the claimant peoples.

III. Position of the State with Regard to Tentatively Approved Lands. The State treats T.A. status as tantamount to title. The sole act to be accomplished after T.A. is survey and patents, both non-discretionary acts of the Department. Under specific authorization of the Statehood Act, the State has granted large numbers of patents and leases and entry rights to third parties in T.A. lands.

The first principle to be observed in any determination regarding T.A. lands is that no interest given by the State to any third party shall be disturbed. If another rule is followed, the protracted litigation and strife which it was hoped a legislative settlement would avoid will become an inevitability. We will have simply switched plaintiffs and defendants. We also believe that, as a legal matter, based on constitutional principles, the grantees of State interests in T.A. land would ultimately prevail in the courts, thereby disturbing the symmetry of any settlement devised by the Congress based on an opposite conclusion.

As a second principle, it is consistent with State policy, both past and present, to grant lands on the State public domain in the proximity of municipal corporations to those municipal corporations. To the extent that State law prohibited such a scheme in some circumstances, we would be willing to support legislation allowing equivalent relief. In considering this policy, one should be mindful that the State is prohibited by the Statehood Act and the State Constitution from conveying mineral rights in such land. In appropriate circumstances the State is willing and able to trade with the United States lands selected by the State which the United States could then convey to Natives. Such trading could include mineral rights.

The State's willingness to trade or convey, and the extent of the estate to be conveyed will vary according to policy circumstances which vary considerably from one town to another and which are equally pertinent to the Congress.

As a general principle, the State is willing to trade for equivalent value, or convey to any appropriate body, at no cost, the township within each claimant village is located. Beyond that township, the State would support additional grants in surface estate or subsistence rights to the extent appropriate to conform with a Statewide Congressional policy. The State would also be willing to engage in trading beyond the enclosing township, including the subsurface estate, to the extent that, in doing so, two principles are observed. First, that the ultimate

extent of the whole settlement should not have an adverse impact on the State's revenues beyond that produced by an up to 20 million acre concession of selection rights on a proximity basis as provided according to the formula of S. 35. Secondly, that the United States contribute an appropriate share to the settlement.

Some mechanism should be provided in the Act, perhaps through the Native Claims commission, or the Land Use Planning Commission, to take care of the need for adjustment in particular circumstances where the situation of T.A. lands creates hardship on one party or another.

The first type of circumstances which activate a State policy objection is the denomination for these purposes as "Native villages," towns, cities or villages which are not, at the present state of historical development, primarily Native in character. The same circumstance is worthy of consideration by the Congress as to federal domain.

For instance, the City of Kenai is non-native in population, and its economy is integrated into the cash economy of the State, as is the surrounding territory. The City of Nome was settled by gold miners and although through migration it has acquired a majority of Eskimo population, it is culturally mixed and urban in character. It is difficult to assess the precise effect of conveying all the vacant land in and around such city to a corporation controlled by a racially defined minority within it, but it may have the effect of dividing the City more than it unites it, working to the long term disadvantage of both elements in the population.

Another problem situation occurs where a native village is in close proximity to an urbanized area and the effect of the transfer may be to stunt the growth of that city or urbanized area through depriving it of access to lands for normal expansion.

In both cases, the option may be more desirable of giving the Native claimants the beneficial interest in the lands so they may receive the value of the land after cost of sale, but allow for conservation or disposition under State or State-federal management.

Perhaps the complexity and variety of the situations before the Congress can be illustrated by touching on the circumstances of each of the villages listed by Alaska Legal Services Corp., in its brief filed with the Committee.

(a) Kenai: as already mentioned, this is predominately a white community and has been for some years. The lands around it are primarily desirable as home and recreation sites or common park and recreation lands. Kenai is situated in a comparatively densely populated area of Alaska.

(b) Ninilchik: While census data are not immediately available, the majority of the population of the township is almost surely non-Native. Kinilchik is a neighboring community to Kenai and the use pattern for open lands is similar to that around Kenai. As with Kenai, the transfer of T.A. or vacant lands well beyond the township would be required to give a full township of lands to the claimants.

(c) Seldovia: Primarily a mixed or non-Native community of fishermen with good access to the populated areas of Alaska. The lands around it are primarily attractive as park and recreation lands for the general public. It might be noted that contrary to the suggestion of one of the other witnesses, the State by no means selects lands exclusively for their commercial value. The State has a major program of selection for development for State park and recreation purposes. It is unlikely that Native selections will give significant recognition to such public purposes, nor should they be expected to.

(d) South Naknek: No apparent problem.

(e) Ouzinkie and Port Lyons: It would appear to be feasible to transfer T.A. lands in the immediate township but if grants are to be allowed in adjoining lands to the aggregate extent of two or more townships of actual land, these communities would be acquiring land in the residential growth areas of the City of Kodiak.

(f) English Bay and Port Graham: Neighbors to Seldovia. It would be a shame to see large areas of the land mass of this part of the Kenai Peninsula go into private hands.

(g) Eklutna: A very small village, possibly under 25 persons at the present time, close to Anchorage on the northeasterly side. The grant of T.A. lands within the township would not present any insurmountable problems. However, if a large proximity land grant were made it would pick up some highly urbanized, non-contiguous lands.

(h) Mentasta and Dot Lake: No insurmountable problems if existing entrys are recognized.

(i) Manley Hot Springs: Is predominantly a non-native community historically and at present.

(j) Nenana: An old trading center and a City of the First Class under Alaska law. It is not a predominantly native community today.

(k) Tanacross: In the process of being moved to a new site. Problems should be overcome.

(l) Lake Minchumena: No major problems.

(m) Klukwan: This is an existing reservation, the extent of which is not recognized in the brief filed by Alaska Legal Services. There are limited T.A. lands which have not been previously disposed of. It should be recognized that this area is a prime recreation area in the Haines vicinity.

To reiterate, where the form of settlement provides for the grant of lands in and around existing communities which are not really Native villages today, there should be flexibility to allow the transfer of beneficial interests only.

IV. The Committee requested our estimate on the timetable for payout of the 2% overriding royalty (fourteen to sixteen percent of total royalty) and 2% of rentals and bonuses to \$500,000,000.

Our calculation is as follows:

Year:	Thousands
1970-----	(1)
1971-----	(1)
1972-----	\$600
1973-----	700
1974-----	8,200
1975-----	19,400
1976-----	23,500
1977-----	25,000
1978-----	26,800
1979-----	35,100
1980-----	41,300
1981-----	48,100
1982-----	54,800
1983-----	54,800
1984-----	58,000
1985-----	58,000
1986-----	58,000
Aggregate-----	512,300

¹ Negligible.

V. The Committee requested a list of members of the Alaska State Legislature who are personally entitled to a direct share in the proceeds of a claims settlement. Our estimate is as follows:

Senate names (2 out of 20)

The Honorable Raymond C. Christiansen.

The Honorable Willie Hensley.

House names (6 out of 40)

The Honorable Chuck Degnan.

The Honorable Frank R. Ferguson.

The Honorable Martin B. Moore.

The Honorable Carl E. Moses.

The Honorable Edward F. Naughton.

The Honorable Frank Peratrovich.

VI. Attached are the two bills which I have had introduced on behalf of my administration regarding the preservation of Indian village lands, pending further action on Native claims by the Congress and recognizing individual rights of occupancy. Since the same result has been secured on a preliminary basis by my executive order, passage of these bills by the Legislature was not requested this year. In addition, adoption now would be premature. It is my intention that the precise form of the legislation should conform to the congressional pattern which is yet certain. In principle, this legislation was favorably received by the State Legislature.

With these matters our testimony is concluded. In the event that the Committee or its individual members or its counsel would like any further elucidation of our views on these or related matters, I would be glad to oblige at any time.

Sincerely,

WILLIAM A. EGAN,
Governor.

APPENDIX

(Under authority previously granted, the following statements and communications were ordered printed:)

A FAIR SETTLEMENT OF THE ALASKA NATIVE LAND CLAIMS; THE KEY ELEMENTS

PROPERTY RIGHTS—THE UNDERLYING FACT

The Alaska Natives possess valid legal claims to most of the land in Alaska, claims of enormous value. A legislative settlement with them is, therefore, not a "gift" to the Natives, to be judged by standards of charity or paternalism. Rather, it is a real estate transaction. Some land, which the Native people have occupied since time immemorial, would be retained by them. Their rights in the balance, almost all of the land in Alaska would be purchased by the United States so that some can be available to the State of Alaska to fulfill the Statehood Act land grants, some can be made available to others under federal public land laws, and some retained by the United States, free and clear of the Natives' claims.

It has always been the law of the United States, announced as long ago as 1823 by Chief Justice Marshall, that the aboriginal inhabitants "were the rightful occupants of the soil, with a legal as well as just claim to retain possession of it." *Johnson v. McIntosh*, 8 Wheat. 543. These property rights, called "Indian title" or "aboriginal title", are, under our laws, valid and protected by the sovereign against all third parties, until and unless extinguished by the sovereign. *Tee-Hit-Ton Indians v. United States*, 348 U.S. 272 (1955). Third parties holding land subject to Native rights may be forced to account to the Native owners. *United States v. Santa Fe Pacific R.R.*, 314 U.S. 339 (1941). The power to extinguish includes the power to do so by force. *Santa Fe*, 314 U.S. at 347. However, such has never been the policy of the United States. *Tee-Hit-Ton Indians*, 348 U.S. at 273. Congress, by the Northwest Ordinance of 1787, declared "consent" to be the basis upon which land held under Indian title was to be acquired. 1 Stat. 50, 52.

Until 1871, Indian lands were acquired by the United States by agreements with the Natives, solemnified as treaties. Thereafter, such acquisitions were made pursuant to congressional enactment, but always the announced policy of our government has been acquisition by consent, never by fiat or confiscation.

Because the United States did not always, in practice, live up to these high ideals, Congress, in 1946, established the Indian Claims Commission to redetermine compensation where Native peoples had, prior thereto, been deprived of their lands by the government upon less than fair and honorable terms. The Indian Claims Commission Act was a praiseworthy, though belated, attempt to remedy injustices which never should have occurred.

Alaska is no exception to the national policy. When the United States acquired what is now Alaska from Russia in 1867, for \$7,200,000, Native title was not extinguished; the treaty left such matters to U.S. law. 15 Stat. 539. From 1884 on, Congress has repeatedly protected Native land rights in Alaska against interference by others. See e.g., Act of May 17, 1884, § 8, 23 Stat. 24, 26; Act of June 6, 1900, § 27, 31 Stat. 321, 330; Statehood Act of July 7, 1958, 72 Stat. 339, as amended, 73 Stat. 171.

The Supreme Court in 1962 (*Mellakatta v. Egan*, 369 U.S. 45, and *Kake v. Egan*, 369 U.S. 60) held that the 1958 Statehood Act preserved the status quo with respect to land claimed under Indian title. In 1969, in a decision which the Supreme Court declined to review (*Alaska v. Udall*, 420 F. 2d 938), the Ninth Circuit United States Court of Appeals refused to hold that lands held by Native title could be selected by the State of Alaska in fulfillment of the Statehood Act land grants.

Unlike the situation of the Indians of the lower 48 states, the United States has not yet, by and large, made a land rights settlement with the Natives of Alaska. The land claims, until settled, stand in the way of federal land grants to the State and to third parties. The time to make the settlement is now because

without it neither the Natives, the State, the United States, nor for that matter, the oil companies who seek to develop North Slope oil, can be assured of the stability of title which each requires.

The question is whether the settlement will be made as a property transaction recognizing that the Natives have valid legal property rights and that they are entitled to fair compensation for lands to which Native title is to be extinguished. Otherwise, the legislation would be an act of confiscation. It would leave in its wake an inevitable residue of frustration, suffering and disappointment, with unpredictable consequences, until at some future date this wrong too might be in part righted, perhaps by creation of another Indian Claims Commission for the Alaska Natives. For time and again, our nation's history demonstrates that nothing is really settled until it is settled right. How much simpler and just to do the job right the first time so that there will be no further grounds for complaint.

What is involved is a decision as to how much land the Natives are to relinquish and what they are to be paid for the relinquished lands, rather than how much land and money they are to be given out of an alleged governmental generosity. Generosity is, of course, a relevant consideration but only within the context of the Natives' clear legal rights. "Legality" itself is meaningless unless it reflects fundamental fairness, adherence to settled doctrine, and satisfaction of reasonable expectations created by past policy.

S. 835, embodying the settlement proposals of the Alaska Federation of Natives, is clearly based on the foregoing fundamentals.

LAND

S. 835 recognizes that to the Natives, land is a most crucial aspect of a just settlement. "Take our land, take our life", summarizes their attitude.

The Natives would give up their claims to all but 60 million acres as to which their title would be confirmed. They would retain, therefore, only about 17 percent of the land to which they validly assert aboriginal title.

Why 60 million acres? The Federal Field Committee has attested to the fact that measured on a subsistence basis, 60 million acres is the minimum needed today, assuming that the Natives could select those lands having the greatest subsistence resources. However, for a number of reasons, it will not be possible to select the 60 million acres having the greatest subsistence potential. Even so, the bill with the 60 million-acre feature, would provide land upon which those Natives who wish to do so might continue to some degree their traditional way of life. Sixty million acres would, at the same time, leave the Natives with property which can—as it should—serve as an economic opportunity base. The Natives are willing to settle for far less than the amount of land to which they could judicially establish Native title in the interests of a legislative settlement *now* rather than having to go through long, drawn-out litigation. Taking these factors into consideration, 60 million acres is a reasonable compromise.

But it is essential that the Natives retain fee simple title to the 60 million acres, sub-surface as well as surface. The longstanding legal principle on Indian land is that Native title includes *all* of the rights to the land involved, not merely the right to use of the surface for subsistence.

The 60 million acres to be retained in the Native would be selected by allotting four townships to each Native village, accounting in the aggregate for about, 20 million acres, and by selection, principally by the regional Native corporations, of the remaining 40 million acres from among lands historically used and occupied.

There have been some suggestions that a 60-million acre settlement is too large because it would perpetuate racially oriented areas. Whether the Alaska Natives will own 17 percent of what was theirs does not present a choice between segregation and integration. It must never be forgotten that Alaska *is* the homeland of the Native people. To recognize their legitimate claims to only 17 percent of what was once their entire domain does not segregate them. Racial equality is not promoted by depriving Indians, Eskimos and Aleuts of title to their lands. That would leave them segregated but landless, with no resources. Meanwhile, others, without payment, would succeed to what was once the Natives'.

Land is the foundation of culture, and landownership is a basic principle of our society. That is why it is accorded supreme protection by our laws. The Natives of Alaska, the rightful owners of its land, are entitled to better treatment than to be deprived of practically all of their land, and of their culture, upon the excuse that such deprivation is required in order to prevent enforced separation of the races. Without land and without resources, the Natives of Alaska, in the remote areas of the state where their villages are located, will still remain the dominant popula-

tion group, segregated but without a land base. With a land base, on the other hand, the Natives will possess assets with which they can effectively join in the commercial and economic life of the State. The retention of land, with its full resource values, can be a strong factor in the reduction, rather than the fostering, of a racially cloistered society.

MONEY

S. 835 provides a cash compensation for the extinguishment of Native title of \$500 million, payable over nine years with 4-percent interest. The standard for compensation applied in judicially supervised Indian settlements is that Natives shall receive the fair market value—at the time of taking—of the lands they have historically used and occupied. *E.g., Crow Tribe of Indians v. United States*, 284 F. 2d (1960). This means that mineral and surface resource values are included, not merely the value of the land for historic (subsistence) purposes. *E.g., United States v. Shoshone Tribe*, 304 U.S. 111 (1928); *Otoe and Missouri Tribe v. United States*, 131 F. Supp. 365 (1955).

In Alaska, the time of taking is now. However, if Congress were to compensate the Natives on the basis of the current fair market value of the lands to which Native title will be extinguished, the compensation would reach astronomical sums. For example, the fee title to the lands leased for oil production by the State of Alaska at the 1969 oil lease sale, which brought in over \$900 million in bonuses, would have to be valued in the billions. The Alaska Natives are realistic. They are reconciled to the fact that to avoid a protracted fight in the courts or in the Congress, they must settle for a figure which is within the realm of feasibility. For that reason, they propose a federal payment of \$500 million, provided it is, as it is under S. 835, coupled with provision for the continued sharing of revenues from lands to be surrendered.

REVENUE SHARING

S. 835 recognizes that a basic function of a just settlement must be to assure the Native peoples a meaningful role in the development of the State. This is accomplished by providing fee title to some land, and a degree of revenue sharing—between the Natives, the State and the Federal Government—in the lands being taken. Specifically, S. 835 provides for the payment of a 2-percent royalty on all mineral revenues from lands to which Native title is surrendered. Such a royalty will help to assure equitable Native participation in Alaskan development. It will, at the same time, narrow the gap between the monetary compensation which adherence to traditional standards would require and the compensation provided for in S. 835 and other settlement proposals.

SELF-DETERMINATION

S. 835 recognizes the paramount importance of self-determination as an operative principle in Indian affairs. This principle, hailed last year by President Nixon as the cornerstone of his Administration's policy toward American Natives, finds expression in two key provisions of S. 835.

First, a majority of the five Presidentially appointed members of the Alaska Native Commission (responsible for a series of significant adjudicatory and administrative settlement functions) would have to be Natives.

Second, the settlement would be managed by a network of Native-owned corporations, operating at the State, regional, and village level. The key level of management and control would lie with 12 regional corporations, reflecting the historic groupings of the Native population within the State, now represented by the 12 regional associations on which the Alaska Federation of Natives is built. This regional corporate structure would control 95 percent of the settlement funds and would assure truly responsive settlement administration.

The crucial fact is that the Natives of Alaska are able, intelligent, industrious, self-reliant citizens. They should not have forced upon them an unacceptable settlement structure which would deny them control of the lands and monies which are rightfully theirs. S. 835 would provide determination by the Natives of their own destiny as responsible members of society.

To honor the principle of self-determination by no means opens the door to the waste or dissipation of settlement assets. S. 835 includes several safeguards for the settlement assets, including provisions for annual GAO audits of the regional corporations, annual budget reviews by the Alaska Native Commission, assumption of the obligations and functions of any delinquent regional corporation by the

statewide Native corporation, separation of the business and welfare functions of the regional corporations, inalienability of stock in the regional corporations for a period of 20 years, and review by the Native Commission for a period of 10 years of any proposed sale or long-term lease of lands by a regional or village corporation. Most important, the fact that the regional corporations will reflect the existing organizational structure of the Native people means that they will be less susceptible to outside pressures than would a statewide corporation alone.

A CRITICAL ANALYSIS OF S. 35

(March 19, 1971)

The Alaska Native Claims Settlement Act (S. 35) introduced by Senator Henry M. Jackson represents a package of cash, subsistence rights, and land. It is intended to be "just, generous, and honorable" and to provide the Natives "opportunity for a better life for themselves and their children."

The Alaska Federation of Natives opposes S. 35 stating: "To deny the Alaska Natives an adequate land base will contribute to their dependency, to the disintegration of their communities, and to the erosion of their cultures. To strip the Alaska Natives of their land will destroy their traditional self-sufficiency, and it is certain to create among them bitterness toward other Alaskans and a deep distrust of our institutions and our laws."

CASH

The sponsors of S. 35 in the Report of the Committee on Interior and Insular Affairs on an identical bill last year, state: "The key to Native progress, and thus the most important single fact of the land settlement legislation is money."

The cash compensation offered in S. 35 would be distributed in the form of social services and shares in a Native investment corporation.

The Interior Committee estimates that a Native shareholder will receive dividends of \$53 in 1971, \$152 in 1980 and \$418 in 1990. (In making these estimates, the Committee did not take population growth into account; by 1990 the Native population will have doubled.) The individual's share of social services is valued at \$201 in 1971, \$197 in 1980, and \$27 in 1990.

Clearly the dividends and the services do not constitute a livelihood for the Natives.

There is reason to be concerned that S. 35, although it is intended to bring Alaska Natives into a modern cash economy, will force them onto the welfare rolls. The services cannot be eaten, and the dividends will not go very far at the village trading post if the Native hunters and fishermen are required to purchase the bulk of their food.

To the extent the land settlement deprives the Native people of their subsistence resources and land-based commercial opportunities, it will increase the cost to the federal and state governments for public welfare.

For example, if a Native hunter in 1971 is deprived of game with a food value equivalent to what could be purchased with \$3,000 and if he is unable to find work, the government will either have to contribute \$2,735 to supplement the family (5 members) dividend income of \$265 to maintain their diet, or permit them to starve.

In addition, it is not certain that the Natives ever will receive all of the cash compensation provided for in S. 35. Nearly one-half of the cash (\$497.3 million) is to be derived from royalties from mineral leasing on the federal public domain which otherwise would go to the State of Alaska under present law. The State questions the authority of Congress to enact this revenue-sharing provision and may take the issue to court. In the event the State wins, S. 35 provides that the Natives will be granted the right to select the mineral estate to an additional one million acres. The Report, however, fails to estimate whether the income from this estate will in any way match the nearly \$500 million the Natives would lose.

In sum, the cash compensation will not have a major impact on the economic well-being of the Alaska Natives. The amount is uncertain. The mechanics of distributing it will discriminate against children born after the enactment. And in all likelihood provisions which deal with the land will cause economic hardships that the federal and state governments can only alleviate by additional expenditures for welfare.

SUSPENSIBILITY RIGHTS

It is estimated that the Natives use between 80 million and 120 million acres of land for subsistence purposes. The largest share of the food Native families consume comes from hunting, fishing, and gathering berries. Trapping is the major source of cash for many of them.

The sponsors of S. 35 assert that they recognize the importance of the present-day subsistence economy and state that it will be protected where it is endangered. The bill provides for the emergency closing of public lands for exclusive Native subsistence uses; however, it limits this emergency closing to a "maximum duration" of two years, with a possible two-year extension. No emergency protection whatever is provided for on the 103 million acres to be selected by the State.

From the Senate Report, it is clear the subsistence economy is to be legislated out of existence: "The settlement will with minor exceptions put an end forever to racial or ethnic distinctions in . . . hunting and fishing rights."

In short, the central feature of the Native economy today—in the utilization of subsistence resources—is, with minor exceptions, left unprotected and almost certainly doomed.

The cash dividend notwithstanding, there is little reason to believe that under S. 35 the Alaska Natives would escape the fate of Indian tribes in the Old West a century ago—they will be deprived of their traditional livelihood and will not be provided with the means to achieve self-sufficiency in a cash economy.

LAND

The Natives oppose the land provision of S. 35 because it denies them title to a sufficient amount of land to insure their economic well-being, the integrity of their communities and of their cultures, and their right to self-determination. The Natives estimate they need title to a minimum of 60 million acres for their survival as a people.

Of the 10 million acres provided for in S. 35, less than 6 million is set aside for village lands. Divided among the State's 200 villages, the settlement amounts to approximately 23,000 acres per village, with additional acreage for the few villages with populations exceeding 450 persons.

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The cash dividend notwithstanding, there is little reason to believe that under S. 35 the Alaska Natives would escape the fate of Indian tribes in the Old West a century ago—they will be deprived of their traditional livelihood and will not be provided with the means to achieve self-sufficiency in a cash economy.

This provision will adversely affect all villages; but it will hit inland villages the hardest since they need far more land per capita than coastal villages that derive a large share of their food from the sea.

Eight Interior villages are entitled to no land under the bill, since the State has already filed for their lands and S. 35 ratifies these selections. The Report expresses the hope that the State will grant these villages some land, but recognizes State law may prevent the State from doing so, even if it were willing.

Of the remaining land, the Native Services Corporation created by the bill would receive title to 2 million acres of timber lands and one million acres for miscellaneous uses. More than 600,000 acres are designated for grants to individual Natives for homesites and campsites, and a special grant of 500,000 acres is made to the North Slope Native Corporation.

At the same time, S. 35 revokes a number of Native land reserves which aggregate approximately 4 million acres.

The Senate Report, recognizing the importance of title to the Natives, states: "The unresolved status of Native lands has . . . subverted both the traditional livelihoods and the possibility of social and economic progress on a modern footing."

Without title to the lands they use and occupy, Alaska Natives are defenseless against commercial development which changes the character of and sometimes depletes subsistence resources, and against the population influx which disorganizes indigenous ways of life. At the same time, the Native people have no useable property rights in the commercial resources of the lands they have historically used and occupied."

Nevertheless, S. 35 would convey to the Natives title to only 3% of their aboriginal lands. The Report states the Committee wished to avoid creating "huge land enclaves . . . which could result in remote, land-locked reservations rather than viable open communities." The Committee's goal, the Report points out, is to "put an end forever to racial or ethnic distinctions in land tenure."

It seems a dubious strategy to seek to promote racial equality in the United States by confiscating the land of Alaska's Indians, Eskimos, and Aleuts. There is no real choice here between segregation and integration of the races; the choice is whether 200 isolated Native villages are permitted to retain enough of their resources to be viable and self-sufficient communities or whether 200 isolated Native villages will be pauperized and demoralized through land confiscations. In the words of Dr. Alexander H. Leighton, Professor of Social Psychiatry and Head of the Department of Behavioral Sciences at Harvard's School of Public Health, a settlement such as the one proposed in S. 35, if enacted, "would threaten the Native people with social catastrophe."

The Committee was also guided by the fear that the Natives would "tie up" the economic development of the State and interfere with conservation measures.

It may be asked whether the development of Alaska requires State ownership of virtually all commercially valuable properties and whether pauperizing the Natives—20 percent of Alaska's population—will contribute to its economic growth.

It also seems reasonable to question the justice and the logic of menacing the survival of the Alaska Natives as a people in the name of conservation.

The Natives have lived in delicate balance with their biotic resources for thousands of years. It is the newcomers to America who have polluted the air and the water and brought so many species, as well as whole tribes of Indians, to the edge of extinction.

Confirming Native title to 60 million acres would still leave the Federal government well over 200 million acres and the State 103 million acres for the designation of parks and forests.

Native aspirations also run counter to the Committee's views on social change. The Report assumes that title to more land will impede the assimilation of the Natives: "This Act is not . . . predicated on the philosophy that the historic way of life of the Native people of Alaska can, or will, or should be perpetuated into the future for all time by the actions taken by this Congress. Like it or not, Western 'civilization' came to Alaska and to virtually all the Native people many years ago."

A coercive policy of assimilation is undemocratic, unworkable, and destructive. The history of aboriginal cultures throughout the world shows that the way to destroy a people is to take their land.

JUSTICE

Long ago, in the Organic Act of 1884, Congress stated that the Alaska Natives "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."

Again, in the Statehood Act of 1958, Congress required that "the State and its people . . . 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 Indians, Eskimos, or Aleuts."

S. 35 would profoundly "disturb" the Natives in the possession of their lands, and clear the way for the State to expropriate Native lands to which it previously had disclaimed all right and title.

S. 35 runs contrary to the tradition of American law and would lend legislative support to the notion that property rights of Native Americans are inferior to those of other Americans.

SUMMARY

The principal feature of S. 35 is money, but the cash it provides would not constitute a livelihood. The Interior Committee stated that the Natives live where there are few jobs, and where little or no economic growth is taking place,

but S. 35 would deny them the title that would give them a stake in whatever commercial development there may be on tens of millions of acres of their land. It recognizes the importance of the Native subsistence economy, but fails to protect it.

Rather than giving the Natives a chance to adapt their present economies to new opportunities, S. 35 forecloses their options.

It asserts the right of the Natives of self-determination, but denies them any meaningful choice in their future.

It denies the Natives and the Nation a last opportunity for justice.

"We are testing the American political system. . . . We know the history of our country in dealing with the American Indian and we want to see a final chapter not written in blood or in deception or in injustice . . ."

"If there is no settlement or a poor one, we will have a generation of leaders who fought for years to protect their land and lost. This may start a chain of events in which it is seen by future generations of Natives as a disaster for us—an injustice that will mar the relations between Natives and whites for many years. It may bring defeatism to the people and prevent us from becoming an integral part of Alaska's social and economic development. Our present political influence will diminish and the efforts to develop our communities will falter."—William L. Hensley. (Mr. Hensley is an Eskimo, and a member of the Alaska House of Representatives.)

PETITION

(April 21, 1971)

We, the undersigned members of the Alaska State Senate, are in support of the Alaska Federation of Natives' land claims settlement proposal embodied in Senate Bill 835 and House Bill 7039 of the United States Congress.

(The petition was signed by 16 concerned members.)

CERTIFICATE

The undersigned, Donald R. Wright or Frances Degnan, President and Secretary, respectively, of the Alaska Federation of Natives, personally witnessed the signing of the attached petition; that the above signatures represent a majority of the House of Representatives of the Alaska State Legislature.

DATED this 22nd day of April, 1971.

Alaska Federation of Natives,
By: DONALD R. WRIGHT, *President*.
By: FRANCES DEGNAN, *Secretary*.

SUBSCRIBED AND SWORN to before me this 22nd day of April, 1971.

GEORGETTE S. WALSH,
Notary Public in and for Alaska.

My commission expires: March 20, 1972.

PETITION

(April 21, 1971)

We, the undersigned members of the Alaska State House of Representatives, are in support of the Alaska Federation of Natives land claims settlement proposal embodied in Senate Bill 835 and House Bill 7039 of the United States Congress.

(This petition was signed by 26 members of the Alaska State House of Representatives.)

CERTIFICATE

The undersigned, Donald R. Wright or Frances Degnan, President and Secretary, respectively, of the Alaska Federation of Natives, personally witnessed the signing of the attached petition; that the above signatures represent a majority of the Senate of the Alaska State Legislature.

DATED this 22nd day of April, 1971.

Alaska Federation of Natives,
By: DONALD R. WRIGHT, *President.*
By: FRANCES DEGNAN, *Secretary.*

SUBSCRIBED AND SWORN to before me this 22nd day of April, 1971.

By: GEORGETTE S. WALSH,
Notary Public in and for Alaska.

My commission expires: March 20, 1972.

ALASKA NATIVE LAND RIGHTS: TAKE OUR LAND, TAKE OUR LIFE

(March 26, 1971)

The United States and its people are offered a priceless opportunity to do justice to its aboriginal people whose treatment in the past has reflected little glory on our Nation.

A hundred years ago on the Western frontier, Indians and whites were killing each other for possession of the land. Today in Alaska, 60 thousand Indians, Eskimos, and Aleuts are fighting to preserve their ancient rights and heritage, and to save a fair portion of their lands from expropriation by the State. They are waging a peaceful war for a decent share of America's future. Congress is now deciding their fate. The Alaska Native people urgently appeal to the conscience of every American for help in their search for justice.

Alaska's Indian, Eskimo, and Aleut citizens have conclusive legal (original Indian title) and moral rights to virtually all of Alaska's 375 million acres of land. They are asking Congress to convey to them formal legal title to 60 million acres essential to their present livelihood and future well-being, and for just compensation for the remaining 300 million acres they are willing to cede to the United States. Their hopes are expressed in legislation submitted to Congress by the Alaska Federation of Natives and introduced in the Senate by Senator Fred R. Harris (Oklahoma) and twelve co-sponsors.

The sponsors of the Native-backed bill (S. 835) are:

Senator Birch Bayh (Indiana)
Senator Alan Cranston (California)
Senator Mike Gravel (Alaska)
Senator Fred R. Harris (Oklahoma)
Senator Philip A. Hart (Michigan)
Senator Harold E. Hughes (Iowa)
Senator Hubert H. Humphrey (Minnesota)
Senator Edward M. Kennedy (Massachusetts)
Senator George McGovern (South Dakota)
Senator Edmund S. Muskie (Maine)
Senator Walter F. Mondale (Minnesota)
Senator Ted Stevens (Alaska) by request
Senator John V. Tunney (California)

The central issue before the Congress is not what it will *give* the Alaska Natives; it is one of determining how much of their land Congress will allow them to keep. The decision Congress makes will profoundly affect the lives of Alaska Natives for generations and will reflect on the honor of our Nation for centuries.

THE LAND AND THE PEOPLE

To the Alaska Natives, the land is their life; to the State of Alaska, it is a commodity to be bought and sold. Alaska Native families depend on the land, its waters for the food they eat, hunting and fishing as they have done for thousands of years.

Living in some two hundred remote villages scattered across a state three times the size of Texas, the Natives need large areas simply to survive. Often the yield from a thousand acres will support only one person. In some regions, a village of two hundred people may require as much as 600 thousand acres to range over.

The subsistence economy of Alaska Natives is as varied as the land. The Eskimos of the Arctic hunt whale, walrus, and seal in the coastal waters and caribou on the frozen tundra. They gather murre eggs from the sea cliffs in July and take ducks and geese through the summer. The Athabaskan Indians of Interior Alaska, on the other hand, hunt moose, beaver, muskrat, rabbit, and black bear in forests of white spruce and birch. The lakes offer ducks and geese. At their summer fish

camps, they take salmon by fishwheel and salt or smoke it for the long winter. And when the waters freeze over, pike are caught through the ice. Wild berries are gathered in July and cranberries in September.

Cash is hard to come by. In the villages there is virtually no wage work. Too often, when there is employment in the Alaska "bush," the Natives are denied opportunities. A recent Task Force investigation of hiring in the oil fields, for example, found that only 8 out of 800 jobs were held by Natives.

Measured by contemporary standards, Alaska Natives are the most impoverished of America's poor. Village family income for those who have any income averages less than one-quarter of the family income for white Alaskans. Only one out of every ten Native youngsters graduates from high school. Average age at death is thirty-five.

Harsh though living conditions may be, the Natives have retained their independence and self-respect and, most important, their hopes and plans for the future. It is sometimes said that the old way of life is passing and with it the need for the land. Mindful of the experience of the Indian tribes of the Old West, the Natives fear that if title to their land passes to the State, they too will be forced onto the welfare rolls.

The land is today's certainty and tomorrow's promise. Industrious and adaptive, the Natives look forward to the day when they can profit, if they choose, from rational commercial development of their resources and can create local employment opportunities through their own initiatives. In short, only if the Natives obtain title to a reasonable amount of their land will they possess the secure economic base upon which to build a better life in a changing world.

THE CONTROVERSY

The present dispute between the State and the Natives has its origins in a century of inaction by Congress. The State claims the right to select 103 million acres from the public domain under a provision of the 1958 Statehood Act. The Natives rely on a pledge by Congress in 1884 to respect their aboriginal claim, buttressed by a provision included by Congress in the Statehood Act that subjects the State's selection to their prior aboriginal claim.

In 1867, when the United States acquired Alaska from Russia, it purchased not the land itself but only the right to tax and to govern. The United States Government recognized at that time, in accordance with long-standing Federal policy and Supreme Court precedent, that the land belonged to the original occupants—the Native people of the villages.

Congress, in the Organic Act of 1884 establishing a territorial government in Alaska, acknowledged the Natives' right to the land, stating: "The Indians . . . shall not be disturbed in the possession of any lands actually in their use or occupancy or now claimed by them." However, it postponed for future legislation the matter of conveying title to the Natives. Congress has yet to act.

Until the Statehood Act in 1958 there was no massive threat to Native land rights or their way of life. Indeed, prior to 1939 the Natives were a majority in Alaska, and even today non-Natives use only a minute fraction of the land. To protect land rights against the new State, Congress provided that the "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."

Nonetheless, the State subsequently moved to take over lands clearly used and occupied by Native villages and to claim, under the Statehood Act, royalties from Federal oil and gas leases on Native lands. The Department of Interior's U.S. Bureau of Land Management, without informing the villages affected and ignoring the claims they had on file, began to process the State's selections. The lands of the Indians of Minto Village, where the lakes provide one of the best duck-breeding grounds in the world, were slated to be taken over by the State for the use of sports hunters and vacationers. The Indians of Tanacross Village were to discover that their lands on beautiful Lake George were being offered for sale at the New York World's Fair as "Wilderness Estates." The multi-billion dollar North Slope oil strike by Atlantic Richfield Company at Prudhoe Bay is on land the State has claimed from the Eskimos of Barrow.

As word of the State's actions spread from village to village, the Natives began to organize regional associations for their common defense, and in 1962 the *Tundra Times*, a Native weekly, was founded to provide a voice for Native aspirations. In 1964, Indian and Eskimo leaders from across the State met in Fairbanks to mobilize

their joint forces; and two years later the statewide Alaska Federation of Natives was formed to champion Native rights.

In 1966, then Secretary of the Interior Stewart L. Udall, with statutory responsibility to protect the interests of the Natives, finally acted to block the State. After the Bureau of Land Management had granted the State of Alaska title to 6 million acres of Native land and had tentatively approved the transfer of another 12 million acres, Secretary Udall, responding to Native appeals, halted the transfer of additional land and suspended the issuance of new Federal oil and gas leases pending Congressional settlement of Native land rights.

Alaska Governor Walter J. Hickel condemned this act as illegal, and the State filed suit against Secretary Udall in Federal Court to force him to complete transfer of certain Native lands around the Village of Nenana. The U.S. Court of Appeals for the Ninth Circuit reaffirmed that traditional Native use and occupancy create valid legal land rights and that lands subject to Native use and occupancy are exempted by the Statehood Act from expropriation. The U.S. Supreme Court refused to hear the State of Alaska's appeal.

In January 1969, as one of his last acts in office, Secretary Udall formalized his land freeze with the issuance of *Public Land Order 4582*. In so doing he stated: "This action will give opportunity for Congress to consider how the legislative commitment that the Natives shall not be disturbed in their traditional use and occupancy of the lands in Alaska should be implemented . . . To allow these lands to pass into other ownership in the face of the Natives' claim would, in my opinion, preclude a fair and equitable settlement of the matter by Congress. It would also deny the Natives of Alaska an opportunity to acquire title to lands which they admittedly have used and occupied for centuries."

Governor Hickel was appointed by President Nixon to succeed Secretary Udall. At confirmation hearings on this appointment Senator Henry M. Jackson, Chairman of the Senate Committee on Interior and Insular Affairs, won a promise from Secretary Hickel that he would continue the freeze during the 91st Congress. The freeze, due to expire December 31, 1970, was extended at the eleventh hour for another six months by Acting Interior Secretary Russell.

The first important step toward Congressional settlement was taken in July 1970 by the U.S. Senate. The Senate passed legislation (*S. 1830*) that would grant Alaska's 60,000 Indians, Eskimos, and Aleuts title to 10 million acres of land—less than 3 percent of the lands to which they have valid legal claim. In return for extinguishing their claims to the rest of Alaska's 375 million acres, the Senate bill offered the Natives cash compensation amounting to \$1 billion in payments deferred over many years.

Mr. Emil Notti, then President of the statewide Alaska Federation of Natives, condemned the 10 million acre Senate land provision stating, "To deny the Alaska Natives an adequate land base . . . will contribute to their dependency, to the disintegration of their communities, and to the erosion of their cultures. To strip the Alaska Natives of their land will destroy their traditional self-sufficiency, and it is certain to create among them bitterness toward other Alaskans and a deep distrust of our institutions and our laws."

The House of Representatives failed to act on a Native claims settlement bill last year. However, the House Subcommittee on Indian Affairs last September reportedly agreed in closed sessions to a provision that would grant the Natives title to 40 million acres of land.

Ten years ago few Alaskans in positions of power recognized the validity and the urgency of Alaska Native land rights. Today the Natives are united and their newly discovered political strength and adroit defense have gained respect for their cause.

VALIDITY OF NATIVE CLAIMS TO ALASKA LAND

The legal validity of Native land rights in Alaska, based on aboriginal use and occupancy, is not subject to serious challenge at this late date in history. A long series of Federal statutes and Supreme Court decisions establishes the rule that aboriginal occupancy creates a property right which the United States alone has the power to extinguish and that Native land rights carry with them the right of the tribe or Native group to enjoy the protection of the United States against interference from all others, including state governments.

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." The Ordinance for the Northwest Territory provided that the land

and property of the Indians "shall never be taken away from them without their consent" and that "their property, rights, and liberty . . . shall never be invaded or disturbed, unless in just and lawful wars authorized by Congress."

Judicial recognition of Indian possessory rights was first announced in 1823 in *Johnson v. M'Intosh*, when Chief Justice Marshall defined the status of the original inhabitants as "the rightful occupants of the soil, with legal as well as just claim to retain possession of it."

Nine years later, in the famous case of *Worcester v. Georgia*, the Supreme Court further stated that, under the Indian Trade and Intercourse Laws, the Indian communities have territorial boundaries and have a right to all the lands within those boundaries, which is not only acknowledged but guaranteed by the United States.

This consistent policy of respect for Indian rights of occupancy continues in the 20th Century and is summarized in the 1941 Supreme Court case of *United States v. Sante Fe Pacific R.R. Co.*: "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."

In *Tee-Hit-Ton Indians v. United States*, which involved lands in Alaska, the Supreme Court again acknowledged that it has been "the policy of the Congress, continued throughout our history, to extinguish Indian title through negotiation rather than by force," and that the Indians had a "right of occupancy which the sovereign grants and protects against intrusion by third parties." It further held that Congress must act in order for Indian title to be compensable as against the United States.

In addition to the protection afforded by general Federal legislation and Supreme Court decisions, the possessory rights of Alaska Natives have been the subject of specific legislative protection from the time of "Seward's Folly"—most notably in the 1884 Organic Act, the Act of June 6, 1900, and the Alaska Statehood Act of 1958.

In 1902, the United States Court of Appeals for the Ninth Circuit held, in *Heckman v. Sutter*, that the Organic Act 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."

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.

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.

THE ALASKA PIPELINE AND NATIVE RIGHTS

A consortium of seven oil companies, Alyeska Pipeline Service Company, proposes to construct an 800-mile pipeline to carry crude oil from the rich Arctic Slope fields on the Beaufort Sea south to the all-weather port of Valdez on Prince William Sound.

The stakes are enormous. The cost of the pipeline is estimated to be \$1 billion. It is reported that the Arctic Slope oil strike of 1968 has been "conservatively" valued at \$60 billion. The Atlantic Richfield Oil Company, on lands at Prudhoe Bay that were expropriated from the Natives by the State of Alaska, has already identified reserves estimated at 3 billion barrels, with a net profit per barrel estimated to range from 60 cents to \$1.00. And this is just the beginning.

Alaska Native leaders assert that their land rights, which have been held in abeyance since the purchase of Alaska from Russia in 1867, must be settled by Congress before the Department of Interior grants a pipeline right-of-way over lands they claim. The New York Times comments in an editorial: "It seems inconceivable, either in law or simple justice, that the project would be launched until the Native claims to the land are fully and satisfactorily settled."

If the construction of the pipeline becomes a matter of national defense emergency, Native leaders propose that President Nixon exercise his legal authority to withdraw from the public domain lands along the pipeline route for the benefit of the Natives, permitting them to lease the right-of-way to the oil companies.

Proponents of the pipeline are no longer eager to test the rights of the Natives

in court. Alaska's newly-elected Governor, William A. Egan, states, "We can get a settlement (of Native land rights) this year, but if this problem gets to the courts, practically all major developments could be held up 10 to 15 years."

TERMS OF SETTLEMENT

Two alternative proposals to settle the Alaska land controversy have been placed before the Senate. Senator Henry M. Jackson, Chairman of the Senate Committee on Interior and Insular Affairs, has introduced legislation (S. 35) with the following major provisions:

(1) Conveyance to the Native villages of fee simple title to approximately 8 million acres of land and surface title to another 2 million.

(2) Cash compensation of \$500,000,000 over a 12-year period and a 2 percent royalty on revenues from minerals off public lands. The royalties, however, will be cut off when they reach a ceiling of \$500,000,000.

The legislation introduced by Senator Harris and co-sponsored by twelve other Senators (S. 835) incorporates the solution offered by the Alaska Federation of Natives. Its major provisions are:

(1) Conveyance to the villages of fee-simple title to 60 million acres of land, with mineral rights to be held by Native regional development corporations; and

(2) Cash compensation in the amount of \$500 million dollars (roughly \$1.60 per acre) payable over a nine-year period with interest at 4 percent; and a 2 percent royalty in perpetuity on gross revenues from Federal lands to which Native title is extinguished.

Given the vast amount of land in Alaska and the extent of Native land rights and needs, 60 million acres is a reasonable request. It represents 17 percent of the land for 20 percent of the people who have valid claims to nearly 100 percent of the land. The State still would find ample land from which to make its selection of 103 million acres, and a balance of about 230 million acres would be retained by the Federal Government.

Justice further dictates that the Natives enjoy fee-simple title to the lands that are to remain theirs. This is consistent with repeated Supreme Court decisions that aboriginal land rights include all mineral rights. Without such title, a village not only would be denied its rightful benefits, but also would be at the mercy of the conservation practices of the oil and mining companies for protection of the subsistence value of the surface of the land.

Considering the fact that the lands to which the Natives have legal rights have a value conservatively estimated in the tens of billions of dollars, the cash settlement proposed by the Natives based on \$1.60 per acre is a modest one. The State of Alaska received over \$900 million in 1969 alone from bonus bids offered in September by oil companies for exploration rights to 412,000 acres of oil land it has taken from the Eskimos of the Arctic Slope.

Measured against the needs of the Natives, the cash compensation is not substantial. Far more would be required to raise their family income and standard of living to half that of white Alaskans.

The amount sought is, however, enough to provide a capital base for human and community development and can be financed by the Federal Government from a fraction of the wealth it will derive from the lands to which Native title will be extinguished. Moreover, the monetary settlement will not be paid to individuals, but rather to Native village and regional development corporations empowered to launch self-help programs in health, education, employment, housing and economic growth.

SUMMARY

In view of the Natives' legal rights and our moral obligations, their social and economic needs, and the value of the land to which they have rightful claim, the settlement the Alaska Federation of Natives seeks is just, reasonable, and humane. It will afford a wise and courageous Native people a meaningful opportunity for self-determination and the base for a better life for themselves and their children.

STATEMENT OF DONALD R. WRIGHT, PRESIDENT OF ALASKA FEDERATION OF NATIVES (AFN), ON OCCASION OF MEETING WITH PRESIDENT RICHARD M. NIXON AT THE WHITE HOUSE APRIL 6, 1971

For the past several months I and other representatives of the Alaska Federation of Natives have been working closely with the Administration to assist them

in formulating their position on the Alaska Native land claims. I have met today with the President to discuss the progress of these negotiations and to give him my views with respect to the Administration's position on this important national issue.

I told the President that the historical dimensions of this legislation are immense. Either it will go down in history as the most enlightened and equitable act of the U.S. Government toward the Native American, or it will be recorded as merely the last chapter of a tragic record of expropriation of Native American land and property rights. The President and the Congress must decide whether this last chapter is to be written in dignity or dishonor.

I also told the President that a just and equitable settlement of our land rights in Alaska is by far the most important and most difficult Indian issue, to be dealt with under his Presidency. There are many powerful vested interests which are actively opposing our land rights in Alaska—both within and outside of his Administration. A just settlement cannot be achieved without the President's strong and continuing support and leadership.

Because of our use and occupancy of the lands in Alaska for literally thousands of years, the Alaska Natives have valid Indian title to roughly 375,000,000 acres of land in Alaska. This title has never been extinguished by the United States since it negotiated with Russia and signed the Treaty of Cession in 1867. To secure these land rights the Alaska Federation of Natives after extensive and careful deliberations proposed a settlement which would confirm our title to 60,000,000 acres of land. As compensation for relinquishing our title to over 300,000,000 acres we have proposed a federal cash appropriation of \$500,000,000 payable with interest over a nine year period, and a perpetual royalty of 2% in all minerals taken from lands in the State. Our proposal has been introduced in the Senate as S. 835, sponsored by thirteen distinguished Senators, and as H.R. 7039, in the House, with 25 distinguished House sponsors. The AFN most emphatically re-confirms its commitment to the positions embodied in these bills, and its intention to continue to seek a settlement on this basis.

The Administration is today sending to the Hill a proposal which would confirm our title to 40,000,000 acres of land. This title would be a full and complete grant of all rights, surface as well as mineral. As compensation for extinguishing our title to the remaining lands in Alaska and the minerals beneath those lands the Administration's proposal would authorize payment of \$500,000,000 from the Federal Treasury over the next twenty years, and an additional \$500,000,000 from the State of Alaska's share of mineral royalties from lands throughout the State.

I told the President that the Administration's position constitutes a positive and constructive contribution toward achieving a just settlement of our land rights. It is the most responsive position yet taken by any National Administration on this issue. We commend the President for his attention to and awareness of our property rights and his sympathetic hearing of our case. The President's invitation to confer with him today demonstrates not only the good faith of the Administration, but the truly national importance of this issue.

The Alaska Federation of Natives regards the Administration position as a foundation upon which a truly just settlement can be built. We do not, however, regard this as President Nixon's final position, and we will continue to press for his support for the full AFN position. I want to make it perfectly clear that we do not in any way regard the Administration bill as a substitute for the AFN bills S. 835 and H.R. 7039 which are presently under consideration in the House and the Senate.

I am especially gratified that the Administration's position clearly indicates that it recognizes the validity of our property rights in Alaska land, and it is not based on some concept of gift or welfare. To 60,000 Eskimos, Indians and Aleuts, Alaska is our land, the very basis of our lives. The real issue is not how much we will release to the United States and on what terms. Because the land is the basis of our culture, the heart of our way of life and the very means for our survival, our slogan for this effort has been "Take our land, Take our life."

In reaching its position the Administration is coming far closer to our position than has either body of Congress to this day. The Administration had vindicated its policy of Indian self-determination, and has shown that it spoke honestly when it announced last summer a new policy of dealing fairly with native people. The Administration has not acted in a unilateral fashion. In response to our requests for consultation and involvement they listened to us and they responded. For this the Native people of Alaska are indeed grateful.

Finally let me emphasize how much today means to all of our Native people scattered across the face of Alaska in 200 villages—the people who are the true owners and stewards of our Alaskan lands. Our people have sent me and my fellow officers and directors of the Alaska Federation of Natives to Washington to negotiate a fair and equitable settlement with the United States. They are eagerly—if at times a bit fearfully—watching and waiting to see what we accomplish. It is their future—and that of their children—which is at stake and we will not fail them. We have put our trust in our government, which alone can translate hope into justice. The Alaska Federation of Natives now calls upon Congress to act promptly to settle Alaska Native land claims, to bring justice to our people, and peace to our lands. We ask all Americans to join us in our fight for justice.

MEMORANDUM IN SUPPORT OF GRANTING NATIVE VILLAGES THE RIGHT, UNDER THE LAND CLAIMS LEGISLATION, TO SELECT CONTIGUOUS LANDS WHICH HAVE BEEN TENTATIVELY APPROVED TO THE STATE OF ALASKA

I

PRELIMINARY STATEMENT

This memorandum is submitted on behalf of the Kenai Peninsula Native Association and the Native villages of Dot Lake, English Bay, Mentasta Lake, Ouzinkie, Port Graham, Port Lions, Seldovia, Ninilchik, and Tanacross, to secure the right under the Federal Land Claims Legislation of these villages to select lands which are contiguous to the village sites but which have been selected by the State of Alaska and tentatively approved under the Alaska Statehood Act (Pub. L. 85-508, July 7, 1958, 48 U.S.C. 1971 Pocket Part, p. 5). There are also eight* other Native villages which are located within or surrounded by State selected and tentatively approved land. Under the terms of most of the bills before Congress, including the bill previously passed by the Senate and the Administration Bill, Native villages would specifically be disallowed selection of land which has been tentatively approved to the State (Sec. 3(i), Sec. 13(b)(1), Sec. 14, S. 1830; Sec. 3(e), Sec. 10(a)(1), Sec. 12, Administration Bill).

These villages would effectively be denied a land claims settlement in that the lands which they use most intensively, indeed, in some villages the only lands they use and occupy, would be unavailable for village selection. In all of the villages here involved, the lands in question are those that the village population has used for traditional hunting, trapping, fishing, gardening, and berry picking since time immemorial. These villages would be forced to select land far distant from the village site and, in many cases, foreign to their use. They ask merely that they be placed on an equal footing with the other 180 Native villages in Alaska.

The issue here, that being whether these villages will have land selection rights to lands contiguous to their village sites, is distinguishable from any regional or other efforts to make non-contiguous selections from tentatively approved lands. Further, the tentatively approved lands in question raise virtually no questions of interests created in third parties by the State. In several instances, the State opened portions of their lands to five-acre tract development by private citizens. However, this program was rescinded by the Alaska State Division of Lands on April 14, 1971.

This memorandum will demonstrate: (1) that the circumstances here presented constitute a problem in which the United States and the villages in question have an identity of interest; (2) that Congress has the power to provide for contiguous village selections from tentatively approved land; and (3) that the facts relating to the Native use and occupancy and the nature of State selection of these lands compel the conclusion that they should be made available for village selection.

*Manley Hot Springs, Minto, Nenana, Lake Minchumina, Eklutna, Klukwan, South Naknek, Kenai.

II

THE NATURE AND EXTENT OF ABORIGINAL TITLE

We begin with the proposition that Alaska Natives are governed by the same legal principles as American Indians, 49 L.D. 592 (1923), 50 L.D. 315 (1924), 53 L.D. 593 (1932), and that the term "Indian" includes Eskimos and Aleuts under the collective term of "Alaska Natives." *United States v. Native Village of Unalakleet*, 411 F. 2d 1255 (Ct. of Claims, 1969). As such, Alaska Natives are beneficiaries of the long established policy of the United States to protect the use and occupancy of aboriginal people.

The projection of aboriginal land use and occupancy rights is a major part of the trust obligation borne by the United States on behalf of Indian and Native people. *Cherokee Nation v. Georgia*, 30 U.S. 1 (1931); *Navajo Tribe v. United States* 364 F. 2d 320 (Ct. of Claims, 1966). The scope of the Federal Trust obligation was highlighted by President Nixon in his July 8, 1970 message to Congress where he reaffirmed that "the United States acts as a legal trustee for the land and water rights of American Indians."

Further, there exists an independent claim of Native and Indian land users specifically recognized by Congress and the federal courts. This is a possessory interest and is based in equity and universally protected. Beginning with *Johnson v. M'Intosh*, 21 U.S. 543 (1823), the courts of this nation have consistently upheld aboriginal possessory rights against third party intrusion. In his landmark *M'Intosh* opinion, Mr. Chief Justice Marshall was careful to point out that the aboriginal inhabitants of the United States were "the rightful occupants of the soil, with a legal as well as just claim to retain possession of it." 21 U.S. at 574.

Later, in *Mitchell v. United States*, 34 U.S. 711, 745 (1835), the Supreme Court recognized that in a culture based upon land use rather than land ownership that the aboriginal "right of occupancy is considered as sacred as the fee simple of whites," and therefore must be protected as a fee until recognized or extinguished. The concepts of protected aboriginal use and absolute title were woven together by the United States Supreme Court speaking in *United States v. Alcea Band of Tillamooks*, 329 U.S. 40, 46 (1946). The Court there held that the Governmental or sovereign title "was deemed subject to a right of occupancy in favor of Indian tribes."

One of the most recent and certainly the most relevant decisions dealing with sanctity of aboriginal land claims is *State of Alaska v. Udall*, 420 F.2d 938 (1969). This case, popularly referred to as the Nenana case, dealt with the conflict between State selection and the aboriginal and possessory claims of one of the 17 villages affected by tentatively approved land. The Ninth Circuit protected the Native claims by rejecting the position of the State of Alaska that, as a matter of law, Native use and occupancy did not affect the vacant and unappropriated nature of the selected land. The case was remanded for a factual determination of the use and occupancy pattern existent on the Nenana Tracts. At the suggestion of the Circuit Court, the hearing on remand has been continued pending possible determination of the Native claims issued by the United States Congress in a Land Claims Bill.

This unchallenged line of cases, then, stands for the proposition that as between Indian and Native people and third parties, such as the State of Alaska, there is a federally recognized and controlled interest in occupied land which will be protected until the Indian or Native claim is formally confirmed or extinguished by the United States. This aboriginal interest runs with the land until acted upon explicitly by Congress.

Thus, a grant of federal land subject to an unextinguished right of occupancy (Native title) is a transfer of land subject to the right of occupancy. In *Beecher v. Weatherby*, 95 U.S. 517, 518 (1877), the Supreme Court held that a grant of public land to the State of Wisconsin subject to an unextinguished Indian claim conveyed land subject to the Indian claim so that "the grantee would take only the naked fee and not disturb the occupancy of the Indians." The *Beecher* case is very much in point in considering the problem presented by the 17 villages affected by the State selection and tentative approval situation. The *Beecher* court dealt with land in the State of Wisconsin which, at the time of its admission to the Union, was subject to an unextinguished Indian claim. Even though there was no disclaimer in the Wisconsin Statehood Act, the Supreme Court held that the state could only obtain a bare legal title prior to the extinguishment of Native claims, the state could not take a beneficial interest in the land until the United States acted to extinguish the Native title. The inclusion of a disclaimer clause

in the Alaska Statehood Act makes the present case even more forceful than the situation presented in *Beecher v. Weatherby*, *supra*.

The distinction drawn between federal grants subject to unextinguished Native title based on aboriginal use and occupancy and the full legal title is not upset by *Tee-Hit-Ton Indians v. United States*, 348 U.S. 272 (1955). In fact, the *Tee-Hit-Ton* case supports this distinction. The court in *Tee-Hit-Ton* held that although unrecognized aboriginal use and occupancy does not rise to the dignity of a Fifth Amendment compensable right as against the Federal Government, it does have the dignity of "a right of occupancy with which the sovereign grants and protects against intrusion by third parties" until Congress determines otherwise.

From the time of its creation in 1884 the Department of Interior has recognized a policy of protecting lands occupied by Native people from inconsistent means of appropriation. A long line of regulations beginning with the circular of May 31, 1884, 3 L.D. 371 (1884), have been issued for the purpose of protecting land in the possession of Indians. See also 16 L.D. 341 (1887), 32 L.D. 382 (1923). This protection has been specifically extended to "lands occupied by Indians, Aleuts, and Eskimos in good faith." 43 C.F.R. 2013.9-3 (1970).

The national policy, then, has been one of consistent and firm protection of aboriginal occupancy rights based on the trust obligation of the federal government on behalf of the Indian and Native people and on the equitably recognized and protected possessory land interest which they have.

Native rights based on land occupancy are existent and run with the land until specifically extinguished. There has been no extinguishment of aboriginal rights in Alaska and, therefore, the United States has the remaining and continuous obligation to protect the aboriginal use and title of the Native People of Alaska.

III

SECTION 4 OF THE STATEHOOD ACT PROTECTS UNEXTINGUISHED NATIVE CLAIMS

Section 4 of the Alaska Statehood Act, 72 Stat. 339 (1958) contains a compact between the United States and Alaska under which the would-be State of Alaska expressly gave up any claim it might have on property actually held by the United States and property actually or potentially held by Alaska Natives. Specifically, the State of Alaska disclaimed:

"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. . . ." (Emphasis supplied.)

This disclaimer is an absolute disclaimer unlike the State's waiver of interest in federal lands. The State disclaimer of interest in property subject to Native claim is effective regardless of whether the State selects the land or not. Therefore, absent an express federal extinguishment of the aboriginal land claims, the disclaimer of the State of Alaska is a bar to any valid or perfectable State interest in the land subject to a Native claim.

The theory and purpose of the disclaimer act is clear. Since Congress did not wish to deal with the issue of Native claims while considering the issue of Alaska Statehood, some protection had to be afforded the Native claims recognized by the Treaty of Cession, 15 Stat. 539 (1867) and the Alaska Organic Act, 37 Stat. 512 (1884). The only possible way of doing this while allowing the State of Alaska to proceed with its land selection grants would be to confirm the absolute power of Congress, by virtue of a disclaimer compact, to recognize or extinguish the Native claims covered by the disclaimer clause.

Thus, Section 4 was designed to maintain, unimpeached by statehood, the existence and extent of Native claims. The Supreme Court itself acknowledged this purpose in *Organized Village of Kake v. Egan*, 369 U.S. 60 (1962). Although the Court had only the issue of fishing rights before it and therefore did not analyze the full implications of the disclaimer clause, Mr. Justice Frankfurter stated that the general purpose of Section 4:

"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." 365 U.S. at 65.

This interpretation of Section 4 was reiterated in *Mellakatl Indian Community v. Egan*, 369 U.S. 45, 71 (1962), where the Court again stated that:

"Clearly this section does not protect only 'recognized' Indian rights—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."

The clear purpose of inserting the Section 4 disclaimer into the Alaska Statehood Act was to make it clear that Congress retains its absolute jurisdiction and control over the aboriginal land claims of the Natives of Alaska and with it the authority to extinguish or not to extinguish these claims. However, until the aboriginal claims are extinguished, Congress retains the inherent and express authority to deal exclusively with lands subject to a Native claim. Mere selection by the State under Section 6 of the Statehood Act and the tentative approval of that selection by the Bureau of Land Management does not and cannot act as an extinguishment of Native claims. The extinguishment of Native title must be by a clear and direct federal act. *United States v. Santa Fe Railroad Co.*, 314 U.S. 339 (1941); *Buttz v. Northern Pacific Railroad*, 119 U.S. 55 (1886).

Further, the title to tentatively approved lands continues to be in the United States, *United States v. Detroit Lumber Company*, 200 U.S. 321 (1905), and the lands continue to be subject to federal authority. *Union Oil Company v. Udall*, 289 F.2d 790 (D.C. Cir. 1961); *Hawley v. Diller*, 178 U.S. 476 (1900). Thus, the United States has the unquestioned authority to withdraw tentatively approved lands in Alaska from the operation of the State selection process. P.L.O. 4582 (1969).

The revenue sharing section of the "Senate" Land Claims Bill, S. 35 §18(g) (1) 91st Congress (1971), the bill introduced by the President, §8(f)(1), and the "Aspinall" Bill, H.R. 3100 §2(c) 91st Congress (1971), specifically rely on "the authority reserved by the United States in Section 4 of the Alaska Statehood Act to determine the disposition of lands used and claimed by Natives and as to which the State was, by the Alaska Statehood Act, required to and did disclaim all right and title" as the basis for granting Alaska Natives revenue sharing in the State claimed lands. See also, "Memorandum on Behalf of 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."

Finally, the Committee Report accompanying S. 1830 R. 91-925 (1970), at page 149, argues that *State of Alaska v. Udall*, *supra*, "supports the proposition that the Statehood Act neither extinguished the Natives' land claims nor diluted in any degree the power of Congress to reserve for the Natives such right, title, and interest in lands claimed by them . . . as the Congress deems appropriate."

In passing the Alaska Statehood Act, Congress did not bind itself in any fashion when dealing with land subject to a Native claim. Congress expressly retained full jurisdiction over the future treatment of whatever of the lands the disclaimer might affect. This being the case, the tentatively approved land surrounding and contiguous to the villages in question is subject to Congressional action on behalf of these 17 villages. Thus, Congress not only has the opportunity but the equitable duty to insure recognition of their right to land selection on a par with other villages not threatened or affected by State action.

The right of contiguous village selection from tentatively approved land will not only equalize the settlement treatment extended all villages in Alaska, but will alleviate the recurring threat of uncontrolled state disposition of contiguous village lands. See generally *Ouzinkie v. Herbert*, Superior Court, State of Alaska, Third Judicial District, C.A. No. 70-131K (1970); *Mentasta Lake v. Herbert*, Superior Court, State of Alaska, Third Judicial District, C.A. No. 71-423B (1971).

IV

CONTIGUOUS VILLAGE LANDS ARE NOT AVAILABLE FOR STATE SELECTION AND WERE NOT PROPERLY SELECTED

Section 6 of the Alaska Statehood Act, 72 Stat. 339 (1958) grants the State of Alaska the right to select approximately 103,000,000 acres of public lands in Alaska "which are vacant, unappropriated, and unreserved at the time of their selection."

The words "vacant" and "unappropriated" clearly condition the availability of land for State selection. The federal regulations published pursuant to the Statehood Act also contain requirements relating to investigations and notice publications designed to insure that the lands selected were in fact vacant and unappropriated. 43 C.F.R. 2677 (1970). However, in selecting contiguous village lands, the State of Alaska failed to adhere to the terms of the legislative grant and accompanying regulations. Further, the Bureau of Land Management (BLM) failed to discharge its federal supervisory obligation when it tentatively approved

the State selection of contiguous village lands. Because of the noncompliance with the selection criteria and procedure and authority reserved under Section 4 of the Statehood Act, *supra*, Congress has the power to modify these tentatively approved selections and award the contiguous village lands to the affected villages on the same basis as other Native villages.

Federal land grants are strictly construed against the grantee. *United States v. Michigan*, 190 U.S. 379 (1903). The State of Alaska as the grantee of 103,000,000 acres of federal land is certainly no exception to this rule. The Section 6 selection rights of the State of Alaska have been narrowly construed. *State of Alaska v. Udall*, *supra*; "Transfer of Real and Personal Property to the State of Alaska Pursuant to Section 6(e) of the Alaska Statehood Act." 70 I.D. 91 (1963). In the course of his Section 6(e) opinion, the Department of the Interior Solicitor stated, at 93:

"It has long been held that federal grants are construed in favor of the government, lest they be enlarged to include more than is expressly included. *United States v. Grand River Dam Authority*, 363 U.S. 229, 236 (1960), rehearing denied 364 U.S. 355. See also *U.S. v. Michigan*, 190 U.S. 379, 401 (1903); *U.S. v. Union Pacific Railroad Co.*, 353 U.S. 112, 116 (1957). Since Section 6(e) was intended as a grant of certain specific federal property to the State, it must include only those properties expressly referred to and not those needed for the continued performance of authorized federal functions even though the same property may have been used to manage the Alaska Fish and Wildlife resources."

Thus, as a general proposition, the grant language of Section 6 must be construed against the State of Alaska and in favor of the Federal Government. In addition, the Native people of Alaska are the wards of the Federal Government and Section 4 of the Alaska Statehood Act, *supra*, specifically disclaims any State interest in any property rights and confirms the federal obligation to settle Native property claims. There emerges, therefore, the proposition that the State selection provision must be construed against the State of Alaska and in favor of the Native People of Alaska as beneficiaries of the Federal Government.

This construction has been specifically recognized by the courts. In *Chote v. Trapp*, 224 U.S. 665, 675 (1912), the Supreme Court held that Indians are always to be favored when construing ambiguous laws that affect Indian people:

"the construction instead of being strict is liberal; doubtful expressions instead of being resolved in favor of the United States are to be resolved in favor of a weak and defenseless people who are wards of the nation, and wholly dependent upon its protection and good faith."

This again forces the conclusion that Native occupancy of the land leaves it non-vacant and thus unavailable for State selection. But let us consider the technical meaning of the word "vacant."

In construing public land statutes, the plain meaning of words used in a statute are used unless the result would be to give an absurd or patently unjust result. *Parker v. Wheeler*, 62 I.D. 88, 93 (1955), *Richfield Oil Corporation*, 66 I.D. 292, 297 (1959). Black's Law Dictionary defines vacant land as land "absolutely free, unclaimed, and unoccupied" on the authority of *Donley v. Van Horn*, 139 P. 514, 516 (Calif. 1920). A New York urban renewal case, *Diehm v. City of New York*, 143 N.Y. Supp. 2d 298, 301 (1955) defines vacant in the following terms:

"True, most of the buildings are of flimsy ramshackle nature and part of the land consists of small gardens, nevertheless, virtually all of it is being utilized for one productive purpose or another."

This might well be the land use pattern of a Native in Alaska. In short, the word "vacant", as used in Section 6 of the Statehood Act, requires a physical and functional analysis. The plain meaning of the word "vacant" is to be physically unoccupied by people, improvements, or useage and any other construction or definition of that word renders it redundant with the word "unappropriated".

Clearly, village lands are not vacant lands. The intensive land use patterns of contiguous village lands is indeed the justification for requiring villages to select from contiguous lands. S. 35 §13, 14 (1971). General public information such as U.S. Geological Survey topographic maps show all villages and many trails and outlying cabin locations. Official Status Plats of the Bureau of Land Management show Native Allotment filings, 48 U.S.C. 357, in contiguous village areas. The Native Allotment applications themselves describe use and occupancy beyond 160-acre allotments raising the clear and direct inference that the contiguous village lands are not vacant or unappropriated. Official Native protests and governmental land use studies of Native villages were done on contiguous village land prior to State selection or the BLM tentative approval decision. The Bureau

of Indian Affairs has recognized the extent of the community interest by establishing school reserves in many of these areas. All of this public information coupled with popular knowledge of the subsistence hunting patterns of Native villages demonstrates beyond a reasonable doubt that State selection officers and BLM personnel are properly held to have had active, imputed knowledge of the nonvacant nature of contiguous village lands. Finally, the recent decision of the Ninth Circuit Court of Appeals in *State of Alaska v. Udall, supra*, stands for the proposition that a factual investigation of Native use and occupancy is required in determining whether land is properly selected by the State of Alaska.

This is all the more true when the trust obligation of the United States to the Alaska Natives is considered. In *Seminole Nation v. United States*, 316 U.S. 286, 296 (1942), the Supreme Court held that the United States "has charged itself with moral obligations of the highest responsibility and trust . . ." when dealing with Indian or Native people. A similar proposition was stated in *Menominee Tribe of Indians v. United States*, 101 Ct. Clms. 10, 19 (1944), where the court ruled that "the United States, as regards its dealings with the property of the Indians, is a trustee." Thus, in reviewing State selection applications, the Bureau of Land Management has a strict fiduciary obligation to investigate all possibilities that the land under application may be occupied, used, or claimed by Native people.

The investigation obligation is also dictated by the line of cases protecting Indian possessory interests in land, *Johnson v. M'Intosh, supra*, and the regulations and circulars of the Department of Interior relating to protection of good faith Indian occupancy, 43 C.F.R. 2013.9-3 (1970); 3 L.D. 371 (1884); 6 L.D. 341 (1887); 32 L.D. 382 (1923). In its 1887 circular on this subject, the Department of Interior directed the local Land Register (now BLM) to:

"exercise every care and precaution to prevent the inadvertent allowance of any such [inconsistent] allowance entries. It is presumed that you know or can ascertain the localities of Indian possession and occupancy in your respective districts, and you will make it your duty to do so, and will avail yourself of all information furnished you by officers of the Indian service [Bureau of Indian Affairs]."

An investigation could be complete only if it entailed a field trip to the selected land. However, as shown above, even a thorough search of all formal and informal maps and writings on contiguous village site locations would clearly reveal the presence of Native land use and occupancy rendering the land not vacant and unavailable for State selection.

As an adjunct to the investigation of use and occupancy, the regulations promulgated pursuant to the Alaska Statehood Act direct publication of a notice of selection in the newspaper nearest the selected land. 43 C.F.R. 2627.4(c); 43 C.F.R. 1824. 43 C.F.R. 1824 is the general publication section for all Public Land Acts. 43 C.F.R. 1824.0-1 states the purpose of the publication requirements as follows:

"The object of the law requiring publication of notice and intended final proof on entries of public land is to bring the *knowledge and attention of all persons who are or might be interested* in the land described therein or *who have information concerning the illegality or invalidity* of the asserted claims thereto, the fact that it is proposed to establish and perfect such claims, to the end that they may interpose any objection they may have, or communicate information possessed by them to the officers of the Bureau of Land Management." (Emphasis supplied.)

This purpose clause has two ends. First, it seeks to protect persons with claims not of record who may be adversely affected by an entry under the public land laws. Second, it seeks to prevent the Federal government from being subjected to an invalid entry under the public land laws. In the case of State selections, the Native people of Alaska, by virtue of the Disclaimer Clause, Section 4 of the Statehood Act, have an interest in the Native lands which is adversely affected by State selection. Also, the government has only granted to the State of Alaska vacant and unappropriated lands and proper notice is necessary to determine occupancy, Native or otherwise, which would make the land inappropriate for selection.

Since neither the State nor the Bureau of Land Management made a field investigation, or any other investigation other than a record search of the selected land, it was critical that notice of the proposed selection be published as near to the land as possible. The Bureau of Land Management has an affirmative obligation to see that notice of a State application for selection obtains such distribution

so as to insure that the United States is not improperly divested from lands not qualified for the Statehood grant.

However, the Bureau of Land Management during the years covering the selection and tentative approval of selection of the contiguous village lands in question almost exclusively directed the publication notice of selection in the Anchorage, Fairbanks, Kenai, and Juneau newspapers. During the same period of time, there were newspapers meeting all of the Departmental criteria for publication, 43 C.F.R. 1824.1-1 (1970) in Kodiak (Ouzinkie, Port Lions), Homer (Seldovia, Port Graham, English Bay, Ninilchik), and Tok (Mentasta Lake, Tanacross, Dot Lake) among other locations. These newspapers were nearest the selected village land and therefore they were the only newspapers proper for publication of the State selection notices for the villages noted in parenthesis.

That local newspapers, regardless of their frequency of publication or informal format, are the proper newspapers for publication of public land notices is clear from a 1958 Solicitor's Opinion (M-36497, June 11, 1958):

Newspapers as traditionally used in departmental proceedings, has meant papers devoted to the distribution of general news and published for perusal of the general public. It seems obvious that compliance with the statute (38 U.S.C. 40) might result in some cases in the selection of a newspaper of rather limited circulation, such as a small county weekly published at the County Seat in the face of a large daily with substantial circulation in the general area. Both papers, of course, have a general circulation within their respective spheres As between two newspapers, if one is known to be circulated and read by people generally in the immediate vicinity of the land, which may be in an isolated area while the other, although much more widely read in the general area, is ordinarily limited in its circulation to the more settled surrounding communities where daily delivery is practicable, then, under the law, the first paper mentioned would have to be selected although of comparatively limited circulation."

Again this emphasizes the proximity to the affected land is the most pervading consideration in the selection of one newspaper over another.

Improper publication is fatal to an entry under the public land laws, *Dwight W. Ensign*, 7 L.D. (1888). Thus, improper publication is a bar to the proper issuance of a tentative approval decision on State selected land.

By virtue of the trust obligation borne by the United States on behalf of the Native people of Alaska, the case law and regulations protecting Native use and occupancy and the disclaimer clause of the Alaska Statehood Act, Congress has the specific authority to review the State selection procedure and make protective awards from improperly approved selections to Native villages. This is an implied and express power reserved to the United States for contingencies such as those presented by the situation of the 18 villages whose unextinguished aboriginal claims are being interfered with by a third party, the State of Alaska.

V

CONCLUSION

Under the terms of S. 35, the Administration Bill, and H.R. 3100, there will be no effective legislative land claims settlement for 17 Native villages. These villages like the other 180 Native villages in Alaska are seeking Congressional confirmation of title to their contiguous village lands. Under the provisions discussed above, Congress has the unchallenged authority to award these villages their contiguous lands even though these lands may have been technically and tentatively approved for State selection. The moral and legal claim of these villages to their surrounding lands is compelling and should be recognized by Congress.

RESPECTFULLY SUBMITTED this 20th day of April, 1971.

HUGH W. FLEISCHER,

G. E. STEIN,

Attorneys for Alaska Legal Services Corporation.

Representing: The Kenai Peninsula Native Association; The Village of Dot Lake; The Village of English Bay; The Village of Mentasta Lake; The Village of Port Graham; The Village of Tanacross; The City of Ouzinkie; The Native Community of Seldovia; The Native Community of Port Lions; and The Native Community of Ninilchik.

(The attachments to this memorandum were retained in the committee files.)

[From the Anchorage Daily News, April 27, 1971]

EDITORIAL

THE LAND CLAIMS

"Take our land, take our life."

That's the simple, straight-forward message that Don Wright, the able president of the Alaska Federation of Natives, and his staff have been attempting to get across to Congress in support of a just Native land claims settlement. Happily, they appear to be succeeding.

All this said, we come to the question which most concerns many thoughtful Alaskans: Is there enough land to go around? Can the needs of both the state of Alaska, which has yet to receive most of the acreage granted it under the Statehood Act, and the Natives be met? Can a bitter and divisive head-on clash on land selection be avoided?

We believe the answer is yes, if the final claims settlement is drafted with care, forethought and consideration of the needs—and rights—of both the Natives and the state.

FIRST, IF A 60-MILLION ACRE settlement is to be feasible, there must be provision for selection of a substantial amount of acreage from federally withdrawn lands. A prime example is Naval Petroleum Reserve No. 4 next door to the Prudhoe Bay oil field. This potentially valuable oil land is not open for selection by the state—so there would be no competition between the state and the Natives.

Second, the Natives, in our opinion, should not be granted title to the Prudhoe Bay oil lands, to which the state has been granted tentative ownership—but not, as yet, final title. This is the land on which the state must currently stake a good bit of its economic future—and the benefits from it will accrue to the Natives as well as to all other Alaskans.

Third, the final settlement bill must provide some machinery establishing priorities in land selection between the state and the Natives. This should not prove impossible, for the interests of the Natives and the state will not always coincide.

We believe a workable settlement could be reached if the Natives were allowed to select four townships contiguous to each village (about 20 million acres) and potentially valuable mineral lands from NPR 4 and other federal reserves closed to the state (another 20 million acres). Generally speaking, the lands contiguous to Native villages are not lands which also are of great interest to the state; and lands in federal reserves are not open to the state in any case.

Thus, competition between the state and the Natives would be largely confined to the remaining 20 million acres of the settlement. And it would be up to Congress to devise appropriate machinery for selection which would protect both the Natives' prior rights to land they have occupied for centuries and the state's right to lands which will help make it an economically viable place for all its people. Such machinery certainly will entail compromise and neither the Natives nor that state are likely to be entirely happy with the result.

Still, a reasonable compromise and a just final settlement of the claims appears to us the only desirable way out of this thorny thicket. In this respect, we have been encouraged in recent weeks to note that acceptance of a large cash settlement is gaining increasing support—often from people and groups opposed to it in the past. Because of that trend, we hope Governor Egan will see fit to endorse the Natives' just claims in his testimony in Washington next week.

ALASKA FEDERATION OF NATIVES,
Anchorage, Alaska, March 11, 1971.

Senator HENRY M. JACKSON,
U.S. Senate,
Washington, D.C.

DEAR SENATOR JACKSON: I am writing to you as the President of the Alaska Federation of Natives which represents all of the 60,000 Aleuts, Eskimos and Indians in the State of Alaska. We strongly urge your personal interest and support for a just and fair settlement of our Native land rights in Alaska.

From time immemorial the Natives of Alaska have used, occupied and exercised dominion over nearly all of Alaska. Under well established legal principles this land use and occupancy gives us original Indian title to this land. Our land title have never been extinguished by the U.S. Congress, although many serious

encroachments have been made by third parties which violate our property rights. This can no longer continue. A just and final resolution of Alaskan Native land rights must be enacted by the 92nd Congress.

This settlement is neither a social welfare program nor an act of Federal charity. The question is not how much land the natives are to be *given*, but rather, how much land they are to surrender, and on what terms. In short, legislation to be enacted constitutes a real estate transaction which recognizes the valid property rights of the Alaskan Natives.

What constitutes a fair and just settlement? A just and equitable settlement should provide the Alaskan Natives with land, money and future expectations within an administrative framework which permits them to manage, as well as derive benefits from their own assets. After long and careful deliberation the Alaska Federation of Natives has proposed the following:

The settlement should include confirmation of fee title in Native village and twelve corporations to 60 million acres of land. As compensation for lands to which Native title has been or will be extinguished in this legislation (approximately 315,000,000 acres), we should receive a payment of \$500 million and retain a perpetual overriding 2% royalty in mineral and other land resources revenues. In short we are willing to permit extinguishment of our original title to the total land mass of Alaska in exchange for 16% of our land, 2% of our rightful mineral interests, and payment for the rest of our land at less than \$2 an acre. By any standard this is a just and reasonable settlement.

These settlement terms are embodied in Senate bill S-835, and a similar bill soon to be introduced in the House of Representatives. We ask that you co-sponsor and support S-835 and its counterpart in the House. We ask that you write or call President Nixon urging his support for our legislation.

As Senator McGovern stated in a recent speech in the U.S. Senate, "the decision we make on this legislation will profoundly affect the lives of Alaskan Natives for generations, and will reflect on the honor of our Nation for centuries."

Sincerely,

DONALD R. WRIGHT,
President, Alaska, Federation of Natives.

RESOLUTION—MARCH 9, 1971

Whereas, the Honorable Spiro T. Agnew, Vice President of the United States, has expressly requested a recommendation from the assembled delegates to the National Conference on Indian Self-Determination as to what should constitute a fair, just, and equitable settlement of the land rights of Alaska's Indians, Eskimos, and Aleuts;

Whereas, the Vice President pledged that he would personally support the recommendations of the delegates here assembled and that he would make every effort to convince the Nixon Administration to support such recommendations;

Whereas, the Alaska Federation of Natives has taken the position that settlement of the land rights of Alaska's Indians, Eskimos, and Aleuts must include confirmation of title to 60 million acres in fee, \$500 million, and a 2 percent overriding royalty of land resource revenues in perpetuity as compensation for the extinguishment of Indian title to the remaining 315 million acres of Alaska Native lands;

Whereas, the Alaska Federation of Natives in the exercise of self-determination has determined that the settlement must recognize this principle through the establishment of 12 autonomous regional corporations to administer the monetary proceeds and to hold title to the land confirmed to the Natives: Now, therefore, be it

Resolved by the National Conference on Indian Self-Determination and the more than 200 tribes represented by the delegates here assembled on this 9th day of March, 1971, that we adopt the position of the Alaska Federation of Natives that a settlement of the land rights of Alaska's Indians, Eskimos, and Aleuts must include confirmation of title to 60 million acres in fee, \$500 million, a 2 percent overriding royalty of land resource revenues in perpetuity as compensation for the extinguishment of Indian title to the remaining 315 million acres of Alaska Native land, and Congressional recognition of a regional corporate structure; be it further

Resolved, That this resolution be delivered to the Honorable Richard M. Nixon, President of the United States, the Honorable Spiro T. Agnew, Vice President of the United States, the Honorable Rogers C. B. Morton, Secretary of the Interior,

the Honorable Louis R. Bruce, Commissioner of Indian Affairs, the Honorable Henry M. Jackson, Chairman of the Senate Committee on Interior and Insular Affairs, the Honorable George McGovern, Chairman of the Senate Subcommittee on Indian Affairs; all members of the United States Senate, the Honorable Wayne Aspinall, Chairman of the House Committee on Interior and Insular Affairs, the Honorable James Haley, Chairman of the House Subcommittee on Indian Affairs, all members of the House of Representatives, and to all Governors of the fifty States.

JOHN RAINER,
Chief Indian Member, National Council on Indian Opportunity; Co-chairman, National Conference on Indian Self-Determination

WENDELL CHINO,
Co-Chairman, National Conference on Indian Self-Determination.

ALASKA FEDERATION OF NATIVES, INC.,
Anchorage, Alaska, February 20, 1971.

The PRESIDENT,
*The White House,
Washington, D.C.*

DEAR MR. PRESIDENT: The Alaska Natives were shocked and outraged over the testimony of your Secretary of the Interior last Thursday on the Native Claims Settlement Act. It is now apparent that the Administration's position on this issue will be totally inadequate.

Secretary Morton announced he will submit a bill confirming our title in about 80,000 acres of land. Last year the Administration supported title to approximately 9,000,000 acres. Last year the Administration supported a Federal appropriation of \$500,000,000. This year, Secretary Morton was uncertain when asked whether this amount would be proposed.

We cannot understand how this latest development is consistent with your stated desire to take "a new direction in Indian Affairs in this country" which you proclaimed at the signing of the Taos Blue Lake bill. We are especially disappointed since members of your staff had indicated there was a good chance that a much better bill would be proposed by the Administration.

The Alaska Federation of Natives Board of Directors passed the enclosed resolution expressing our dismay at this development. We urge you to take appropriate action.

Respectfully,

DONALD R. WRIGHT,
President, Alaska Federation of Natives, Inc.

Whereas, a just settlement of the Alaska Native Land Claims is of the utmost concern not only to the Native people of Alaska but to the Indian people throughout the whole United States, and

Whereas, President Nixon's "enlightened" policy toward the's Indian people of America was received with appreciation by the Native people in every state of the union, and

Whereas, the President's expressed genuine interest and substantial support for a solution to the Alaska Native Land Claims problem was proof of his announced policy, and

Whereas, the recent testimony of Secretary Rogers C. B. Morton before the Senate Interior Committee is obviously and glaringly inconsistent with and contrary to President Nixon's position toward the Native people of Alaska in the previous session of Congress and it leaves the Native people with a sense of gross betrayal of both the President and the Native people of the nation; Therefore be it

Resolved, That the Alaska Federation of Natives Board of Directors expresses its dismay, shock, outrage and disapproval of this latest betrayal by the so-called "guardian" of the Native people.

Adopted this 20th day of February, 1971.

DONALD R. WRIGHT,
President, Alaska Federation of Natives, Inc.
FRANCES DEGNAN,
Secretary, Alaska Federation of Natives, Inc.

NATIONAL COUNCIL ON INDIAN OPPORTUNITY,
OFFICE OF THE VICE PRESIDENT,
Washington, D.C., February 27, 1971.

HON. SPIRO T. AGNEW,
The Vice President,
Old Executive Office Building,
Washington, D.C.

DEAR MR. VICE PRESIDENT: I write to you as Chief Indian Member of the National Council on Indian Opportunity asking that you take a personal interest in the serious problems facing the Alaska Natives with regard to their land claims bill.

As the President has been notified by them, "The Alaska Natives were shocked and outraged over the testimony of your Secretary of the Interior last Thursday on the Native Claims Settlement Act. It is now apparent that the Administration's position on this issue will be totally inadequate."

The Indian members of the Council feel just as strongly as the Alaska Natives that under the policies cited by the President in his July 8, 1970 message that equitable treatment of this critical issue bears directly upon meaningful Indian self-determination.

We are enclosing a copy of the letter from Mr. Donald R. Wright to the President along with a copy of the Alaska Federation of Natives Resolution on this subject.

We the new Indian members of this Council want to reiterate, and reinforce the recommendation on this matter which was given to you by the former Indian members of the Council in the meeting you held at the White House in January of 1970. We strongly support the Alaska Federation of Natives' proposal now before the Congress.

Thank you for your attention to this most pressing matter.

Sincerely,

JOHN RAINER,
Chief Indian Member.

WASHINGTON, D.C., March 3, 1971.

TO ALL INDIAN PEOPLE: In the year 1971 the biggest land fraud since the lower 48 land wars is being perpetrated on our Alaskan Native Brothers. The buttress of Indian culture is at stake in this matter.

We urge you to no longer remain silent, for you understand your past best and know that what has happened to you is happening in Alaska today under the disguise of oil and economic development.

The Department of the Interior has completely flunked as legal trustee of the land and water rights of American Indians. These "conflicting responsibilities, obligations, interests, claims, legal theories—indeed philosophies—oftentimes prevent the Interior and Justice Department administrators, planners, engineers and lawyers from fulfilling the trust obligation, which the nation owes, to the American Indians in regard to natural resources."

The proposals of the Senate Interior Committee contained in S. 35, House version H.R. 3100, and those of the Interior Department are totally unacceptable to Alaskan Native people. This is the first termination policy imposed on Alaskan Native aboriginal titles.

We urge you to support and endorse the position of the Alaskan Native people advancing the passage of Senate Bill 835. Act now, contact the President, your representatives in the Congress, Senator Henry M. Jackson, Congressman Wayne Aspinall, Senator Fred R. Harris and Senator Edward M. Kennedy, and let them know you support our Alaskan Brothers.

LaDonna Harris, President, AIO Action Co., 1820 Jefferson Place, N.W., Washington, D.C. 20036.

Leo Vocu, Acting Executive Director, National Congress of American Indians, 1346 Connecticut Avenue, N.W., Washington, D.C. 20036.

Charles Lohah, American Indian Task Force, 1145 19th Street, N.W., Washington, D.C. 20036.

Don Wright, President, Alaska Federation of Natives, 1775 K Street, N.W., Suite 700, Washington, D.C.

UNITED CROW BAND,
Tok, Alaska, March 1, 1971.

Hon. Senator HENRY M. JACKSON,
Chairman, Senate Interior Committee,
Washington, D.C.

DEAR SENATOR JACKSON: The United Crow Band includes all Athabaskan Indians of the watershed of the Tanana River from Big Delta up to the Canadian Border and of the watershed of the Forty-Mile River, including the villages of Healy Lake, Dot Lake, Mansfield, Tanacross, Tetlin, Northway, Eagle and Mentasta.

Our United Crow Band wish to bring to your attention that the Land Claim Bill before Congress exclude our people from any selection of our property and seek your support that we have the same rights to selections and patent as other villagers have. Our lands have been given Tentative Approval (TA) to the State of Alaska by the Bureau of Land Management.

We wish to point out that the records show that the policy of the B.L.M. discouraged our people from obtaining patent to our property prior to Statehood and after State Selections by not honoring our Claims filed in 1950, by rejection of Allotment Applications, and by giving patent and Tentative Approval (TA) to patent to the State of Alaska.

We wish to point out that the B.L.M. gave Tentative Approval to the lands of our villages, home sites, allotments, sacred burial grounds, subsistence fishing and hunting grounds based upon the State of Alaska's fraudulent claim that the lands were vacant and unused.

The records show B.L.M. rejection of allotment applications before and after our lands were given Tentative Approval to the State of Alaska forcing people to re-apply, often at expense and hardship to them. Many of said applications were rejected on minor technicalities such as the fact that the B.L.M. Agent did not inspect the allotment in the required time; a fault of B.L.M. not of the applicant.

The records show that the State of Alaska has served eviction notices to all our people who were forced to re-apply. To the effect that the State of Alaska considers our peoples occupancy and use of Tentative Approval lands to be in trespass, and to vacate our lands.

We wish to point out that the former Secretary of Interior, Walter Hickel, ignored our pleas for the protection of our property and recommended that no native avail himself of allotment upon passage of the Senate Bill, which was adopted by the Senate, thus giving patent to the State of Alaska to our applied for allotments on Tentative Approved lands.

We are opposed to provisions within Land Claims Bill that repeal the allotment Act and gives patent to the State of Alaska in exchange for the State's promise to return to us some land.

The State of Alaska has selected millions of acres of our best land, including subsistence land, villages, home sites and is holding it under tentative approval from B.L.M.

It is felt by our people that the State of Alaska is engaged in a land swindle with the help of the B.L.M. with such magnitude to be unique in the history of the Native property loss. The past records of the State of Alaska and B.L.M. in regard to the take over of our lands and property can lead to complete destruction of our culture, heritage and the future opportunity for our people to survive as a people. If Congress fails to protect us in selection of our property within Tentative Approved lands, we can only look forward to eviction proceedings against our property leading to bitterness, dispare and dissent for years to come, the State of Alaska has little to gain and much to lose by claiming our property contrary to the Statehood Act.

We appeal for your support that the United Crow Band be included in the present Land Claims now before Congress. That we be allowed selections and patent to our land and property within Tentative Approved Lands, that we have the same rights of selection as villagers on land classified as Public Domain.

Due to past record of the State of Alaska in that our people have been rejected in their claims to their property, harassed by eviction notices and attached under liens against native property under trust patent: a Restricted Patent; our people cannot accept any promise of the State of Alaska to return our property. We reject any provisions of Land Claims Bill which would make the State of Alaska a partner and voice in the selecting or management of our land and property.

We oppose the Sections 13, page 25, House Bill 3100 which in effect abolishes the Bureau of Indian Affairs.

We oppose Section 10-12, House Bill 3100 establishing Alaska Native Distribution Agency consisting of the Governor of Alaska, Speaker of the House, President of the Senate, and four Natives appointed by the Governor.

We would be forever grateful for your support in bringing our plight and proposals and resolutions before Congress that the injustice to our people by the Senate Bill 1830 and House resolution 3100 which exclude our people from any selection under Tentative Approval lands, be corrected.

We oppose political control of any settlement that is made to us for our land.

The United Crow Band will not accept any State promises to return our land to us that they claim under Tentative Approval or patent.

Sincerely,

ANDREW ISAAC,
Chief of United Crow Bands.

UNITED CROW BAND—RESOLUTIONS AND PROPOSALS

The United Crow Band includes all Athabaskan Indians of the watershed of the Tanana River from Big Delta up to the Canadian Border and of the watershed of the Forty Mile River, including the villages of Healy Lake, Dot Lake, Mansfield, Tanacross, Tetlin, Northway, Eagle and Mentasta.

The United Crow Band hereby agree and present our proposals and resolutions before the Honorable Secretary of Interior, C.B. Morton and Congress in regard to the protection of our land and property and for consideration in the present land claims now before Congress.

Whereas the Department of Interior failed to honor our 1950 Land Claim and gave patent and tentative approval (TA) to the State of Alaska to our land, villages and allotments;

Whereas the State of Alaska made fraudulent claims in State applications to selections of lands under the Statehood Act, to the effect that the lands on which our homes, allotments, village sites were located that were vacant and unappropriated;

Whereas the B.L.M. accepted these applications and gave patent and tentative approval to patent to State of Alaska, to our village lands, allotment lands, sacred burial grounds, subsistence camp sites, and village sites of Healy Lake, Dot Lake, Tanacross, Mansfield, Northway, Eagle and Mentasta;

Whereas the State of Alaska, Division of Lands has sent out eviction notices to our people throughout our area ordering our people off their lands and property and that the State of Alaska consider native use and occupancy to be in trespass on tentative approved lands;

Whereas the State of Alaska has opened to entry our lands to others for cabin sites of five acres;

Whereas the United Crow Bands are excluded from any selection of lands within tentative approved lands in the present land claims bill in Congress;

Whereas the former Secretary of Interior, Walter Hickel ignored our pleas for protection and recommended that no native avail himself of an allotment upon passage of Senate Bill 1830, giving our allotments to the State of Alaska. Allotments which number several hundred which are now pending Patent on Tentative Approved Land to the State;

Whereas the Land Freeze does not protect our property and lands which are under Tentative Approval to the State of Alaska, we submit the following request and resolutions:

RESOLUTION NO. 1

It is respectively requested that the Honorable Secretary of the Interior Rogers C. B. Morton and Congress revoke the State Selection of our land and withhold patent indefinitely from the State of Alaska to the lands Tentatively Approved; applied for under the Allotment Act in good faith; for lands filed on in our 1950 Claims and that the State of Alaska be given other lands to select.

RESOLUTION NO. 2

That the Honorable Secretary of the Interior Rogers C. B. Morton and Congress give our people of the United Crow Bands the same rights of selection of our village lands, allotment lands to four plots of land totaling 160 acres, our Village sites of Healy Lake and Mansfield which are Historic Villages, our Sacred Burial Ground, Subsistence Sites, as other villages are whose lands are not Tentative Approved to the State of Alaska;

Whereas the State of Alaska requires that persons receiving Old Age Assistance upon death that the person's property be sold by the State;

Whereas it is of concern that many of our people can neither read or write and who live in poverty have no skills to secure jobs but depend on subsistence living off their lands that they will be victims of con artists, cheats, and that in a few years all native lands granted patent to will be in non-native hands.

RESOLUTION NO. 3

It is requested that Congress grant restricted titles to Allotments, Homesites, Subsistence sites. And the State of Alaska disclaims forever all lands granted to our people; that upon death a holder of such land that the land become the property of the nearest relative, in the event of no relatives, that the land be available to natives of the Band needing land;

Whereas many of our people live whole or part time outside of the Village of Tanacross and Dot Lake, these places are Mansfield Village area, Sand Creek area, George Creek area and Healy Lake area;

These sites are locations of traditional hunting, fishing, and food gathering and Historic Village Sites;

Whereas the State of Alaska claims these sites under Tentative Approval and consider our people to be in trespass.

RESOLUTION NO. 4

That Congress withhold patent to the State of Alaska, allowing our people to select and receive patent to these subsistence areas as well as patents to the villages of Healy Lake and Mansfield Village.

RESOLUTION NO. 5

It is requested that Congress request that B.L.M. process and give restricted patent to all allotment applications showing continued use and occupancy prior to State selection under the Allotment Act as amended to include up to four tracts of land, fishing sites, home sites and food gathering sites totaling 160 acres.

RESOLUTION NO. 6

That our Historic Village sites within our area claimed by the United Crow Bands be given patent to; that subsistence use lands around these Villages be given even though they do not contain enough persons to qualify for land withdrawal.

RESOLUTION NO. 7

We the United Crow Bands are opposed to land claims allowing only five acres subsistence sites, as not enough land around these sites.

RESOLUTION NO. 8

Opposed to repeal of Allotment Act as our people are not farmers and could not acquire under the Homestead Act.

RESOLUTION NO. 9

Opposed to provisions which would not give our people priority to select and receive patent to needed lands within Tentative Approved lands.

RESOLUTION NO. 10

Opposed to Section of Senate Bill which states that no native shall avail himself of allotment upon passage of Claims Bill.

RESOLUTION NO. 11

Opposed to Senate Bill 1830 as it does not allow enough land for native ownership and subsistence use vital to our culture and future needs and security we support the 60,000,000 acres grant of our land in title.

RESOLUTION NO. 12

Opposed to any Claims Bill which does not allow recourse for compensation in the event the Department of Interior or State of Alaska does not honor provisions set forth by Congress within Land Claims Bill.

RESOLUTION NO. 13

Whereas the United Crow Band regards the five hundred million payment for giving up our land as a form of promised Welfare, we believe that this will not contribute much in our future welfare.

We want title to our lands for security in the future, and to be able to lease and develop our land as the State of Alaska plans. This would give more security for future generations of our people. We ask that Congress support our request and include within passage of Land Claims Bill.

ANDREW ISAAC,
Chief of the United Crow Band.

THE TSIMPSHEAN TRIBAL ASSOCIATION,
Metlakatla, Alaska, April 27, 1971.

HON. NICK BEGICH,
Congress of U.S.A., House of Representatives, Washington, D.C.

MR. BEGICH: First let me introduce by correspondence, Mr. Walter Wesley. Walter is the chairman of our organization's Historical Data committee. His election to this position by the Association was a wise choice as Mr. Wesley has been very active in the past in the process of securing factual data on the history of the Tsimpshean Nation and its many tribes.

Upon receiving my request to draw up a document to present to the subcommittee he quickly set to work and produced the enclosed document on Tsimpshean Indians.

The Tsimpshean Tribal Association's stand on the Alaska Land Claims issue lies initially upon the definition "NATIVE".

Although the central organization of Tsimpsheans is within the Annette Island Reserve, the Association does represent Tsimpsheans throughout the State and the Nation.

The Metlakatla chapter of this Association stands firm with the Community Council's wishes that the Reserve status should be preserved.

However, we do feel that since the Reserve is not all Tsimpshean and that not all Tsimpsheans are on the Reserve, that any limitation placed upon the Reserve's position should not be placed upon Tsimpsheans' as a Tribe.

We stand on the fact that Tsimpsheans have, since time immemorial, had aboriginal rights to the territories in question, and that these rights pre-date Alaska's purchase and any border settlement that followed.

The argument that Tsimpsheans on the Reserve want to have our cake and eat it too cannot hold water since the bill states that the Reserve cannot and will not be affected by the terms of this act.

If there is a remote possibility of an individual, or a corporation, which resides within the Annette Island Reserve (Tlinget, Haida, Aleut, Eskimo, Athapascan, etc.) to receive even one legal benefit granted by the commissions set up by the act, again we run up against the basic issue of prejudice and restriction of human rights by the exclusion of persons having Tsimpshean blood.

We also face the same situation away from the Reserve within almost every town in Alaska and throughout the country that have Tsimpshean Indians that fulfill the requirements of enrollment yet cannot participate.

The Tsimpshean Tribal Association strongly feels that only when Tsimpshean Indian blood is not alienated within this act and that only when Tsimpsheans as a tribe are allowed to take their rightful place as American citizens and Alaska Natives, only then can this bill have a true and just settlement.

Please inquire, through the Honorable Nick Begich of the House of Representatives or Mr. Arthur Lazarus Jr., Suite 1000, the Watergate 600, 600 New Hampshire Ave. N.W., Washington, D.C., as to further information and definition from the Tsimpshean delegation.

Sincerely,

TOM LANG, *President.*

METLAKATLA, ALASKA, *April 12, 1971.*

TSMISHIAN INDIANS

PREFACE

Historically, the Tsimshian Indians were scattered along the North Pacific Coast from Stikine area as far South as Gidisju, Milbank Sound. A very good description of this tribe of Indians appears in the *Encyclopaedia Britannica*, Volume 22, page 528, "Tsimshian, and American Indian Linguistic Stock on Nass and Skeena Rivers and Milbank Sound, British Columbia. They are a typical North Pacific Coast tribe, forming with the Tlinget, the Haida, and certain Athabascans, of the adjacent interior, matrilineal subcultured group. The Port Tsimshian phraties, Raven, Wolf, Eagle, and Grisley Bear are distributed through the three tribes composing the Stock. Namely, Tsimshian Proper, Nishga and Git-ksan."

This research will prove that the Tsimshian Indians were aboriginally in Alaska predating the U.S. Purchase. The data and material that is being used in this work has been authenticated by findings of authorities on Alaska History, ethnology and anthropology like Marius Barbeau, Edward Keithahan, Franc Boas, documents and material from the National Archives in Washington, D.C., Library of Congress and many anthropological works by the Smithsonian Institution. Most of the material is information taken from the book "ALASKA", by Clarence C. Hulley, additional information was taken from the *Encyclopaedia Britannica*. We also used quotations and material from President James Monroe, President Theodore Roosevelt, John Adams and many other historical figures. All these sources contributed some information to this work which the writer has compiled to show that the Tsimshian Indians were in this area before it was purchased by the U.S. in 1867.

From the time immemorial the Tsimshians used this area of Southeastern Alaska for habitation until the U.S. Purchase in 1867 when an International Boundary line was established right down the middle of their Country at Dixon Entrance, which is situated partly in Alaska and British Columbia.

When Fort Tongass was established on Tongass Island at the mouth of Portland Chanal, with cannons pointing toward the boundary. Knowing the destructiveness of the Caucasian artillery, the Tsimshians feared to approach this bastion, and thus were discouraged to travel northward then after. For this reason, there was less and less use of the areas once occupied for livelihood in Alaska, by the Tsimshians.

WALTER WESLEY.

TSMISHIAN INDIANS

(By Walter Wesley)

On July 8, 1799, Emperor Paul I of Russia, granted a charter to the Russian American Company. The terms of the charter forbade all other companies encroaching on the territory granted which comprised all the coast of North America from Latitude 55 degrees to Bering Strait and beyond it.

At that time in history, there were no whitemen or any other foreigners south of the Russian Territory, because it was the stronghold of the numerous Tsimshian nation. Their biggest encampment was situated at Port Simpson with a population of 20,000 before the disastrous smallpox epidemics. "Blankets were contaminated by traders and distributed among American Indians in order to reduce their fighting strength through smallpox epidemics", quotation from *Encyclopaedia Britannica*, Vol. #3, page 598 A.

This tropic like region of Pacific Northwest America now called Dixon's Entrance, warmed by the Japanese current and fed by fresh water from the interior of North American Continent by the mighty Skeena and Nass Rivers, is an ideal place for propagation of salmon, halibut and various seafood. The tropic like rain forests and mountains were full of game; like deer, moose, goats, bears, and valuable fur bearing animals. The seashores were teeming with ducks, geese, seagulls and many other birds. This is the only region where the giant red cedar tree is to be found, which the Tsimshians used for canoe building, split shakes for house as well as for making totem poles. Cedar bark baskets and mats and many highly prized artifacts are made with red cedar.

This area is the exclusive hunting and fishing possession of the Tsimshian nation, and for that reason, Emperor Paul I set the boundary of Russian influence North of 55 degrees Latitude. This rich coveted land belonged to fierce warlike Tsimshians which was never conquered except by an attempt of extermination by biological warfare by the whiteman.

Again in September the year of 1821, Czar Alexander I of Russia, renewed the 1799 Russian American Company charter with the same privileges with the boundary of Russian influence north of 51 degrees Latitude. In February 1822, it brought a prompt note of surprise from the American secretary of State, John Quincy Adams and insisted that 55 degrees should be the southeastern limit of the Russian claim. Mr. Adams was actually helping preserve the Tsimshian Possessions from the encroachment by foreign power, and so was President James Monroe, because he used certain phrases the Secretary of State had used in his discussion with Russia, in which he referred to the Russian incident as follows, quote:

"In the discussions to which this interest has given rise, and in the arrangements by which they may terminate, the occasion has been interests of the United States are involved, that the American Continents, by the free and independent condition which they have assumed and maintained, are henceforth not to be considered as subjects for future colonization by any European powers".

Direct quotation from the well known Monroe Doctrine. The Russian government was not in position to disregard these American protests and declarations, due to deep involvement in European politics. Russia did not want to lose the friendship of the United States, so on April 5, 1824, a Treaty was signed between the United States and Russia. Provided that "the ships of the two powers may mutually frequent, without hinderance whatever, the interior seas, gulfs, harbors, and creeks upon the said coast for the purpose of fishing and trading with the natives of the country."

The article describing the boundaries was later inserted in the Russian-American Treaty at the time of the American Purchase of Alaska. This treaty was actually describing the Tsimshian possession, and "Natives of the country" meant the Tsimshian Indians.

The interior seas, gulfs, harbors, and creeks up the said coast did not bear any Russian names. They all have descriptive Tsimshian names. It is still the same today, like Ketchikan, which is an Tsimshian name (giṭskan), meaning people of cedar-bark-mat.

For this reason: the Canadians and Americans disagreed when they attempted to interpret the agreement made by English and Russian diplomats. The Anglo-Russian Treaty of 1825 had failed to account for the fact that Portland Canal lays 50 miles east of the southeastern point of the Prince of Wales Island. The Canadians contended inasmuch as the treaty of 1825 did not mention going east such a distance. The "Portland Channel" named as such in the agreement, really meant the present Clarence Strait and not the long arm now known as Portland Canal. (see attached map)

The Russians had very good reasons for not naming the eastern extent of the line from 55 degrees Latitude. This part of the Country all of the Northeastern shore of Dixon Entrance was in possession of the unconquerable warlike Tsimshian Nation. At the present time, Tsimshian Indians do not have any Russian names. They do not have any Russian Orthodox Churches. Russian culture and languages are foreign to them.

An attempt was made in 1898 when United States and Great Britain appointed a joint commission to settle a dispute over the Boundary question between Alaska and British Columbia the six commissioners representing each country adjourned without reaching a satisfactory solution.

Again in 1903 negotiations to adjust the Alaska Boundary were renewed, the jurists chosen by President Theodore Roosevelt, were Secretary of War Elihu Root, ex-Senator George Turner, and Senator Cabot Lodge. Throughout the United States a general outburst of derisive laughter greeted the announcement of the appointments.

The "Brooklyn Eagle" suggested that the chances of the Canadians were about equal to the possibility of a "blizzard in Hades". (Quotation from T. Bailey. "A Diplomatic History of the American People" Page 556).

The British members were Lord Alverton, Chief Justice of England, Sir Louis Jette, Lieutenant-Governor of Quebec, and Justice Armour Judge of the Supreme Court of Canada.

On October 20th the decisions were rendered in which the American point of view was upheld, in all the decisions, Lord Alverstone had voted with the Ameri-

cans. The Canadians believed that they were simply the duped victims of American and British Imperialism and Lord Alverstone's votes were influenced by President Theodore Roosevelt's veiled threats.

The History of the Tsimshian nation which included Dixon's Entrance and environs before the Alaska Purchase was a story of a people with a land of plenty, which was able to support a large population and did. No Korean, Japanese, Russian or other foreign ships were depleting her fisheries. No fish traps along her shore rapidly exterminating the "Silver Horde". No Pulp Mills were stripping the land bare and polluting the clean cold Alaska air, no Hudson's Bay Company, or Yankee Traders depleting her rich fur resources. There was no smallpox, Tuberculosis, or Hudson's Bay Rum exterminating the noble Tsimshian Tribe.

The writer will not attempt to cover the ethnology and anthropology of these people. They have been well studied by many learned scientists, historians, explorers and missionaries, and many books have been written about them.

However, their pre-Columbian social, economic and political organization was highly developed.

Their culture was equal to any emerging European race of people. Their art which took many forms were so far ahead of their time that the so-called modern art is just catching up with them.

Their music in the form of dirges love songs and dance music could be a composition of Bethoven or any of the classical composers. Their literature and speech are highly developed, the Tsimshian language is so rich in poetical expression equal to any written by Shakespeare.

This pre-Alaskan land and its aboriginal people sound like the nearest thing to Utopia and Shangri-la, and it was just that until the United States purchase of Alaska in 1867 when their possessions in Alaska were taken over by the United States, and hindered from using their hunting and fishing grounds by the guns of the U.S. Army at Fort Tongass. Also the Tlinget Indians moved into Tsimshian territories under United States Army protection.

No attempt was ever made to include the Tsimshian Indians in their Territorial deals and boundary disputes, although their land was being divided up among these powerful civilized nations of the world.

On September 7, 1888, a treaty was signed by Charles M. Thomas, Lieutenant Commander of the U.S. Navy as representative of the United States aboard the U.S. Coast and Geodetic Survey Steamer "Patterson" to Nisgha Indians in Portland Canal. The verbatim quotation of the "Skookum paper" is as follows:

"This is to certify that Mountain Chief having located on the Western Bank of Portland Canal-United States Territory will not be disturbed in his possessions by any United States Authorities". These possessions mean 55 degrees North latitude and following a line running up the middle of Clarence Strait.

When Mountain Chief tried to use this "Skookum Papers" he was rudely awakened by the Governor of Alaska when he said in his letter to Honorable John W. Hollowell, Department of the Interior, in January 7, 1920. "It has always been the practice in this country to give natives the papers that they may ask for so as to get rid of them 'unquote'." The Tsimshian migration to this promised land took many generations. They crossed the Bering Straits, and across Norton Sound and up the mighty Yukon River, 1,500 miles, to its head waters up in Alaska Interior (Tem Lak Am) and then down the Skeena, Nass and Stikine Rivers. On their migration they left many of the people along the Yukon and Interior Alaska (Britannica, Vol. 22, page 528) including Alaska's oil rich North Slope, whose natives are suing the United States for billions of dollars today."

When they settled on this land on Dixon Entrance, they claimed and used it for their hunting, trapping, and fishing grounds, and made use of the dense forest to make their many products. Many of their Indian foods came from what is now Alaska side, for various sea foods like seaweed, herring spawn, halibut, which we gathered in various Islands, Cape Fox, and many other Alaskan Island and Creeks. These areas still bear Tsimshian names today.

It was on one of these sea food gathering expeditions, on Duke Island, Alaska, that they first came in contact with the white man; to explore the North Pacific Coast and look for the Northwest Passage. (Barbeau page 409 Book 2) From there he sailed up the Portland Canal and met with many more Tsimshian Indians.

In the winter months the Tsimshians gathered in Port Simpson for Potlatches, various ceremonies, totem pole carving, and many Indian artwork, which still survive today. There were many Tsimshians in those days, some of the early white explorers placed the populations of Tsimshians during the winter months at Port Simpson as about 16 to 20 thousand Indians. The following is a list of the

different tribes who gathered in Port Simpson as recorded by William Beynon in 1918. These tribes gathered there for the potlatches during the winter months and in the spring they scattered all over northern British Columbia and South-eastern Alaska.

List of tribes at Port Simpson (Tsimshian):

1. The Gidzarhlaehl tribe on the Island under the leadership of Neeshawt.
2. The Gitlaen
3. Gitandaw Tribe
4. Ginarhangyeek
5. Ginahdoiks
6. Gitwilgyawts
7. Gilldozar
8. Gisparhlawts

This is not the complete list of the Tsimshian tribes who gathered at Port Simpson, but they didn't come to Port Simpson for these ceremonies unless they were invited. The Tsimshian tribes are the Nishga of the Nass River, Gitskan of the Skeena River, Gitzalas of the Skeena River, Gitkatla. The Southern tribes like Gitlope, Kitimat, Gitgait, Giteszu.

Many Tsimshian tribes scattered in isolated villages were never seen or heard from after the great small pox in the Eighth Century.

"On account of their habits during sickness, the American Indians were severely stricken, and students have assigned small pox as one of the chief reasons for the conquests of the land by the white man" (Brittanica Vol 20, page 817).

It was the third voyage of Captain Vancouver in 1793, he came from the Hawaiian Islands in the spring to explore in the North Pacific and to look for the Northwest Passage, when he first came in contact with these Tsimshians.

We know that the Tsimshian Indians first came into contact with the white man on Duke Island, Alaska. Because of the fact the Duke Island is most prominent landmark for ships that sail up the Hecate Straights or Dixon Entrance, and ships that make land fall in this area will steer for Duke Island. And according to Captain James Vancouver himself, anywhere that he made after him. We find one little Island, not very far from there is a point of land which he named Cape Northumberland, after his friend. This is the Island where a favorite camping ground of the Tsimshians called Laranow. The Tsimshians used to go to get their halibut because this is the place where there is a lot of halibut, as there is no halibut in the mouth of the Skeena River and the Nass River due to prevalence of fresh water. There is also no edible seaweed there. It is said that there was so much halibut in Dixon Entrance in those days that they used a spear to catch the halibut on these white sandy beaches in Laranow.

We'll let Edward L. Keithaha tell about the natives first encounter with white men as he wrote about in "Monuments in Cedar: page 98.

"A Tsimshian story of their first encounter with white men concerns one Sabahan who was some distance offshore fishing for halibut when his party saw a strange monster approaching them out of the fog. It was black and shiny, and its numerous long legs lifted then touched the water with a rhythmic beat, causing it to move over the water at an astonishing speed. Sabahan and his companions pulled up their lines and started for shore, paddling furiously. But the monster took after them, gaining at every stroke. Sabahan, believing that they would all be killed, tied kelp fishline around his body and fastened it to the canoe, hoping thereby that his body would at least be found. But the canoe reached shore first and the Indians sprang out, disappearing in the forest. That, is all except poor Sabahan. He had forgotten that he had tied himself to the canoe. He ran until, coming to the end of the line, he suddenly snapped back in to the arms of his pursuers. As it turned out, it was not a water monster after all, it was only a bank of friendly men with pale faces, dressed in dripping black oil skins.

Using sign language, the white men indicated that they wanted Sabahan to build a fire. He understood them, and taking some wax out of his ear, and some equipment from the canoe, started to make fire by friction. The white men, apparently believing this ancient process too tedious, gathered some dry grass. Then one of them taking a pistol from his belt, fired into the heap of grass. Immediately it burst into flame but the loud report of the pistol caused Sabahan to fall to the ground in a faint. When he came to, he felt himself all over carefully to see where he had been hurt but found he was whole. Believing that he was in the presence of supernatural beings who were dealing in magic, Sabahan urinated into his hands, then washed his face in it, this being the approved preventative of witchcraft.

Presently the white men, indicating the halibut in Sabahan's canoe, made known through signs that they wanted him to prepare some for cooking. Sabahan began dressing the fish with a mussel shell but was soon stopped. Then one of the men pulled something bright and shining from his side, struck the fish a few rapid blows and it fell in pieces before the amazed eyes of Sabahan.

The other Indians who had been lurking in the trees watching, were now beckoned by Sabahan to come out of hiding since he was sure the strange men meant no harm. Sometime later the white men were guided to the village where the fisherman lived and were feasted on Indian Food and given presents, then the Indians were invited out to Vancouver's ship to taste white man's food and receive a return of presents.

As they approached the ship riding at anchor, its sails furled, the Indians became very uneasy. The rigging of the ship looked like the web of a gigantic spider and the blocks appeared to them as the heads of its victims. But Sabahan reassured them and the visiting party went aboard.

First they were offered pilot bread or hardtack but it looked to them like the bracket fungi or conks that grow on dead trees, Sabahan tasted it and finding it good recommended it to his friends. Then they were offered molasses to eat on their rice. This they refused, believing it to be spoiled blood, but Sabahan tasted it warily and pronounced it sweet. After that they all ate heartily and enjoyed the new food.

Presents were then distributed to all. Some were given knives, others hatchets, beads, buttons, small bells and articles of clothing. But Sabahan received the most wonderful gift. It was a small mirror in which he saw his own face for the first time. With this mirror, Sabahan became a very wealthy man. People came to believe that in it they could see their future. Sabahan capitalizing on their credulity, charged them so much to look.

We know from fact that by an interesting and historical accident, just one month separated the visit to the same spot of the two leading explorers whose names are associated with the Northwest coast. Vancouver moved out of his first anchorage in Restoration Cove in the middle of June and Alexander McKenzie moved in after an overland journey in 1793. Another event that happened was the eruption of a volcano at the head of Nass River. These events happened the same year.

There were no Tlingit Indians at this part of the land prior to the United States Purchase in 1867, when the U.S. established a Fort at Tongass Island, this fact is described in the book titled "Monuments in Cedar", by Edward L. Keithahn.

"At the time of the Purchase of Alaska in 1867, about a third of the native Indians of the coastal rain forests of the Alaskan Panhandle were in object to slavery to other Indians. The powerful Haida and some of the Tlingit raided the coast as far south as Pudget Sound and brought back captives for their own servants or for trade to Haida, Tsimpshean or Tlingit tribesmen. Many were born in slavery. Other Indians gambled away their freedom or lost it in petty intertribal clashes. To harbor an escaped slave was unpardonable. This was how the Ganazadi Ravens had made their mistake. Because they had given sanctuary to escaped slaves they were considered outlaws and had been harried from place to place until weakened and without hope, they had settled on a tiny village island there to make their last stand against powerful and implacable foes.

"About this time the Purchase took place and the U.S. Government set up a Custom Station near the southern border of Alaska on Tongass Island to try to intercept smugglers from Canada. This was not far from Village Island and Ebbetts, Chief of the harried group asked permission to settle his people on the island under the protecting guns of the Americans. This request was granted and the little band built their village in the sanctuary for which they were most grateful."

The Tsimpshean made use of what is now known as Tongass National Forest in Alaska. As they derived their timber to make large hollowed out canoes which were very valuable in trade with the Tlingits up north in Chilkat, Sitka, Klawack, and other Tlingit Villages as far north as Copper River where they brought great prices in native copper.

All other Tsimpshean red cedar products brought great prices; like baskets, mats, cedar chests, and totem poles. The reason these items were in great demand was that the Tsimpshean was noted for artistic work, and these items were made of red cedar which did not grow in Tlingit land.

The Tsimpshean used this land before the Alaska Purchase of 1867, because there wasn't any boundary lines.

ANCHORAGE, ALASKA, APRIL 30, 1971.

Re: Alaska Native Land Claims

HON. HENRY JACKSON,
U.S. Senate, Washington, D.C.

DEAR SENATOR JACKSON: This letter is addressed to you in the interests of sensible land use planning for public lands and in the maintenance of our national recreational and wilderness potential.

As you are certainly aware, there are pending before the Congress of the United States a multiplicity of bills concerning Alaska Native Land Claims. An itemized analysis of each of these bills would consume far too much space and far more of your time than would seem warranted. Therefore, I respectfully submit the following general considerations and will follow those considerations up with a specific example drawn from the near vicinity of Anchorage.

My concern lies not so much in the overall size of the land grants, nor in the overall size of the monetary settlements, nor in the administrative structure which will be set up to handle the disposition of these lands and funds. Rather, my concern is with the type of lands that will be available for native selection, with particular regard to park and refuge lands, watersheds, and state selections.

One factor which one fears will be lost in the handling of these various proposals is that all Alaskans, whether or not native, have every bit as much of a stake in the future of this state as do the natives.

Any native land claims bill should identify national parks, national monuments, national forests, national wildlife refuges, national wildlife ranges, and the Alaska State parks, as areas not generally falling within the definition of public lands open to native selection. It should be made very plain in the ultimate legislation, that no such land may be selected by the natives unless the land in question is the site of an existing village or is required as reasonable expansion room for that village. All of the citizens of the United States, native and non-native alike, have a substantial interest in what happens to the Federal and State reserved lands in Alaska, especially those areas which have in the past been designated for special treatment by legislation, such as parks, monuments, and wildlife ranges and refuges. It would be contrary to the best interest of the United States and of the State of Alaska to allow these areas to fall into any form of private ownership.

It is my understanding that every bill presently before the Congress, with the possible exception of Representative Aspinall's, constitutes a greater or lesser degree of threat to this principle. Each bill would, however, be readily susceptible to amendment to provide the protection I urge.

Another point which I would like to stress is that the usable acreage in the State of Alaska for all purposes, development or enjoyable preservation alike, is rather limited in scope. I regret that in the considered judgment of many Alaskans whose knowledge exceeds my own, and in whose relative impartiality I have faith, the grant of as much as sixty million acres of land to the Alaskan natives will in effect give them a near monopoly on holdings of usable land in Alaska, unless the present native proposal that state selections not yet actually patented be made available for native selection is radically modified.

The legal argument (I am an attorney) upon which the natives base their view that unpatented land can be selected by the natives without violating the Statehood Act is equally applicable to patented lands, and therefore scarcely supports the distinction. Likewise, the distinction which the other bills have drawn between State selections which are tentatively approved and those which are not tentatively approved does not in mind find support in the law. It strikes me that once the State has given the Federal government notice of a desire to select a certain area, unless there is a prior and valid entry or occupancy on that land, the selection is in law accomplished. There is no authority in the regulations for withholding tentative approval on the basis of anything other than the non-availability of the land by reason of actual occupancy, or of the existence of a valid, recognized entry. There is nothing in the Statehood Act which indicates that the State cannot select lands which are not in fact occupied and/or used by the natives at the present time, and the right of the State to do so has apparently been expressly recognized by the Supreme Court of the United States. *Organized Village of Kake v. Egan*, 369 U.S. 60, 65, 66, 69 (1962).

The principle which I implore you to see incorporated in any final settlement bill is as follows: That *no* national park, national monument, national wildlife refuge, national moose range, state park, or state selection, in no matter what stage of processing such state selection may be, should be subject to native selection unless the land in question is the village site plus reasonable expansion room surrounding

the village. A compensatory increase in a particular monetary grant to that village, or a non-contiguous grant of land not falling within such categories, could be arrived at to restore relative equality as between villages.

Turning to the specific example, then, let me point to the Chugach State Park east of Anchorage. Within this park lie major recreation areas for use by all people in the Anchorage area without regard to race. Also included in this park are major portions of the Ship Creek and Campbell Creek watersheds. These are the water supply, whether by direct diversion or by ground water recharge, for nearly one-half of the population of the State of Alaska. Due to private litigation having nothing whatsoever to do with native land claims, a selection of these areas by the State in 1963 for watershed protection did not become suitable for tentative approval until after the imposition of the land freeze. The private litigation, against top-filing homesteaders contesting the 1963 selection procedures, was resolved in favor of the State, at considerable expense, including an appeal to the Ninth Circuit. *Kalerak v. Udall*, 396 F.2d 747 (1968). The present AFN bill, the former AFN bill, the President's bill, and even the Senate bill, would threaten these watersheds.

It is insane, as a matter of land use planning, to allow these areas to fall into the hands of *any* private owners. They are presently reserved for the common use of all of the citizens, without regard to race. They should not be made available as private property to anyone. I can only implore you to see that the final bill either protects all state selections and the public parks and areas, except village sites and expansion room, or else makes specific provisions for all areas like the Anchorage watershed. Anything else poses substantial and irreparable economic ecological damage to the State and *all* of its citizens, and most assuredly bears the seeds of long, bitter, and divisive litigation.

I suggest that this modification of the pending bills would clear the way for a generous land settlement that should be acceptable to all the people of Alaska. What I am suggesting is that state selections (in any stage of processing), parks and other public areas, benefit all Alaskans without regard to race, indeed, all Americans; and they should be beyond the reach of any private group, unless defacto already in the hands of a private group (the village). The present proposals, however, do not all incorporate or even permit such rational land use thought. Such concepts must be built into the bill if it is to be regarded as progress for all concerned.

Very truly yours.

E. G. BURTON.

STATEMENT OF WASHINGTON CHAPTER, ALASKA FEDERATION OF NATIVES

The Alaska Federation of Natives—Washington Chapter is the only formal organization known to exist outside the State of Alaska whose primary concern is the welfare of nonresident Alaska Natives. Its board of directors is composed of thirteen Alaska Natives who reside outside the State of Alaska. Its membership is now nearly 5,000, and its potential members may number as many as 20,000.

The Washington Chapter is organized as a nonprofit corporation under the laws of the State of Washington, for the following purposes:

1. To promote pride on the part of the Natives of Alaska in their heritage and traditions.
2. To preserve the customs, folklore and art of the Native races.
3. To promote the physical, economic and social well-being of the Natives of Alaska.
4. To discourage and overcome racial prejudice and the inequities which such prejudice creates.
5. To promote good government by reminding those who govern and those who are governed of their mutual responsibilities.

It is a membership corporation, with regular membership restricted to persons of Aleut, Eskimo, or Alaskan Indian descent.

The Washington Chapter is currently engaged in two major projects. The first is to ascertain by every possible means the identification and location of Alaska Natives resident outside the State of Alaska. Census forms requesting a broad spectrum of information have been and are being sent to all available sources; and many have already been completed and returned for recording. The second project is to undertake a survey of the immediate needs and long range goals of Alaska Natives outside the State of Alaska. The organization stands ready to

assist any governmental agency concerned with the welfare and goals of Alaska Natives, both within and without the State of Alaska. It also is prepared to advise and assist individual Alaska Natives, consistent with the limited funds it receive in donations from its members.

The Washington Chapter is unique among Native organizations in that it, by definition, is composed wholly of Natives who do not presently reside in Alaska. Some testimony in prior hearings has questioned whether the benefits of any Native claims legislation should extend to the members of the Washington Chapter. It is to this question that the Washington Chapter directs its special attention at this time.

A basic premise for the inclusion of benefits to nonresident Alaska Natives in the various proposals is that this proposed legislation is a *settlement* act. The Natives claim aboriginal title to the land, based on occupancy by them or their ancestors.

During the period of early Russian dominion, only a very small portion of the territory was explored by the Russians. While the United States expanded greatly the exploration and development of Alaska, the claims of the Natives to the land, and the status of their aboriginal title, continued as a very difficult problem, recognized but unresolved.

Because of the complexity of the problem, a decision on the Native claims was "reserved" when Alaska was admitted to statehood in 1959. A declared purpose of all proposed Native claims legislation is to finally resolve this problem in the best manner possible, as the end product of decades of research, evaluation, negotiation and compromise. It is proposed as a final settlement, to satisfy and extinguish any and all claims of Alaska Natives.

During the many years in which the question of the validity and value of the claims of Alaska Natives has gone unresolved, some of the Natives have left Alaska. Like most non-Native Alaskans, many Natives regularly visit the "lower forty-eight" for various reasons and varied periods of time. Often, health problems—both transient and permanent in character—require relief from the rigorous Alaska winters or require special care not readily available in Alaska. Perhaps the most frequent occasion for residing outside of Alaska is education.

Because of the diffusion of the Native population among small villages, often in remote areas, the educational facilities locally available are severely limited, as are the facilities for specialized and professional training within the State of Alaska. Consequently, many Natives have left Alaska during the period of their childrens' education, to return when the children complete their schooling. Various other reasonable motivations have impelled Alaska Natives to reside temporarily or permanently outside Alaska.

Appropriately the proposed statutory qualification in all three bills for "native" status is determined by "blood" standards rather than geographical residence. Such a provision appears routinely in Federal statutes providing for the distribution of property (other than real property) to Indians and natives. *E.g.*, 25 U.S.C. §§ 677d, e, g, 697, 747, 797.

The absence of residential qualifications with regard to classification as an Alaska Native accords with past congressional practice, as in the Reindeer Industry Act of 1937, 50 Stat. 900, 902. Such a provision has also received judicial acceptance. Barring some statutory requirement of residence, the removal of a tribal member from his reservation and his disassociation with tribal activities does not affect his right to benefits available to "members" of the tribe. *United States ex rel. Besaw v. Works*, 6 F. 2d 694 (D.C. Cir. 1925).

Traditionally, membership in Indian tribes and bands is based on blood standards, usually without any residence requirement. The Wheeler-Howard Indian Reorganization Act of 1934 (26 U.S.C. § 461 *et seq.*) authorizes the organization of Indian tribes as federal corporations, and does not contain any residence requirements for tribal membership.

Under the enrollment provisions contained in Section 7 of S. 35, the Alaska Natives who do not reside currently in villages may return to the villages and participate in the village corporations if their background is such that they reasonably should be considered a part of a village community (subsections 7(c)-(e)). Indeed, many may choose to do so. S. 35 also gives them the alternative of continuing their present residence outside the villages and being a member of either the Urban or National Corporations (depending on whether they live in Alaska, or in states other than Alaska, respectively). Once having made that decision, it is final (subsection 7(b)(2)). No Alaska Native can be both a member of a village and a member of the Urban or National Corporations (subsection 7(f)).

S. 835, on the other hand, in effect excludes nonresident Natives by providing that virtually all benefits under the Settlement Act would be administered through and by Alaska regional and village corporations (Sections 8, 9). Other than the operating expenses of the proposed Alaska Native Development Corporation, all monetary benefits of the settlement would be paid to the regional corporations (subsection 8(f)(2)), which in turn would distribute most of its income to an "affiliate non-profit membership corporation" and the village corporations (subsections 9(f)(2)(B), 9(f)(3)).

Under S. 835, then, the nonresident Native would be effectively shut out from the benefits of the settlement legislation unless he qualified as a member of a village. But that qualification could be extremely difficult. Subsection 7(a)(1) grants a statutory presumption of enrollment to "any person on an existing membership roll of any Native village," while subsections 7(b)(2) and 7(c) provide for a village to "protest a designation of membership therein by a Native." Protests would be decided by the Alaska Native Commission, itself composed chiefly of Alaska Natives (subsection 6(a)).

Nor would the nonresident Natives fare much better under S. 1571 than under S. 835. While S. 1571 does not directly exclude nonresident Natives, its provision would indirectly exclude nonresidents from at least 50% of the monetary benefits of the settlement. All of the monetary benefits would be paid to and administered by an Alaska Native Development Corporation (subsections 7(f), 8, and 12(e)). Not more than half of the Corporation's income could be distributed to its shareholders, and the balance is to be used primarily to "promote the economic development of the native and the native villages to the greatest possible extent" (subsection 7(f)). Decisions as to how these funds are to be used would be in the hands of the board of 17 directors, 12 of whom would be elected by and represent the twelve Alaska regions and the rest elected at large. The nonresident Alaska Natives, then, would have little or no voice in how the monetary proceeds of the settlement would be applied.

Summarizing, the claim of the Alaska Natives is based on aboriginal title. That title either still exists (on a theory of uninterrupted possession by the Natives), or was extinguished by an actual or constructive "taking" by the United States at some point in the past. If still existing, the title is proposed to be extinguished by the various proposals, and the settlement provisions of these bills are designed to compensate the Natives for their loss, whether it be past or present. From the standpoint of identifying the proper Natives to be compensated for their loss, the "past" or "present" nature of their loss is irrelevant.

The title (and hence the claim) was and is "tribal" or "communal", and membership in the tribe or community (here, the village) is—as it has been historically and traditionally—determined solely by blood and not by residence. The only proper question then, is whether or not a particular individual is in fact an Alaska Native. If he is, then his claim (as an undivided share of the total claim of all Alaska Natives) is to be extinguished by the legislation and he should share in the settlement.

Despite this residence distinction between the Washington Chapter and the other organizations in the Alaska Federation of Natives, the Washington Chapter been recognized and accepted by the AFN as a member organization, with representation on the Board of Directors and full voting rights.

It is not anomalous that the Washington Chapter has an equal status in the AFN with the twelve Alaska regional organizations. The overwhelming majority of Alaska Natives recognize their kinship and common heritage, without regard to any residence distinctions.

As a consequence of these common bonds of heritage and history, the Washington Chapter fully supports the position of its Alaska brothers in their present aims:

1. The Washington Chapter supports S. 835 insofar as it would confirm fee title to the Natives in 60 million acres of Alaska land, even though none of the members of the Washington Chapter will acquire any direct interest in that land.

2. The Washington Chapter also supports the provisions of S. 835 as to a cash settlement and a two percent royalty on revenues from public land in Alaska, in perpetuity.

3. Also, the Washington Chapter supports S. 835 and S. 1571 as to their recognition of native organization through regional corporations. However, the Washington Chapter believes that only S. 835 properly provides for such organizational structure for the *nonresident* Alaska Natives, in the provisions of Section 12 for the Urban and National Corporations.

4. Finally, the Washington Chapter endorses provision of S. 835 that a majority of the members of the Alaska Native Commission must be Alaska Natives, so long as that Commission is not also given the power of economic life or death over the nonresident Natives.

The Washington Chapter vigorously opposes those provisions of S. 835 and S. 1571, however, which would:

1. Require Village membership as an express or implied condition of enrollment by each Alaska Native.
2. Require, either expressly or in effect, that an Alaska Native return to his village for enrollment or to benefit from the proceeds of a settlement.
3. Fail to recognize the necessity for an equal, independent, economically sound organizational structure devoted exclusively to the welfare of the nonresident Natives.
4. Fail to permit each non-resident Native a free and unfettered choice between associating with an Alaska village or region, or with a nonresident organization.

In summary, the Washington Chapter recognizes all three bills as sincere efforts toward an honorable settlement of the Alaska Native claims question. While it shares the basic goals of the parent AFN, the Washington Chapter believes that only S. 35 fully recognizes the equal rights of Alaska Natives not resident in Alaska.

Essentially, the Washington Chapter seeks from any legislation only that which the AFN and S. 35 would give it, recognition of the Alaska Natives resident in the "other 49" as a group (or "region" if you will) with equal rights and equal treatment with the resident Alaska Natives, except for certain rights in land which would be enjoyed only by those who reside on or make beneficial use of it.

Thank you.

SUPPLEMENTARY COMMENTS OF THE WASHINGTON CHAPTER, ALASKA FEDERATION OF NATIVES

The Washington Chapter of the Alaska Federation of Natives urges passage of legislation to settle the Alaska Native claims question. All of the various proposals now before the Committee on Interior and Insular Affairs would accomplish that result.

The Washington Chapter is unable to support any of the bills without reservation, however. The primary reason is that each of the bills in its present form fails to consider the equal rights and distinct problems of the Alaska Natives not presently residing in Alaska.

A second reason, no less important, is that Alaska Natives are not a homogeneous group. The native grouping is composed of various distinct bloodlines, ethnic backgrounds, and historical subsistence patterns. As in any other non-homogeneous group, the various factions and splinters, and combinations thereof, tend to dominate the other members. There is every reason to believe that such domination will continue in the future. The parent AFN has recognized this fact in its application for strong regional organizations to control and manage the proceeds of any settlement. The Washington Chapter would simply carry this theme another logical step, to the recognition of the non-resident Alaska Natives as a distinct group whose problems and needs are not the same as those of the resident Alaska Natives.

For this same reason, the Washington Chapter strongly urges the need for any settlement legislation to carefully protect against the opportunity for any one faction or combination of fractions to dominate the other groups. Any settlement which inadvertently left open the opportunity for any regional organization of Natives to profit at the expenses of another region would be tragic, indeed.

From these general comments, the Washington Chapter offers the following comments on the individual bills now before the Committee:

H.R. 3100

In order to offer comments on all of the amendments which would be required in order to recognize the general principles discussed above, the Washington Chapter believes that a document of undue length would result. While subsection 11(a) defines Native in such a way as to include the Alaska Natives no longer residing within the State of Alaska, it is apparent that non-resident Natives were simply not considered in the drafting of this bill. To amend this bill in accord

with the general comments outlined above would require wholesale revision beginning with the very first section.

The other proposed settlement acts now being considered by this Committee, as well as all of the similar bills being considered by the Senate Interior Committee, are basically comparable and not subject to the basic assumption of H.R. 3100. Upon request, the Washington Chapter will willingly discuss in the extensive detail required the shortcomings of H.R. 3100.

H.R. 7039

Section 3. Subsection (g) should be amended to delete the words "of Alaska" in order to permit the Alaska Natives not residing in Alaska to form a regional corporation.

Section 6. Subsection (a) should be amended to substitute the words "Alaska Natives" for the present words "Natives of Alaska". The term Alaska Natives is used in all other places in the bill, and the present language could be read to preclude a non-resident Alaska Native from being a member of the Alaska Native Commission.

Subsection (d) should be amended to provide for hearings to be held at a "mutually agreeable" location outside Alaska, rather than leaving the decision of the location up to a majority of the Commission. Further, the provision for holding hearings outside Alaska at the request of any party should be made mandatory rather than discretionary with the Commission. Literally tens of thousands of Alaska Natives reside in States other than Alaska, chiefly near metropolitan areas in the Pacific Northwest States, and it would be an impossible financial burden for them to have to attend hearings on their own cases in Alaska.

Section 7. Subsection 7(a)(1) should be amended to permit Alaska Natives to indicate that they are non-resident in Alaska, in order to qualify for a regional corporation composed of non-residents. This subsection could be read to require that the native indicate a village membership, particularly since he could not otherwise vote in elections for the various offices established by the bill. When read in conjunction with the subsection 7(b)(2), permitting a village to protest the inclusion of any individual on its membership roll, the Washington Chapter believes that a dangerous opportunity for discrimination against non-resident natives results. If the native were able to designate that he is a non-resident of Alaska, which would then qualify him for inclusion in the regional corporation formed by non-residents, the opportunity for discrimination would be considerably abated.

There are many Alaska Natives who do not presently reside in the State, however, who would prefer to affiliate with a village. Subsection 7(c) now states that, in the event of a protest by the village of a native's declaration of affiliation, "the burden of proof of membership shall be upon the individual". Since it is the protest by the village which would trigger the necessity for a determination by the Commission, the burden of proof should be upon the village. This placement of the burden upon the village is strengthened by the beginning sentence of that subsection which grants to each native the *right* to designate the village of which he is a member.

Section 8. As is clear from the above comments, the non-resident natives should be provided with a "regional corporation" representing their interests and in which they would have some voice. This would make a thirteenth region, which would require the amendment of subsection 8(b)(1) to refer to thirteen members of the board of directors rather than twelve, and also for four rather than three directors to serve a particular term of years.

The necessity for a separate regional corporation is evident in the provisions for the Alaska Native Development Corporation. The directors of the corporation would be elected one from each of the regional corporations by procedures to be determined by the regional corporations pursuant to subsection 8(d). Membership within the regional corporations is dependent upon membership in the village within that region. As a consequence, most non-resident natives would not be able to participate in the selection of any of the board of directors of the corporation. This disenfranchisement would be avoided by having a separate regional corporation for the non-residents.

Subsection 8(b)(2) provides that the board of directors of the corporation would fill a vacancy by appointment of "a member of the corporation". However, subsection 8(d) provides that the members of the corporation would consist of "the regional corporations". Certainly it was not intended that a corporation should

sit as an actual director, and amendment of the section is required to establish whether the corporation's members are to be the natives or the regional corporations.

Section 9. The only fair way by which to adequately recognize the interests of the non-resident Alaska Natives in H.R. 7039 is by the simple mechanism of providing that those natives should constitute a separate and thirteenth regional corporation. This would be accomplished by an additional subsection 9(b) (and relettering the subsequent subsections accordingly), to provide that the other 49 States of the United States constitute a region.

Subsection 9(b)(1) would then be revised to refer to subsections (a) and (b). Subsection 9(b)(2) would refer to political subdivisions of "a" State rather than "the" State. Subsection 9(c)(1) would require slight amendment to refer to thirteen rather than twelve regions, and to subsections (a) and (b).

Subsection 9(c)(2) would be amended to substitute the words "appropriate State official" in lieu of "State commissioner of commerce". Subsection 9(e)(3)(A) would require amendment to substitute "State of incorporation" for "State of Alaska".

Subsection 9(f)(3)-(7) would require simple amendment making their provisions applicable to those regional corporations having village corporations within the region.

Subsection 9(i) would require simple amendment to refer to the State of incorporation rather than the State of Alaska, and to the appropriate State office rather than the State commissioner of commerce.

H.R. 7432

Section 3. Subsection 3(b) needs to have added the requirement that the native be a citizen of the United States, unless foreign citizens are intended to qualify. Subsection 3(b) should also be amended to delete the words "who the Commission determines to be" where it appears in conjunction with the blood requirement. If the language remains in its present form, the only question for judicial review upon denial of enrollment might well be whether the Commission *decided* the applicant had the requisite blood qualifications rather than whether the applicant did, *in fact*, have the requisite blood qualifications.

It is noted that subsection 4(b) as now written permits payment for legal expenses incurred in regard to claims before the Indian Claims Commission, but makes no provision for the payment for legal expenses with regard to the Settlement Act itself. All of the other bills now pending before either House permits such recovery, in varying amounts.

Subsection 7(c) should be amended so as to provide for a member of the board of directors of the Alaska Native Development Corporation representing the Alaska Natives not resident in Alaska. As presently drafted, the board would be composed of one member from each of the twelve Alaska regions, plus five members who would be elected at large. In this form, over two-thirds of the directors, by definition, do not represent non-resident natives, and sheer numbers dictate that the other five directors would probably be selected from among resident natives. The simplest method for insuring representation of non-resident natives, of course, would be to reduce the at-large membership to four directors, and have the occupants of a "non-Alaska" region select a thirteenth regional director.

Subsection 7(e) provides that the articles of incorporation of the Development Corporation may provide for different classes of common stock. There would not seem to be any reason for dividing the stock into classes. The provision for different classes creates an obvious opportunity for discrimination among the natives in myriad ways. The most obvious method would be to have a class of non-voting common, which would be issued to some of the natives, perhaps the non-resident natives. The provision for classes of common stock should be deleted altogether.

Subsection 7(f) appears to have been drafted with the viewpoint of granting the Development Corporation considerable flexibility so that it might adapt and respond to the various needs of its non-homogeneous shareholders. In providing for that desirable objective, an almost unlimited opportunity exists for intra-corporate discrimination. For example, there is a limitation on the amount of dividends and unsecured loans which the Corporation could make in any one fiscal year. There is no limitation, however, on the amount of outright grants that could be made, nor on the amount of loans for nominal security or simple sales for nominal consideration. It would appear to be entirely consistent with the provisions of this subsection, for example, if a majority of the board of directors simply voted to grant 90% of the corporate assets to one or two regional corpora-

tions. It is unlikely that the other shareholders would have any effective remedy in light of the statutory authority to "provide . . . grants to . . . regional . . . bodies . . . for the purpose of fostering the health and welfare of the people"

The shares of stock of the Development Corporation, as established in H.R. 7432, would provide in effect for per capita ownership by the natives. The same per capita principle should extend to the benefits as well, at least substantially. This might be accomplished by an additional subparagraph requiring that the loans and grants to organizations or individuals within any one region (including a non-Alaska region) may not exceed 110% of the sum which the residents of that region would have received in a straight per capita distribution. In this way, guidelines would exist, with sufficient flexibility to meet emergencies and disproportionate needs of the various regions, while at the same time minimizing the potentiality for intracorporate discrimination.

Subsection 7(f) also refers to "native villages, or regional or governing bodies or native corporation[s]," but does not provide specifically for the formation of such organizations. Secretary Morton's letter of transmittal to the President of April 5, 1971, accompanying the bill, comments on page 4 that, "This corporation will, of course, have authority to establish subsidiary corporations on a regional basis, or any other basis the natives desire." The word "subsidiary" connotes, in a legal as well as a literary sense, that the other corporations would be controlled by the Development Corporation. It might even mean that the other corporations would have to be Alaska corporations, an anomaly when applied to a non-Alaska regional corporation. It would seem to comport more with the needs of the various regions to add an additional subparagraph providing for their specific establishment under the laws of the State of their choosing and subject to the approval of the Commission or the Secretary.

KODIAK AREA NATIVE ASSOCIATION,
Kodiak, Alaska, March 27, 1971.

RESOLUTION

Whereas the Villages on Kodiak Island, and the historic Native Community of Kodiak, are surrounded by lands tentatively approved to the State of Alaska, or are surrounded by Federal Reserve lands and,

Whereas the Governing bodies of the Island Villages have expressed grave concern over the provisions of proposed Congressional legislation on Land Claims because preference selection rights of native groups is not clearly stated and,

Whereas the Native people on Kodiak Island continue to assert their aboriginal rights of ownership of the lands, so, now therefore be it

Resolved, That the Kodiak Area Native Association, acting through its Board of Directors, duly assembled on this 27th day of March, 1971, requests and demands that the rights of the native people of Kodiak Island and elsewhere be fully recognized and that preference land selections be granted on Federal Reserve lands and on lands tentatively approved to the State of Alaska. Be it further

Resolved, That Copies of this resolution be sent to:

- (1) Alaska Federation of Natives, Anchorage
- (2) Congressional Delegation, Washington, D.C.
- (3) Chairmen, House & Senate Interior & Insular Affairs, Wash.
- (4) Governor, State of Alaska
- (5) Village Councils, Kodiak Island.

Passed this 27th day of March, 1971

ROY MADSEN,
Vice President.
HARRY E. CARTER,
Secretary-Treasurer.

STATEMENT OF JEROME TRIGG, PRESIDENT, ARCTIC NATIVE BROTHERHOOD,
NOME, ALASKA

Speaking for and with the Natives in the Bering Strait Area:

We, the Eskimo people of the Seward Peninsula from the Shishmaref area to the Koyuk River including offshore islands encompassing this area, are concerned as to the final outcome of the Native Land Claims settlement and actual receipt of our inherent rights to land and life.

We have occupied our lands and seas from time immemorial. We have lived proudly and without fear.

We support the A.F.N. on:

- (1) \$500 million in cash;
- (2) 60 million acres in land;
- (3) 2% overriding royalty in perpetuity.

1. We have already lost to mining, public roads, airfields and to other federal and state use, much of our land. If land claims are not settled soon, some of our better remaining lands will also be gone.

2. That all lands distributed to the Bering Strait region be given in fee simple title and tax free.

3. Due to the lack of opportunities and work, many of our Native people have been relocated, therefore, we request that a fair share of land based on tribal rolls naming their village as their home town regardless of where they presently live.

4. Since we use the Bering Sea for subsistence from our cosats to and beyond the islands, we request that if ever oil, gas, and other non-locatable minerals are discovered and produced in our waters, we request a royalty in cash from these resources be paid to our regional corporations for all times.

5. We support the regional and village corporations as the best means of distributing money, land, and the development of our area.

6. Our past and present rights to hunting, fishing, and berry picking in our area must remain with us. We have hunted on land and sea and without this subsistence it would form a hardship on our livelihood.

7. (a) We support those villages which do not have sufficient land surrounding them to be able to select land from elsewhere in our claim area.

(b) We ask that those on reservations have the option to select off the reserves.

(c) Those living on federal reserves be able to select lands in the reserve areas. If the federal requirement is to be continued, it shall become the basis for additional compensation to the region in the form of cash payment or lease fees.

8. That no B.I.A. legislation be incorporated in the Native Land Claims settlement.

We have great love for our land, we do not want to lose it! We hope that in sharing with the Federal and State Governments, great care will be used to keep our great and beautiful land as resourceful and bountiful as it has been to us throughout the centuries.

KAY, MILLER, LIBBEY, KELLY, CHRISTIE & FULD,
Anchorage, Alaska, April 1, 1971.

Re: Position Paper of the Aleut League—Alaska Native Land Claims

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

DEAR SENATOR JACKSON: I write this letter on behalf of the Aleut League, one of the three ethnic Native groups of the State of Alaska. The purpose of this letter is to provide some brief commentary on S. 35.

Generally speaking, the Aleut League is in complete agreement with the position taken by the Alaska Federation of Natives.

There are two small areas where the Aleut League would like to suggest modification of S. 35.

The first of these concerns the definition of a "Native" in section 3 (f) of the bill. Rather than comment directly in this letter, I would like to enclose herewith the written testimony of Mr. Ilidore Philemonof, who recently testified before your committee on this problem.

The remaining problem arises due to the fact that the Aleuts, in their long occupancy of the Aleutian Islands, have depended very greatly upon the sea for their subsistence requirements. Although it is difficult to predict with any measure accuracy, it is very probable that the Aleuts rely upon the sea for over fifty percent of their subsistence requirements.

This becomes all the more obvious when one considers the fact that most Aleut communities have no electricity, and thus, no means of preserving food. They are more or less required, on a daily basis, to look to the sea for their means of living.

This has led many Aleuts to raise the question as to whether or not it would be possible to incorporate in a land claims bill some protection of the sea for today's and for future Aleut generations. To this end, the Aleut League has the following recommendation:

That S. 35 be amended to contain a provision allowing each Native village, as defined in section 3 (f) of the bill, to select for their exclusive use 50 miles of shoreline, not necessarily contiguous, and to grant to that Native village the exclusive right of use of the land for a distance of five miles inland from the shoreline and of the sea for a distance of five miles seaward from the shoreline.

I recognize that this is an entirely new suggestion, but if this could be incorporated in the land claims bill, it would more nearly meet the present and future needs of the Aleut community of Alaska.

Very truly yours,

LESTER W. MILLER, Jr.
THE ALEUT LEAGUE,
By ILIODORE PHILEMONOF, *President*.

DEFINITION OF "NATIVE"

The Aleuts, more than any other native people in Alaska, have a particular problem with operation of the bill's blood quantum definition of "Native" which would exclude a small number of Aleuts who are themselves recognized members of an Aleut community and whose ancestors have also been so recognized. This problem results from the greater exposure of the Aleuts to non-native populations going back over 200 years. This greater exposure has led to more frequent intermarriages between Aleuts and non-natives and consequent dilution of blood quantum but frequently has not affected the individual Aleut's way of life and full membership in his native community. To do justice, we feel that these Aleuts should not be penalized and cut off from the benefits of this bill when they and their ancestors have been regarded by their own communities as natives, treated by the state government and federal government as natives, but who know that they are not one quarter Aleut blood.

Under the present wording of S. 35 some Aleuts fully recognized by their village as natives and at least one of whose parents were similarly recognized nevertheless are excluded from the Act's benefits by the definition of "Native." In order to remove this inequity and to allow these Aleuts to participate with other Natives under this proposed legislation, the following language would be deleted from S. 35:

At page 6, on lines 3 and 4
", in the absence of proof of a minimum blood quantum,"

Unless this change is made, an Aleut who is aware that he is less than one quarter Aleut blood, would not be included as a member of an Aleut community within the alternative definition of "Native," even though both he and at least one of his parents had been recognized as Aleuts by their native community.

Deletion of the language as we have suggested above would remove this inequity from the bill.

STATEMENT OF THE SIERRA CLUB, WASHINGTON, D.C.

The Sierra Club appreciates having the opportunity to comment on pending legislation designed to settle the aboriginal claims of Alaskan natives.

A great many decisions of immense environmental importance have been held in abeyance pending the settlement of these claims. The freeze on private claims has been continued to allow time for Congress to devise a settlement; pipeline permits are being held up, among other reasons, to allow the native claims issue to be settled; and the State of Alaska will not be free of conflicts with natives in making its state selections until the claims are satisfied.

In untying this Gordian knot, it is important that this legislation not suddenly throw Alaska's environment at the mercy of unrestrained economic forces. The Bureau of Land Management's authority to classify and plan under the Classification and Multiple Use Act of 1964 expired at the end of 1970. The Taylor Grazing Act's authority to segregate land from private entry does not apply to the Bureau of Land Management in Alaska. Thus, the settlement of native claims could open Alaska to a rush of private land claimants once the freeze on land disposal is lifted.

Under obsolete disposal laws, like the Homestead Act, land speculators could

get title to Federal holdings in Alaska for little or nothing. If such a rush is allowed to take place, many choice public properties will be lost, many fragile sites will be despoiled, and a crazy-quilt pattern of land holding will develop.

Also, there is the danger that the State may try to select lands which belong in the National Park or Refuge System, and that it may also try to select the route of the proposed oil pipeline. All hopes for stiff Federal controls on that possible line would be frustrated if the Federal Government should lose ownership of the right-of-way for it.

To prevent these threats from occurring, it is critical that language be placed in any bill to settle native claims to confer continued classification and planning authority on the Bureau of Land Management. This language should withdraw all unreserved Bureau of Land Management lands from appropriation under the public land laws until the BLM decides to reopen them for disposal to any extent. S. 35 introduced by Senator Henry Jackson and Senator Ted Stevens has such language, and we urge that it be retained.

It appears as Section 24. In addition, it also directs the Secretary of the Interior to make detailed studies of these lands to determine which are suitable for inclusion as recreation, wilderness, or wildlife management areas within the National Park System. Within three years of the act's passage, the Secretary is to notify Congress of his findings and recommendations and at the same time he is to withdraw these areas from mineral entry and leasing and disposal. These withdrawals will last for a period not to exceed five years from the date of the passage of the act.

With such a provision, there is a chance that the most environmentally sensitive and valuable areas in Alaska might be rescued from indiscriminate private claims. But it is also important that key areas of national importance not be lost to the State during the same period. One such area, the Wood River-Tickchick Lakes area, has already been lost. It belongs in a national park. Subsection (2) of Section 24 should be amended to include a proviso specifying that areas identified by the Secretary for study under Subsection (3) or withdrawn under its terms, as potential refuges of parks, should also be temporarily closed to state selection while Congress is considering what the Secretary recommends. In this way, the process of Federal study will not be frustrated by unilateral State action.

Finally, it is important that another proviso be inserted in Subsection (2) also making it clear that areas under consideration as potential routes for a pipeline, for which permits may be received in the next five year period, are not open to state selection either. The Federal Government has made too many pledges with respect to its intentions to afford environmental protection along the pipeline route to expose itself to the possibility of losing control over the route.

We urge that S. 35 be amended to include both of these provisos.

STATEMENT OF GEORGE ALDERSON, LEGISLATIVE DIRECTOR, FRIENDS OF THE EARTH

Mr. Chairman, I am George Alderson, Legislative Director of Friends of the Earth, an international organization of 18,000 members, committed to the preservation, restoration and rational use of the earth. Our Washington office is at 917 Fifteenth Street, N.W.

Friends of the Earth look forward to testifying before the Committee in detail on this legislation when our spokesman can be accommodated on the hearing schedule. We appreciate the opportunity to submit this statement for the record at this time.

Friends of the Earth urge that Native Claims legislation recognize and incorporate the twin objectives of: (1) granting a liberal and realistic settlement in land and money to the Alaskan Natives, and (2) requiring a comprehensive Alaska land-use plan before the carving-up begins.

NATIVE LAND SETTLEMENT

The bills under consideration predominantly represent a taking of Native lands throughout Alaska, in return for which a small percentage of the land is given back to the Natives. The give-and-take of the legislative process becomes a case of the Natives giving, and the non-Natives taking. Compared to the vast land that Native populations ancestrally depended upon for subsistence, these bills would leave them with a token.

Friends of the Earth are sympathetic to a more generous settlement of land than the Administration bill proposes. Yet the fact of the matter is that nobody knows how much land is needed, and *which* land, for either Native purposes, or the purposes of the non-Native population; and nobody will know until a comprehensive Alaskan land-use plan is completed.

We believe that legislation is needed at this time to begin untangling the matter, but it must be done in a way that forestalls the immediate rush to divide up the spoils, without regard to conflicts between different elements of the public, and conflicts between different uses of the land.

Friends of the Earth recommend the following approach:

1. Let the Natives immediately begin selecting village-site lands, and authorize payments to the Natives of \$500 million from appropriations over the next eight to ten years. This would create an immediate improvement in the situation of the Native people, and secure for them the nuclei of Native land-holdings. (Village-site lands should not necessarily be required to surround the actual site, because in some cases of river-dependent villages or those on coastlines, the village-site lands could more appropriately follow the water than extend back into the land.)

2. All Native lands should come out of the lands granted by the Federal government to the State of Alaska in the Statehood Act. The 103 million acres granted to the State in that Act should amply provide for both Native and non-Native purposes. The principal land area in Alaska should remain in Federal hands.

3. A comprehensive land-use plan for Alaska should be authorized by this legislation, involving a joint Federal-State planning effort, including full representation of the Natives. Such a land-use plan should be completed, and approved by Congress, as a prerequisite to further selections by the State or, except for village sites, by the Natives.

Unless such a plan is done, it will be impossible to prevent the same kind of hasty land-grabbing by competing interests that happened in the lower 48 states. The Senate Interior Committee last year recommended enactment of the National Land Use Policy Act, designed to put the 50 states to work on just such land-use plans. In Alaska we have the opportunity to do the planning first, instead of having to go back later and try to pick up the pieces left after the land-rush.

Without joint, careful planning by both the Native and non-Native populations, the Natives stand to lose their subsistence base, and the non-Natives stand to become embroiled in an all-out fight for the most valuable land. Rational land-use decisions go by the boards in such a process.

4. When a comprehensive Alaskan land-use plan has been approved by Congress, then the State and the Natives should be able to proceed with their selections, in accordance with the provisions laid out in the plan, and with the State and Natives having equal priority in making selections.

5. Pending completion of the land-use plan, no major commitments should be made. For example, it would be folly to proceed with any pipeline, such as that provided for in the Administration bill, before we have a comprehensive picture of Alaskan resources. Are there other potential pipeline routes that would have less conflict with other resources? We simply don't know, because only the most superficial land-use planning has been done. We urge that no specific corridor, for transportation or other purposes representing a substantial commitment of the land, be recognized in Native Claims legislation.

SUMMARY

Friends of the Earth recommend immediate alleviation of the Natives' situation through selection of village-site lands and through appropriations. We propose that Native selections be made from the 103 million acres to which the State of Alaska is entitled under the Statehood Act. We urge that all selections beyond the village sites, by either Natives or the State, be held in abeyance until a comprehensive land-use plan is completed for the State of Alaska and approved by Congress.

STATEMENT OF DANIEL A. POOLE, PRESIDENT, WILDLIFE MANAGEMENT INSTITUTE, WASHINGTON, D.C.

This Institute, along with other national conservation organizations, is gravely concerned about the terms of settlement of the Alaska Native Claims. While

the remainder of this letter will deal more specifically with our principal concerns, we wish to make clear at the beginning our general view (1) that the State of Alaska should bear a share of the responsibility of any settlement (money and land) along with the United States and (2) that payments of money constitute a more desirable settlement than excessive grants of land.

Our more specific comments follow:

LAND USE PLAN URGENTLY NEEDED

Pending settlement of native claims, all land withdrawals in Alaska have been suspended for many months. The inference is that state selections and applications for public lands under the many prevailing laws will proceed once the claims issue is settled. Because of events in the past few years, including the discovery of oil and the potential for greatly improved surface access, vast areas of interior Alaska will be exposed to special claims, resource use demands, and settlement and developments of many kinds. Neither the Federal Government, the principal land owner, nor the State are prepared to cope with the flood of land claim applications that will follow a native claims settlement. Pertinent public land law is inadequate and the abuses that are possible under these weak authorities, accelerated by desire to capitalize on the oil discovery and other resource availability, threaten public values of great magnitude.

For this reason, we believe that a Land Plan should and must be made a part of the native claims settlement. The various bills propose that large acreages pass to the natives. Some would authorize random land selection, a procedure that would further compound problems of proper land use. The Bureau of Land Management, in cooperation with State and native representatives, should be authorized and directed to prepare such a land plan (1) before any land outside the immediate vicinity of occupied villages passes to the natives (2) before state selections may resume, and (3) before existing public land laws are reactivated on any basis.

The plan should not take more than two years to complete and interim actions could be taken under the Native Claims and Statehood Acts as agreement is reached on parts of the plan for specific areas. The plan should provide for identifying appropriate town, commercial, airport, communications and allied sites, transportation corridors, and all the rest. It should provide authority to designate, or to temporarily reserve from selection or development for study and subsequent recommendation, areas believed potentially most valuable to remain in public ownership for recreation, fish spawning, wildlife habitat, wilderness and similar purposes.

It is believed that with its constitutional authority over the public lands, the Congress would be failing to uphold its responsibilities to all of the people of the United States should it not include workable land planning authority in the Native Claims Act. The floodgates to land selection, exploitation and development in Alaska currently are held closed by the Native Claims issue. Failure to include adequate land planning authority in this crucial legislation will vitiate Congress' best opportunity to provide for the orderly and provident development of Alaska.

EXTENT AND NATURE OF LAND SETTLEMENT

Pending bills offer a broad range of acreage settlements, some so excessive as to present potential obstruction to the creation of a viable and responsive state government. We firmly believe that, with few exceptions, the conveyance of land title should be tied to existing, occupied native villages. Selection authority not tied directly to villages will impede state selections, making it more difficult, if not impossible, for the State to consolidate an economically, politically, and administratively manageable land area.

At village sites, we favor the outright conveyance of an acreage of not more than three times the actual present occupied site, as proposed in H.R. 3100. For outright conveyance to the Native Corporation, we favor an acreage not greater than that in the proposal reported by the Committee and approved by the Senate in the last Congress. Should the Congress decide to favor the natives with a larger acreage, then we suggest that this be done in the form of subsistence use permits as proposed in H.R. 3100.

If, however, there is a disposition to convey title to a larger acreage than authorized in the earlier committee proposal, we urge that the State of Alaska and the Federal Government share in the grant in proportion to the relationship that the area of State land selection entitlement in Alaska (103.5 million acres)

bears to the remaining federal land in Alaska after all acreage eligibility will have been exercised.

We believe that the Federal Government alone does not bear a land responsibility to the natives. The State should be made to share in this responsibility. Alaska has been treated handsomely under the Statehood Act, and the State and the residents, if they truly are as interested in aiding the natives as they purport, should bear a greater personal share of the settlement.

NATIONAL WILDLIFE REFUGES AND GAME RANGES

We are gravely concerned about the effect of any claims settlement on the federal national wildlife refuges and game ranges in Alaska. This problem has not received adequate consideration by either the Administration or the Congress. Under some plans, notably the Harris and Administration plans, native villages would be given excessive acreage selection rights in these dedicated wildlife areas, so excessive in some cases as to jeopardize their administration for wildlife purposes.

Most of the federal wildlife refuges in Alaska were created to protect necessary habitat for species that require wilderness surroundings, for migratory birds and for colonial nesting species. Listed in the Administration's bill are 29 native villages either located in wildlife refuges or close enough to affect them. Even though many of the villages have a sea-oriented subsistence, large land acreages would be conveyed.

In the Kodiak National Wildlife Refuge, for example, the reported seven villages could take up to 20% of the refuge under the Administration's plan. The Kodiak refuge was established to perpetuate the wilderness kind of habitat required by the giant Kodiak brown bear. Some attempt was made in the past to establish grazing on Kodiak Island, and severe difficulty arose between ranchers and the administration of the refuge. Bears coming off the refuge undoubtedly took a few cattle; others consumed cattle that had died of natural causes. In either case, and because ranching is a marginal business on Kodiak due to the demonstrated low nutritional value of native forage and distance to market, the bears were blamed for all cattle losses. The situation got so far out of hand at one time that even the Alaska government permitted the killing of Kodiak bear from aircraft.

We cite this one example to suggest that the proposed conveyance of large acreages in the refuges, aside from posing long-term land alienation problems, offers the immediate hazard of stimulating activities inimical to wildlife and their habitat.

Natives and wildlife refuges have co-existed in Alaska without difficulty for many years. The refuges were created because the outstanding habitat they contain offers opportunity to conserve and perpetuate wildlife. The animals cannot be shifted or located elsewhere; most are narrowly habitat dependent. Human encroachment promises only to destroy habitat, thereby reducing the value of the areas for wildlife. Some of the refuges, such as Kodiak, assure the preservation of a unique species. Others, such as the Clarence Rhode, are a haven for migratory wildlife, including ducks and geese, that are treasured by millions of Americans and others greatly distant from Alaska. The point is that decisions made here affect many other people than Alaskans.

We urge the committee to examine this matter carefully. None of the information accompanying the Administration's proposal nor the explanations of the Harris bill treat this subject adequately. We suggest that villages that can be accommodated in refuges be granted not more than three times the size of the existing site as proposed in H.R. 3100, if grants are to be made at all. In certain critical areas financial assistance should be authorized to relocate villages so that refuge lands can be excluded from selection in the same manner as the pipeline corridor and defense and park areas. Refuge maps showing villages and depicting the extent of proposed selections should be demanded by the committee so that it can understand the threat to national wildlife refuges and game ranges in Alaska.

I have discussed these three subjects in some detail because we believe they are pertinent to an equitable Native Claims Settlement. These points should be considered and incorporated in the committee's proposal, in our opinion, because the final recommendation of Congress should reflect responsibility and obligation to all United States citizens, including natives and non-native Alaskans, of the future as well as of today.

FAIRBANKS, ALASKA, April 22, 1971.

HON. HENRY M. JACKSON,
Chairman, Senate Interior Committee,
U.S. Senate, Washington, D.C.

DEAR SENATOR JACKSON: As a 26 year resident of Alaska, graduate of the University of Alaska, father of 5 growing Alaskans and interested in Alaska's long-term future, I wish to express my strong feelings on the Alaska Native Land Claim Settlement issue.

First, there certainly is a need for settlement by the federal government of its obligation to the Alaskan natives, via the vehicle of cash. If 500 million is fair, so be it.

Secondly, the native people do need and deserve title to lands in the *immediate* vicinity of each village, *but nothing more!*

The objective should be to determine if there is valid native claims, and if there is, to settle these claims in an equitable manner. This must be done without carving the State of Alaska into large portions that would be dedicated to the exclusive use of only certain elements of our population. If Alaskans are to prosper they can only prosper by the development of the State's resources for the benefit of all its citizens.

I have lived, traveled and hunted in the outlying areas, and know that the number of natives presently dependent for the major portion of their livelihood by hunting, fishing, berry picking etc., to a greater extent than the average non-native Alaskan is very small indeed.

The theory that they need all this area, "to live off the land like their ancestors", is just plain romantic rhetoric. One figure previously mentioned was four townships per village. According to my calculations this is over 92,000 acres per village.

When one considers we are talking about a proposed village count in excess of 250, the total land mass involved becomes staggering even for a state the size of Alaska. Many, many of these villages that are on the preliminary listings contain less than twenty bonafide residents; some exist only as historic legend with no active year round residents for scores of years.

When you start channeling that kind of land area into the hands of any one segment of a states populous for their exclusive benefit it's just plain wrong. Give away the store, *but not the land*. Once the land and it's benefits are taken away from general use it never returns. The land in Alaska is and should be for all Alaskans, native-born as well s born-native.

I don't want my son's forced to dodge a crazy-quils patchwork of exclusive use native land to be able to enjoy our great outdoors and the recreation it offers.

Thirdly, and last, the two percent over-riding royalty is thinking of such a discriminating nature that it is repugnant to me and a hell of a lot more of us non-native tax paying Alaskans. If the federal government feels its obligation requires this type of payment and is prepared to fund 100 percent of the two percent great, but let's not take away from many to enhance the not-so-many. No matter how romantic sounding the cause.

Frankly, I'd rather live in Alaska and be economically strangled for another 26 years than see millions of acres of my children's heritage deeded over to a group who decry a purer moral heritage claim.

Sincerely,

BERT M. SHARP.

FAIRBANKS, ALASKA, April 19, 1971.

HON. HENRY M. JACKSON,
U.S. Senate, Washington, D.C.

DEAR SENATOR JACKSON: Enclosed is a copy of my letter that was previously mailed to Alaska's Governor, State, and Congressional Representatives, stating my views in regard to native land claims. I am in hopes you will read said enclosure and weigh the contents along with the following additional comments.

From the date of purchase through Territorial status days the American citizen that moved to Alaska and established residency was denied the right of full democratic representation; however, he was subjected to full Federal Taxation. TAXATION without representation—shades of the American Revolution!

Finally, Alaska was granted statehood; the entire citizenry of our state rejoiced. Now, after too many years, we could at last be first class citizens, vote for the President of the United States and elect our own officials to represent us in the Congress. We could now exercise management of land and natural resources in

our state. We could, because other states of the union were allowed such autonomy in accordance with provisions contained in the Constitution of the United States of America.

Senator, I submit that the pending native land claims legislation, in particular the Administrations Bill and those sponsored by the Honorable Legislators from Florida and Oklahoma, are not representative of the wishes of the majority population of the State of Alaska. If any one of these bills were to become law, it would go down in infamy as one of the gross miscarriages of democratic process in the history of the United States. There are 250,000 white U.S. citizens that have not been heard. You have listened to numerous spokesmen from native associations, and perhaps have been swayed and influenced by the now national pastime of supporting minority groups, whether justified or not.

Stipulations contained in these bills will substantially kill Alaska as a viable State in the future. I beg you to please give us an opportunity to shape our own destiny as was granted to others. The Federal Government through land freezes and extensions thereof, broke faith with the Statehood Act. (Reminds me of some of the old time Indian treaties.) This Act was designed to benefit all of the people. The pending land claim bills referred to, are designed to benefit only one-fifth of our State's population and at the same time impose perpetual detrimental effects on the remaining four-fifths. *Is this Democracy?*

Sincerely,

R. L. HUFMAN.

FAIRBANKS, ALASKA, *April 16, 1971.*

Hon. WILLIAM A. EGAN,
Governor of Alaska,
State Capitol Building, Juneau, Alaska

DEAR GOVERNOR EGAN: The time has come for the majority population of the State of Alaska to call upon their duly elected representatives, both Federal and State, to speak out on their behalf in regard to the native land claims. It is quite evident that failure to do so in a timely manner will, through silence itself, convey to the rest of our United States that Alaskan John Q. Citizen is willing to acquiesce the claims issue at hand and virtually give the land back to the Indians, Aleuts and Eskimos. These aboriginal people came with the land when Alaska was purchased from Russia. You, as our representative so charged, must be knowledgeable as to the Alaska Organic Acts, wherein Congress recommended the setting aside of 160 acres around each native village. You must then also be knowledgeable as to the extensive native assistance and welfare programs through the ensuing years since purchase, such as: the heavily funded BIA, importation of reindeer for native benefits, Public Health Services, and the Native Land Allotment Act of 1906 allowing 160 acres to each native that could substantiate mere use. (Recently, with the assistance and insistence of the BIA, 1,500 of these applications were filed.) Maybe the land claims should be considered settled! Also, there is natural gas service to Barrow (taxpayers paid to drill and develop), special educational training programs available to natives, and legal services FREE—many of the suits aimed at frustrating the pipeline project are financed by us, the taxpayers—aboriginal fishing rights, new housing, village relocation, business loans, and grants fee titles to certain village locations; airlift of fuel, supplies and evacuations; preferential hiring of natives for specific projects, offers of small business financing for all native groups, and granting of lands for reservations. Most of these are paid for by the taxpayers of the United States and/or private corporations. On a more individual basis, Charlie Brower, a white New England trader, did more for the North Slope natives in regard to whale hunting skills, trading, and bartering than most of them would care to admit.

Please tell us how many millions of dollars have been spent to assist the Alaskan aborigine since Alaska's purchase. Then tell us how much we really owe these people. Some of them, in particular the North Slope Native Association, have spokesmen such as Edwardson, that publicly call the white population "pigs"; another, Upiksoun, states his people do not want American culture to influence their North Slope section. Instead, with the land and wealth they demand they wish to create an oligarchy all their own. I am astounded that he is amazed that Alaskan and Pacific Northwest businessmen do not actively support their claims.

I have not, since Howard Pollock left office, received details from any elected official as to the particulars of pending claims legislation. Perhaps some elected officials do not have the fortitude to take a stand on land claims. However, I am hopeful that *you do*. If not, at least give the general public information in a timely

manner so they can react in their *own* best interests. About all I see our elected officials do is pass resolutions stating they are in favor of an equitable land claims settlement as soon as possible. Please have the guts to tell the voting public what you feel is an equitable settlement in the best interests of the State of Alaska as a whole. If you choose to remain silent on this issue, I sincerely hope that the 250,000 non-native voters in the State of Alaska cast their ballots for *effective* representation in the coming state and national elections.

A good many Alaskans, both white natives and transplants, continue to live in and come to Alaska for the beauty, wildlife, fishing, hunting, open spaces, previous availability of land, individual freedom, opportunities and other reasons. If you allow the grant of 60 millions acres with mineral rights and allow certain aspects of the Administrations Bill, such as four townships blocked around each village, coupled with land freeze extensions, then you should explain to the majority of the population why there are only mountains tops left for settlement and ownership, why the best mineral lands left in the state are owned by aborigines and not open to leasing by others. Tell them that you are sorry places such as Minto March and Tolovana Flats are closed and that ducks and geese had better be taken with a camera at Creamer's Field—Wildlife Refuge.

I am, and will continue to be, for the pipeline. However, if the permit price amounts to a project that owes one billion dollars to begin with and could run dry in 20 years or less, plus 60 million acres of our land, with mineral rights, selected in this order:

First—60 million acres by natives

Second—by Federal Government, of what's left

Third—by State, of what's left

Fourth—I can guess what is going to be left for 250,000 non-natives well, then, I am not an Indian giver—it has been bought and paid for once or twice. If the so-called honorable legislators from Oklahoma, California, and Florida have a guilty conscience, I say they should give their own states back to the Indians.

Sincerely,

R. L. HUFMAN.

FAIRBANKS, ALASKA, April 23, 1971.

AN OPEN LETTER TO RICHARD M. NIXON, PRESIDENT, OF THE UNITED STATES OF AMERICA, THE WHITE HOUSE, WASHINGTON, D.C.

MR. PRESIDENT: Enclosed and attached find a copy of the April 19, 1971, editorial printed in the Fairbanks, Daily-News-Miner. I agree with this editorial in its entirety. It is time that the Native Alaskans of other Aboriginal stock speak so loud and clear that their so far silent voices be heard throughout the Nation.

The New Merriam-Webster Pocket Dictionary defines the word "native"; 1: inborn, natural 2: born in a particular place or country 3: belonging to a person because of the place or circumstances of his birth (his-language) 4: grown, produced or originating in a particular place: Indegenous.

I contend that all persons, regardless of race, creed, color or national origin born in the State of Alaska, are Native Alaskans. It follows that each and every one of these persons is entitled to exactly the same share of any benefits the Federal Government decides to award the Native Alaskans upon the final settlement of the Native Land Claims.

Should the Native Alaskans of other than Aboriginal stock be denied equal participation in the aforesaid benefits, it also follows that only Native Alaskans of pure Aboriginal stock are entitled to a full share. A half-breed would receive $\frac{1}{2}$ share, a quarter-breed $\frac{1}{4}$ share, etc. This would be the only equitable solution to the problem. What restrictions will apply to prevent the dissipation of these benefits by irresponsible members of other races married to Native Alaskans?

In regard to the proposed Alaska pipeline. The Atomic Energy Commission has failed to comply with the provisions of the National Environmental Policy Act in proceeding with plans to explode a nuclear bomb on Amchitka Island. The A.E.C. should be required to prepare an environmental impact statement before it conducts this test exactly as the Alaska pipeline was and is required to do, with exactly the same type and amount of public hearings and national press coverage on both the adverse and favorable testimony given with special emphasis on exactly who is giving said testimony.

From several news releases during the past few weeks, I gather that this detonation will be five (5) times the strength of the last one. Can the A.E.C. guarantee that this detonation will not set off a chain reaction of quakes that could reach from Alaska down the west coasts of both North and South America? We all know that said area has in the past been subject to earthquakes of huge magnitudes.

If, God forbid, our Nation found itself in a state of national emergency, and in dire need of the North Slope oil, you Mr. President would order the Corps of Army Engineers to immediately construct this necessary pipeline, just as President Roosevelt ordered the Alaska Highway to be constructed. As was the case with the Alaska Highway, the pipeline would be constructed as speedily as possible without regard for ecological or environmental factors or the destruction of the natural beauty of the land.

I personally drove over the Alaska Highway 23 years ago, only a few years after it's completion. Nature had already commenced healing the scars of construction. I can well imagine that now, about 30 years after it's completion most of those scars have disappeared.

The willful, intentional and for clearly apparent immensely profitable and financial purposes conspiracy entered into by the promoters and members of the various news media in having Closed-Circuit television and only partial coverage by radio of the Clay-Frazier fight was and is a deliberate and flagrant act of suppression of the news, and according to the first Amendment of the Bill of Rights, Constitution of the United States a violation of the rights of every citizen of this Nation. The Federal Communication Commission, or any other Agency responsible for the protection of these rights should institute proceedings for the prosecution of all those involved in any way in this conspiracy for the commission of this act.

Finally, in regards to the cessation of the production of the two prototype S.S.T. planes. Now that Senator William Proxmire, his cohorts in the Senate and his able stooges and assistants affiliated with the various ecological and environmental groups, have succeeded in halting production of our S.S.T.'s, I suggest that they pool their evidently plentiful resources and excess energy in;

1: Attempting to convince Great Britain, France, and Russia to halt production on their versions of the S.S.T.

2: Convince said Nations to devise some method to deter any pollution caused by operating said planes from traveling on the air currents of the atmosphere and so polluting our air.

3: Request the said Nations not to fly over our Nation or any of our Territories with these planes at less than 500,000 feet.

4: Have our able scientists and engineers etc., design and immediately place in production Rockets suitably armed and having the range and capability to deter any trespassers from entering our atmosphere below 500,000 feet.

5: Commence World War III. This would effectively eliminate the necessity for any of the aforesaid precautionary steps. Pollution, ecology, and environment would be completely erased from the world. There would be no world. I repeat, "There would be no world."

Mr. President, I am an uneducated person, have never taken a typing course and have difficulty with my hands so please excuse the flagrant errors in this attempted type-script.

Sincerely,

ANTON BRAUN.

[From the *Fairbanks Daily News-Miner* April 19, 1971]

IGNORED ALASKANS . . .

The Alaska Native land claims issue comes up for hearings in Washington during the next two weeks in both the Senate and House. We are alarmed at the schedule to be followed at the hearings.

The respective Interior and Insular Affairs committees, which will be conducting the hearings, have announced they will be listening to the testimony of only three witnesses at these hearings. The three on tap are Secretary of the Interior Rogers C. B. Morton, Alaska Gov. William A. Egan, and a representative of the Alaska Federation of Natives.

These hearings should be open for testimony of a more diversified group. It is obvious that the so-called "silent majority" (mostly the 250,000 non-Native Alaskans in our state) are generally not in favor of a claims settlement in the manner now proposed. This group should be allowed to speak.

Sec. Morton will testify in favor of the generous Administration version. Gov. Egan has been silent on his total stand on the settlement—remaining completely mute since the November election as to his preference regarding the all-important acreage aspect. And, the AFN has time and again made its position clear and it is one we feel is directly opposed by the great majority of the residents of our state.

The Senate Interior Committee hearings are scheduled April 27, with the House committee scheduled to hear the issue on May 3-4. There are three versions of the claims bill before each body.

The "silent majority" received that tag because it was felt a large number of people do not speak out on major issues. We are aware of a number of groups and individuals who would be only too happy to speak out on our land claims problem at the upcoming hearings if provided the opportunity.

The measures being considered are as far apart as A and Z. The Administration bill is probably the most generous to the Natives in the Senate and of course the bill entered by Fred Harris of Oklahoma is the most generous in the House.

The most sensible bill appears to us to be the one in the House presented by Colorado's astute Wayne Aspinall and Florida's James Haley. Aspinall, incidentally, is chairman of the House Interior and Insular Affairs Committee.

That the Native land claims should be resolved in a fair and equitable manner is disputed by few. But, our Natives have seized upon the delay in the construction of the trans-Alaska pipeline to continually step up their claims, using the pipeline as a lever for a bigger settlement.

The Administration bill, latest to be entered, most vividly reflects the feeling of the need to get the claims issue out of the way. Aspinall, undoubtedly the key figure in a final settlement, observed of the Administration bill, "the Administration has done what so many others have done—they've let their hearts go further than their understanding should permit."

The Native land claims issue is most complex, and reaching the best settlement is necessarily going to require the understanding of all involved persons. It will have a far-reaching effect on additional requests from Indians throughout the other 49 states, in addition to having a major impact on the future of Alaska.

Action should not be taken on this bill until all voices have been heard. We urge that our 250,000 non-Native Alaskans be given due consideration. The proper place for this majority group to be sounded out is before the respective Interior committees of the United States Senate and House. Under present scheduling, it is clear that the interests of the majority of Alaskans are being ignored.

ANCHORAGE, ALASKA, April 3, 1971.

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

DEAR SENATOR JACKSON: Thank you very much for your March 16 letter covering the response you received from the Secretary of the Interior regarding the effects of the Native Claim Settlement on Alaska Wildlife Refuges. You may be interested in knowing that I received a similar reply from Acting Director Smith, Bureau of Sports Fisheries and Wildlife.

It is my understanding that each village will be granted one township, individual natives would be eligible to patent claims inside a refuge, grazing permits would be issued to private native groups, and public access would be permitted where land claims span a water system. Although this information is helpful, I am disappointed over the fact that Secretary Morton and Acting Director Smith failed to mention the impact these provisions may have on the Kodiak and other Alaska Wildlife Refuges. Your correspondence of February 2 left me with the impression that a "report" from the Department of Interior would, in extent, give an explicit account as to just how our Wildlife Refuges would be affected by the Native Land Claims Settlement. You will agree, I am certain, this remains to be accomplished and therefore I wish to register the following specific objections.

Village Land Grants.—A one township settlement may induce natives to graze livestock which would seriously handicap achievement of the Kodiak Refuge objectives. This is evidenced by the dubious history of livestock grazing on non-refuge lands within the Northeast section of Kodiak Island. The conflict created by livestock grazing on brown bear ranges of Kodiak Island is well documented. It confirms the incompatibility of livestock and brown bear and resulted in the decimation of this wilderness species on existing grazing leases.

There has not been any assessment as to current use of village lands nor any projected need for additional lands relative to the land claim settlement. I seriously doubt that additional village lands are required in view of the diminishing population trends characteristic of isolated villages in Alaska.

Reindeer Husbandry.—As evidenced in the past, reindeer husbandry would be incompatible with Kodiak Refuge objectives. The history of grazing reindeer on the Kodiak Refuge casts considerable doubt as to the managerial ability of the former leasee. The previous reindeer program, while started with high hopes and expectations, disintegrated into complete neglect within a few short years. The herders returned to their village and the reindeer were allowed to become feral, in which state they remain today with a declining population trend. A permit issued as part of the claim settlement would commit the refuge management to undesirable animal control work and will further complicate the objectives of the refuge. It has yet to be demonstrated that reindeer grazing is economically feasible on Kodiak Island. In the 1930's when reindeer herding was first practiced, the program made sense. At that time reindeer provided the only fresh, year around source of meat for Kodiak, commercial fisherman and cannery crews. With the advent of refrigerated shipping and air service, Kodiak is no longer faced with this problem.

Individual Native Land Patents.—As above, it is not only the amount of land withdrawn from the refuge but the location and use the land is put to that creates conflicts with refuge objectives. As an example of the conflict mentioned I use the following: The Federal Government has an active wolf control program on the reindeer grazing leases located on the Seward Peninsula. Whenever wolves come in contact with the reindeer, the wolves are eliminated. This same situation could arise on the Kodiak Refuge if livestock is raised on individual land patent frequented by brown bear. Again, I doubt that a need has been demonstrated for individual patents, and if so, I believe they, the individual natives, would be satisfied with a monetary settlement as a substitute for the land patents.

Subsistence Use.—The need for subsistence use privileges has not been demonstrated for the natives of Kodiak Island. As you may know, the economy of the Kodiak Island Group is saltwater-commercial fishing oriented (read my letter to President Nixon, February 16, 1971) and as a result of its stability, the natives of this region are relatively self sufficient. Local natives have indicated interest in establishing areas containing salt water resources and restricting their usage to Native groups. This type of interest demonstrates their dependence on marine resources rather than land resources. Areas of this type would not be in conflict with refuge goals so long as the Alaska Department of Fish and Game is able to control seasons and harvest quotas. To my knowledge, there has not been any bona fide reliance on land resources for subsistence purposes, at least during the past decade.

I would appreciate very much if you give these objections your undivided attention *because there is valid basis for assuming that a Land Claims Settlement would be detrimental to the Kodiak Refuge*. I realize the above listed objections are in opposition to the letters of Secretary of the Interior Morton and Acting Director Smith. Since the objectionable information is available to private citizens I fail to understand why it is not available to Department of Interior officials and *especially* not available to you upon your written request to this agency.

In reference to the Bill (H.R. 3100), introduced by Representatives Aspinall and Hall, I am perplexed over line 16, page 5 which permits utilization of subsistence resources although said resources are threatened by depletion. It would appear to be of mutual benefit to village residents and other persons as well if such areas would be closed to all hunting and fishing until these resources are fully recovered. I urge the use of your influence to rectify this situation. On page 5, line 6, I believe the term primary residence should apply only to those people who lived in a given location for 365 consecutive days or one full year. Those natives occupying temporary shelters for less than 90 days should not be eligible for an individual withdrawal of 80 acres.

I am indeed thankful for the effort you have expended in supplying me with helpful information.

Sincerely yours,

DARRELL FARMEN.

ANCHORAGE, ALASKA, April 3, 1971.

HON. JOHN D. DINGELL,
House of Representatives,
The Capitol,
Washington, D.C.

DEAR CONGRESSMAN DINGELL: Thank you very much for your letter of March 24 regarding the adverse affects of Alaska Native Land Claims on our Alaskan wildlife refuges.

I am sure you will be interested in the enclosed replies I received from Secretary of Interior Morton and the Acting Director of the Bureau of Sport Fisheries and Wildlife, Spencer Smith. Frankly, I was disappointed in the superficial manner the Department of Interior handled my letter of inquiry as well as the request for information made by Senator Jackson. Please read the attached copy of the letter I sent to Senator Jackson in respect to the potential adversities of the proposed land claims settlement. I entertain the motion that the Department of Interior is giving this matter a white washing and I truly hope action by you and your colleagues will produce more fruitful results.

I fear time is running out in that a settlement will soon be agreed upon, much to the detriment of Alaskan refuge operations. I appeal to you to give this matter the support we all know it deserves.

Sincerely yours,

DARRELL FARMEN.

UNITED STATES DEPARTMENT OF THE INTERIOR,
FISH AND WILDLIFE SERVICE,
BUREAU OF SPORT FISHERIES AND WILDLIFE,
Washington, D.C., March 11, 1971.

MR. DARRELL FARMEN,
Anchorage, Alaska.

DEAR MR. FARMEN: This is in response to your letter to former Assistant Secretary Glasgow which enclosed a copy of your letter to President Nixon concerning your interest in the Alaska Native Claims Act. You expressed concern regarding the effect that land settlement might have on national wildlife refuges in Alaska, with particular reference to the Kodiak National Wildlife Refuge.

As you are probably aware, S. 1830 was not enacted into law during the last session of Congress and an identical bill has been resubmitted as S. 35. We will follow closely the content and progress of S. 35; however, at this time we find no basis for assuming that a land settlement under the present proposal would seriously handicap achievement of our refuge objectives.

It is our understanding of the present bill that villages with populations of less than 400 adjacent to Kodiak Refuge would be eligible to acquire claim to one township of land. Individual natives would not be eligible to patent claims inside Kodiak Refuge; however, they could apply for and receive special use permits for land within a national wildlife refuge. Permits for grazing on national wildlife refuges in Alaska may be issued to private native groups, provided such use is compatible with the objectives established for these refuge lands.

Where land claims span a river or stream within the boundaries of a national wildlife refuge, public access is permitted through the waters but access across land would be at the will of the owner of the tract.

It is a pleasure to learn of your intense interest in preserving these national wildlife refuges for public enjoyment. We share your concern for them and wish to assure you of our intent to maintain careful surveillance over legislative proposals affecting these refuges.

Sincerely yours,

SPENCER H. SMITH,
Acting Director.

DOUGLAS, ALASKA, April 23, 1971

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

DEAR SENATOR JACKSON AND MEMBERS OF THE COMMITTEE: My grandfather came to Alaska in 1901. I have lived in Alaska for 42 years. I married a girl born and raised in Alaska. I regard my family as much native Alaskan as I would a person with a quarter Indian blood.

The Senate and House bills allowing millions of acres of land to be awarded to the Natives are unfounded. If one of such bills became law it would be very unjust, cause great friction and disruption among Natives and whites for generations to come.

In 1946 Congress established the Native Land Claims Commission, whereby Natives could make their claim for land used or occupied. A five year period was allowed for these claims to be filed. However, very few claims WERE filed. I have a strong feeling that the oil strike and riches involved gave some attorneys the needed push to change the whole image of Native land claims.

I strongly recommend the following: pay the Natives the half billion dollars plus the 2% royalty to \$500 million, give them title to the villages, but let the state be developed for ALL Alaskans, for all generations to come, for the good of the state and its future.

Sincerely yours,

MARCUS F. JENSEN.

NORTH POLE, ALASKA, *April 23, 1971.*

I'm Gene A. George born and raised in Stevens Village Alaska, I belong to the Athabascan Indian peoples who made their way of life in this last frontier simple and happy, which is fast becoming the political football field for major corporations which control the economy of the United States of America. For about three weeks now I have started to study the Native Land Claims gathering material from such places as the University of Alaska, Fairbanks Native Association, Alaska Federation of Natives, News from the Associated Press, and most important of all from living in sixty below zero weather, trapping when the odds is against you weather wise, food, & clothing. Learning to survive in this vast land and making a living off the land itself. Now just beginning to realize that the Native Land Claims and the Settlement of it will help me to improve my standards of living if given a fair and equitable claim. The land in question now being decided upon by Congress of the United States must consider and weigh each proposal carefully that has been drawn up by the Bills now before Congress. That these committees take into absolute consideration of the bill that the Natives themselves have introduced into the House and Senate.

Because the people or persons responsible for the making up of the others may not have walked in any Aleut, Indian, or Eskimos moccasin and lived in their conditions over the past one hundred history making years of the State of Alaska. Therefore I would suggest that these committees give the Natives proposal 80 (eighty) per cent majority over the other proposals. When each one of you put yourself in the place of an illiterate Aleut, Indian, or Eskimo and survive on what little money you can get during the short summer months providing that you happen by chance get a job before the white man from the lower 48 (forty-eight) gets it. Then for the next nine months live in a run down cabin with no utilities such as running water, lights, or a thermostat to turn up when you're cold but have to cut wood for your old Yukon stove. But you Mr. Congressman, Senator, and whoever is on this committee would if you were in my shoes decide now that 60 million acres is inadequate. But since you ride in such Jets as the 747 and ride in big roomy cars with a chauffeur, then it is hard for you to make decisions, you look at only the statistics on your desk and wonder how come we want only 60 million acres.

So please remember that your decision will affect the Aleuts, Indians, and Eskimos for the foregoing years to come. Put each proposal in an imaginary scale and weigh them according to the next 20 or so years of the economy of the United States. So after reading the Bill H.R. 7039 I have proposed such modifications and changes I feel will help the interest of the Aleuts, Indians and Eskimos. I haven't tried to change or make suggestions on the other parts of this Bill as you will find out. As I look outside my window and see the snow melting and spring is here I figure there is not much time left in order to get this to Washington, D.C. Sorry I could not go over all of the items but touched it lightly.

ALASKA NATIVE COMMISSION SEC. 6

If a Commission is given full power to control all monies and land, to be associated with many intricate agencies and have the power to hire legal council for almost any kind of situation—we must remember that the 12 Regional Groups that is being set up will be the main governing body of all Aleuts, Indians, and Eskimos—the sooner such Groups is set up the less money that will be spent in

organizing the entirety of the one governing body of the Aleuts, Indians, and Eskimos.

The Commission and the five members appointed by the President of the United States. Three of them should be Native members for the Land Claims is for the settlement of such. They should be given a chance to help run this commission for a period of 12 years. Because they have the better understanding of what life is like in the farthest Village.

Sec. 6(c) page 10 line 3-8 The amount of monies to be paid the commission should not be in excess of 31 thousand dollars for the chairman and 26 thousand for the other four commissioners. To spend large amounts of monies on a newly organized commission would be foolish in that you would spend thousands of dollars needlessly if the commission did not uphold their duties as required by this act. But when the commission start improving the Villages and their conditions then they should get a higher pay scale according to the standard regulation of the Civil Service Commission.

Sec. 6(e) page 10 line 20 An amendment should be added to this clause to *regulate the amount of monies spent on such legal counsel.* Legal counsel should be more defined, who, what, and how?

Sec. 6(e) page 10 line 22 (employees) An amendment should be added to this section. . . . *To control the number of employees, or make it subject to approval by the A.N.D.C. (Alaska Native Development Corporation) to prevent unnecessary spending of salaries and wages.*

Sec. 6(f) page 12 line 15 Change the Wording . . . *any information which that agency is already in possession of it may deem necessary for carrying out and etc. . . . To do away with the unnecessary gathering of information, and not to use different agencies to accumulate information not helping the carrying out the functions of the Commission.*

Sec. 6(i) page 12 line 17 Omit . . . (IN a hearing or other proceeding) change the wording to . . . *Only an official hearing etc. . . .* So that the Commission will not get personal information for which they have no immediate need.

Sec. 6(i) page 13 line 6 Omit . . . (Appropriate) So it reads . . . When each decision etc. . . . So the members of the A.N.D.C. (Alaska Native Development Corporation) will know what is going on at all times.

Sec. 6(i) page 13 line 12, Should add an amendment here pertaining to the *sending of the official records or copies of such matter to the Villages or corporations so they will be notified of such actions by the commission.*

Sec. 6 (k) page 14 line 11-13 and amendment here shall be made a part of this section to protect the rights and give them the opportunity to voice their opinion. Such amendment shall read . . . *Any additions to the duties and responsibilities of the commission should be proceeded by a period of 60 days during which a notice of intent shall have been filed with the A.N.D.C. (Alaska Native Development Corporation)*

SELECTION OF PUBLIC LANDS SEC. 11 PAGE 44 LINE 11

Suggestions . . .

1. Pipeline Corridor. Only those villages whose boundaries fall within or on such corridors should be given title to such lands and not to any corporations.

2. That the Committee on the Indian Affairs make a sincere effort to settle the amount of land in question and arrive at a reasonable amount not less than 50 million acres. The persons on such committees should not think of the publicity and political standard the effects this has on them in the general public.

3. The Alaska Federation of Natives Bill sponsored by them (Bill 7039) must be taken into consideration because some 252 villages are represented for land selection. That if any other village become a part of, and any large corporation get title to such lands then the amount of land should be raised up to the original 60 million.

4. Committee on Indian affairs must realize that if the Aluets, Indians, and Eskimos are not given full mineral rights, then a provision must be made so that in the future they are eligible for such minerals. Common sense will tell you that what good is land to a person if he does not benefit from the full use of it.

Page 80 Attorney's Fees and other Expenses . . . Must be weighed out carefully by the committee before any such act or law be passed, *because these Acts, as amended to the Native Land Claims Bill were made, suggested, and all points have been thoroughly discussed by numerous attorneys in modifying, and proposing such legislation in any Land Claims Bill!*

Just a few more words from your friend the Athapascan Indian from great Yukon River. I will mention this so there will be no misunderstanding about what I have written on this short report. This is done on my own research and not by anyone else. Was not influenced by anyone. As some of you might come to believe. I'm thinking of the ones in the Villages who should benefit the most. May the Lord Bless all of you.

Sincerely, Athapascan Indian from great Yukon River.

GENE A. GEORGE.

AUBURN, WASH., April 24, 1971.

Senator HENRY M. JACKSON,
The Alaska Land Claim Committee.

DEAR SENATOR JACKSON: I am disappointment about not recive the new copy of your last Land claim Bill you got out.

If you Think that I am all done on this Land Claim Deal you are so wrong as I got them all ready to do Battle you people on this Land Claim Bill up in alaska and in seattle too.

This Land Claim Bill is for the birds it stinks like all the other bill you people put up for the Alaska Natives

You are trying to give them pea nuts for the deal you made with the state of alaska about taking all that good land out of the Natives and steal it, The Whole 40 Billion Dollars From the Natives 20 Billion In Oil And 20 Billion in Mineral in it.

The State got half to become a state and the Government got the other Half of all that Land you took away from the Natives that you Arestealing from the Natives The State is talking about the 300 Million they will make from there half a Year.

Just Take a good look at This Corporation you people put up For the Natives, In my first thing in my writing is about "Two corporation One for The Eskimos And Other one for The Aleuts. and that leaves only the Indians Left for one too

Did you think about this when made one Corportion for all you Made "Powder Barrels out of this the way it stands Today.

The Indian will get all the few peanut shells you want to give to the Natives in this set up now the way you set it up.

You know the North Slope Native have said they will take it to court and the Native in the sound are left out of all things you people put up at this time. "Too"

You last letter you said that you us sending me 6 of them natives books and where are they at this time?

You know that "I" said that. Make a Book on this Rotten Deal and put all your pictures in it and tell all this rotten deal from 1867 up to 1971 its getting more rotten as it goes.

Do you people every Think about the little people in this country too.? and just take a good look at this rotten set up on the "Old People In the Country have to put up with as most of them can't write at all. and they are not alone in this as most of the Natives Can't Write at all and who to blame about this "Big Rotten Deal Too," just take a look at this little thing on the fish just who can buy it, Red Snapper is \$0.95¢ per lb. and cod is \$1.59¢ per pound too, and look at the meat in this country also it stinks to high heaven also.

And who can get a sawbones if one get sick the only people you people play Ball is the Billion airs or million airs all the rest needs tin bills so they can pick ' ' ' ' with the chicken

Why is it that 5 per cent have 95 per cent of all the wealth in all this big country and the other side is 95 per cent have only 5 per cent of it.

The only people who you play Ball with is 5 per cent one like the big wheel took the tax off the big one and added it on the guy who could not pay it the poor people.

This country is so rotten from coast to coast with this graft. so " I Think that this Book just got to be finish up soon. and the younger people will clean this rotten thing up soon.

This Rotten one in washington still think they are in the 1880 Hundreds living in this day and age of 1971.

Sinceral Yours

ROBERT W. ARMSTRONG,
The Aleut Professor (Pundit).

Den Nena Henash Yuit—Our Land Speaks Eskimo.
Unanguq Tunuktauq—The Aleuts Speak.

WESTERN OIL & GAS ASSOCIATION,
Washington, D.C., March 9, 1971.

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

ALASKA NATIVE CLAIMS

DEAR MR. CHAIRMAN: This letter expresses our continued support for legislative settlement of the Alaska Native claims and contains our suggestions on S. 35. We respectfully request that it be included in the current hearings, and we hope that it will be helpful to the Committee in its deliberations on this important matter.

When we were privileged to appear before your Committee during the last Congress, we joined other interested parties in urging that legislation be promptly enacted to settle the Alaska Native claims. Time has only served to confirm the need for a legislative solution as soon as possible. Continued delay in enactment works against the interests of everyone concerned, including the United States, the State, the Natives, and our industry as well, and makes it increasingly difficult to proceed with orderly planning, development and other needed activities.

We appreciate, of course, that you and your Committee are keenly aware of these considerations, as evidenced by the passage of S. 1830 in the Senate last year and by the importance and priority you attach to achieving a legislative solution in this Congress.

POSITION ON S. 35

When we appeared before your Committee during the last Congress we did not presume to discuss what would be appropriate terms for a fair and equitable settlement, realizing that this is a matter for Congress to decide after hearing the views of the parties directly concerned—the United States, the State of Alaska, and the Natives. Instead, we limited our comments to specific points on which we had suggestions to offer, particularly: (1) the need for comprehensive description of the Native claims being settled and extinguished, and (2) appropriate provisions for existing Federal and State mineral leases in view of their status as valid existing rights. To a large extent, our suggestions were embodied in S. 1830 as it passed the Senate last July, and are accordingly included in the present S. 35 which is textually the same. Thus:

1. Section 4(a) is a broadly comprehensive declaration of settlement and extinguishment of the Native claims. We have no changes to suggest in it.

2. Existing State mineral leases are appropriately handled by the definition of "public lands" in section 3(i) which excludes patented or tentatively approved State selections. Existing Federal mineral leases are appropriately provided for by the provisions appearing in sections 15(k), 18(g)(1)(B), 22(c), and 23(r). However, as noted later, a similar provision should be included in section 19(f)(1).

Accordingly, the only changes we have to suggest in S. 35 are:

1. Lease provisions in § 19(f)(1)

By floor amendment last July the grant of 500,000 acres to the North Slope Natives, made in section 19(f), was changed from a grant of surface title to a grant of fee title. By apparent oversight, however, the amendment did not include the provisions for existing leases which uniformly appear elsewhere in the bill wherever more than a surface grant is made—see sections 15(k), 18(g)(1)(B), 22(c), and 23(r). This oversight is continued in S. 35. To rectify this oversight and for consistency with the other cited sections of the bill, it is suggested that the following language be inserted after the first sentence of section 19(f)(1), between lines 9 and 10 on p. 119 of S. 35:

"Where, prior to such patent, a lease, contract, or permit has been issued for the utilization of the mineral resources covered under such patent, 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 such patent, the North Slope Native Corporation shall succeed and become entitled to any and all interests of the United States as lessor, contractor, or permitter, in any such leases, contracts, or permits covering the minerals patented. The administration of such lease, contract, or permit shall continue to be by the United States. In the event that the patent does not cover all of the land embraced within any such lease, contract, or permit, the North

Slope Native Corporation shall only be entitled to the proportionate amount of the revenues reserved under such lease, contract, or permit by the United States which results from multiplying the total of such revenues by a fraction in which the numerator is the acreage of such lease, contract, or permit which is included in the patent and the denominator is the total acreage contained in such lease, contract, or permit."

2. Competitive bidding

Section 17 provides for competitive bidding in Federal mineral leasing in Alaska. A similar competitive bidding provision is included in section 18(b) in the event minerals in Naval Petroleum Reserve No. 4 should be opened for disposition.

As we have previously testified, this Association takes no position on—either for or against—the question whether competitive bidding should be required for Federal mineral leasing in Alaska. However, if competitive bidding is required, it should be made clear that leases which are not within the known geologic structure of a producing oil or gas field, the so-called "wildcat" leases, will continue to be for a primary term of 10 years and for a maximum acreage of 2,560 acres as provided by existing law. Without this clarification—if "wildcat" leases are limited to a primary term of 5 years and a maximum of 640 acres the same as presently required for leases on lands within the known geologic structure of a producing oil and gas field—it may be seriously questioned whether competitive bidding will produce the hoped for results, in view of the greater uncertainties involved in "wildcat" acreage and of the climatic, logistical and other difficulties of operating in Alaska. Conversely, if it is made clear that "wildcat" leases even though competitively issued are not restricted to the same term and acreage limits as leases within known producing structures, the competitive bidding requirement seems much more likely to achieve its intended objective of generating additional lease revenues in which the Natives will share.

Accordingly, we suggest that the following clarifying sentence be inserted immediately before the last sentence of section 17, in line 11 on page 106 of S. 35:

"Leases issued competitively under this section for lands which are not within any known geologic structure of a producing oil or gas field shall be for a primary term of ten years and may include up to two thousand, five hundred and sixty acres as provided in those Mineral Leasing Acts for leases covering such lands."

and that the following similar sentence be inserted after the second sentence of section 18(b), in line 15 on page 108 of S. 35:

"Leases issued competitively under this subsection for lands which are not within any known geologic structure of a producing oil or gas field shall be for a primary term of ten years and may include up to two thousand, five hundred and sixty acres as provided in that Mineral Leasing Act for leases covering such lands."

3. Possible inconsistency between subsections (1) and (2) of section 24(a)

There is a possible inconsistency and ambiguity between subsections (1) and (2) of section 24(a) which should be clarified:

Subsection (1) would apparently limit Federal mineral leasing in Alaska, for a period of five years, to lands which the Secretary classifies as chiefly valuable for minerals and opens to mineral leasing. Thus subsection (1) reads in pertinent part (underlining added):

"Except as otherwise provided in this Act, all unreserved public lands in Alaska which have not been previously classified by the Secretary are hereby withdrawn from all forms of appropriation under the public land laws, including the mining and mineral leasing laws, for not to exceed five years. The Secretary of the Interior is hereby authorized, at his discretion, and after consulting with the State, to classify any lands withdrawn by this section and to open to mineral leasing . . . for disposal in accordance with applicable public land laws, such lands as he determines are chiefly valuable for the purposes provided for by such laws."

However, subsection (2) creates an exception which would permit continued mineral leasing without going through the process of classification and opening. Thus it provides (underlining added):

"(2) Nothing in this section shall restrict the land selection rights of the State under the Statehood Act (72 Stat. 341), or restrict the acquisition, granting, or use of leases, permits, or rights-of-way under existing law except that rights-of-way under Revised Statutes section 2477 shall take effect only under such terms and conditions as the Secretary may establish."

Mineral leases and permits fall within the literal language of subsection (2) that "Nothing in this section shall restrict the acquisition, granting, or use of leases [or] permits . . . under existing law", and thereby they appear to be excepted from the requirements of subsection (1). The specific restrictions on mineral leasing contained in subsection (1) thus seem meaningless but their very inclusion causes some uncertainty as to what is intended.

The bill should not be left uncertain in this respect. The apparent purpose of subsection (1) is to provide for orderly transition following the termination of the land freeze by the Act. However, the restrictions respecting mineral leasing in subsection (1), which would require classification and opening, are not needed to provide for orderly transition and seem inconsistent with other provisions of the Act.

They are not needed because, as the courts have repeatedly held, the Secretary has discretion whether to issue mineral leases. Accordingly, he does not need additional discretionary authority to refuse to issue any leases which he believes should not be granted during the transitional period following termination of the land freeze. These restrictions of subsection (1) also appear inconsistent with other provisions of the Act because they will delay achievement of the revenue sharing objectives of the bill. Half of the monetary payments to the Natives for settlement of their claims is to come from the proceeds received by the United States and the State from Federal and State mineral leases. However, if it is required for a period of five years that Federal lands be classified and formally opened to mineral leasing before they can be leased, the result will be delays in the issuance of Federal mineral leases and in the implementation of revenue sharing by the Natives.

It is therefore suggested that the matter be clarified either by stating clearly that subsection (2) controls so far as mineral leasing is concerned, or by revising subsection (1) to eliminate the references to the mineral leasing laws and mineral leasing. In either way the apparent ambiguity of the existing language will be eliminated and the objectives of the bill advanced.

* * * * *

We greatly appreciate the efforts of you and your Committee to reach a sound solution of this difficult and urgent matter, and we hope that this statement of our continued support for a prompt legislative resolution of the Alaska Native claims and of our suggestions for changes in S. 35 will be helpful to that end.

Very truly yours,

FRANK W. ROGERS,
Washington Representative.

WESTERN OIL & GAS ASSOCIATION,
Washington, D.C., April 30, 1971.

HON. HENRY M. JACKSON,
*Chairman, Senate Committee on
Interior and Insular Affairs,
Senate Office Building,
Washington, D.C.*

DEAR MR. CHAIRMAN: On behalf of the Western Oil and Gas Association, I submit for the record and for consideration by your committee, the attached statement setting forth our views on S. 835 and S. 1571—Alaska Native Claims. Twenty-five additional copies of the statement have been left with the committee staff.

On last March 9 we also submitted a statement covering our views on S. 35.

We have endeavored to be constructive in our suggestions for modifications of all three of these measures, and we will appreciate any consideration which your committee will give to our statement.

If there is any other way in which we can be helpful with respect to this legislation, please feel free to call on me.

Sincerely yours,

FRANK W. ROGERS,
Washington Representative.

Enclosure.

STATEMENT OF WESTERN OIL & GAS ASSOCIATION ON S. 1571 AND S. 835

Western Oil and Gas Association appreciates the opportunity to submit this statement on S. 1571, the bill proposed by the Administration, and S. 835, the bill favored by the Alaska Federation of Natives, for the settlement of the Alaska

Native claims. We have previously submitted, by letter dated March 9, 1971, our views on S. 35, the other bill pending before the Committee which is the same as the bill (S. 1830) passed last year by the Senate.¹

As stated in our prior submissions, we support a prompt, comprehensive, and equitable legislative settlement of the Alaska Native claims, and we hope that the Committee can quickly fashion from the bills before it legislation which will completely and fairly settle this complex issue. As has been our consistent practice, we do not endorse or favor any particular bill, nor do we presume to discuss what would constitute a fair and equitable settlement. That, as we have said, is for Congress to decide after considering the views of those most directly concerned—the United States, the State of Alaska, and the Natives. As the Secretary of the Interior wrote in transmitting the bill proposed by the Administration, S. 1571, “legislation on this subject represents an agreement among three parties—the Alaska natives, the State of Alaska and the United States Government.”

Accordingly, we do not comment on the settlement packages contained in S. 1571 and S. 835 which are larger, particularly in the amount of land that would be granted, than the settlement provided for in S. 35. Instead, we continue to limit our comments to matters which are of interest to the oil and gas industry operating in Alaska which we represent and on which we think we have constructive suggestions to offer. These points are:

1. The need for insuring that the legislation will achieve a complete and final settlement by comprehensively describing the Native claims which are being settled and extinguished.

2. The inclusion of appropriate provisions regarding Federal and State mineral leases.

Our comments and suggestions on these points follow, first for S. 1571, and then for S. 835.

1. COMMENTS ON S. 1571

A. Comprehensive description of the Native claims which are being settled and extinguished

The declaration of settlement in section 4(a) of the Administration bill, S. 1571, is deficient in two respects which should be corrected by substituting the language of section 4(a) of S. 35:

- (1) S. 1571 does not extinguish Native claims to submerged areas, but only to “land in Alaska”.

- (2) The only statutes cited in S. 1571 as possible bases for the claims are the Act of May 17, 1884, and the Act of June 6, 1900.

In order to achieve a complete and final settlement, these deficiencies should be corrected as they have been in S. 35, and the Alaska Federation of Natives appears to be in accord:

a. Claims to submerged areas. Some of the Native claims are asserted for water as well as land areas. Accordingly, if there is to be a full and final settlement, the Native claims should be extinguished to submerged lands as well as uplands. This point was recognized by the Federation’s testimony in the 1969 hearings that the Natives “are prepared for an extinguishment of anything that is based upon aboriginal title . . . including claims relative to fishing rights so grounded . . .”² Accordingly, section 4(a) of S. 1830 as passed by the Senate last July and its verbatim successor, S. 35, extinguish claims to “land in Alaska (including submerged land underneath all water areas, both inland and offshore, and including any aboriginal hunting or fishing rights that may exist)”. The same language should be included in section 4(a) of S. 1571.

b. Additional citations. In addition to the Acts of May 17, 1884 and June 6, 1900 which are cited in S. 1571, there are a number of other statutes which can be cited as lending possible support to the Native claims of use and occupancy.³ Indeed, the Treaty of Cession can be cited. Accordingly, as in section 4(a) of S. 35, there should be a catchall reference to “any other statute or treaty of the United States relating to Native use or occupancy” in order to have a complete settlement of the Native claims. Again the Federation recognized this point in the 1969 Senate Hearings by suggesting reference to “any other Act of Congress” in addition to the Acts of May 17, 1884 and June 6, 1900 (p. 288).

¹ As a result of our study of the two later bills, we have a couple of additional changes to suggest in S. 35 which were not covered in our March 9 comments. These changes, which would be in sections (2a)(4) and 18(a)(3) of S. 35, are described at pp. 10-11 later in this statement.

² Page 301 of the *Hearings before the Senate Committee on Interior and Insular Affairs on the Alaska Native Claims, 91st Cong., 1st Sess., 1969, Part 2* (hereafter cited as “1969 Senate Hearings”).

³ Examples are the Act of March 3, 1891 (26 Stat. 1095), and the Act of May 1, 1936 (49 Stat. 1250).

Accordingly, we suggest that section 4(a) of S. 1571 (lines 10 through 18 on p. 5) be changed to read the same as section 4(a) of S. 35.

B. Appropriate provisions for State and Federal mineral leases

1. State leases

The Administration bill, S. 1571, like S. 35, does not contain any provisions for handling State mineral leases, and no provisions are needed since lands leased by the State will not be granted to the Natives under either bill. All conveyances to the Natives are to be made from the "public land" which is defined in section 3(e) of S. 1571 to exclude, as in section 3(i) of S. 35, "land selections of the State of Alaska which have been patented or tentatively approved under the Alaska Statehood Act, as amended (72 Stat. 341, 77 Stat. 223)". Accordingly we have no suggestions to offer concerning the treatment of State leases in S. 1571.

2. Federal leases

Subject to a couple of improvements we suggest for complete clarity, the Administration bill also adequately provides for Federal mineral leases on lands conveyed to the Natives. Subsection (f) of section 12 requires that all patents for the lands granted to the Natives be made subject to leases and to the rights granted the lessees thereunder; also, the patentee succeeds to the lessor's share of the revenues and the administration of the lease remains with the lessor.

This subsection (f) is generally the same as sections 15(k), 18(g)(1)(B), and 23(r) of S. 35. However, it would be improved if two additions are made to it which are included in those sections of S. 35:

(1) It should be made clear that the reference to "all income derived from any such lease", which the patentee is to receive, is to the income of the lessor under the lease.

(2) A provision should be added, as it is in S. 35, to apportion the revenue in situations where a patent does not cover all of the area of a particular lease.

For these reasons we suggest that this subsection (f) (line 16 on p. 44 through line 3 on p. 45) be changed to read (language added is shown by underlining):

"(f) Where, prior to patent of any land or interest therein, under this section, a lease, contract, or permit has been issued for the utilization of resources, such patent shall contain provisions making the patent 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. After the issuance of a patent for the land or interest therein subject to such lease, contract, or permit, all income derived from any such lease, contract, or permit *by the lessor, contractor, or permitter* shall be received by the patentee except that the administration of such lease, contract, or permit shall continue to be conducted by the lessor, contractor, or permitter. *In the event that the patent for the land or interest therein subject to such lease, contract, or permit does not cover all the area embraced within such lease, contract, or permit, the patentee shall only be entitled to the proportionate amount of the income reserved by the lessor, contractor, or permitter which results from multiplying the total of such income by a fraction in which the numerator is the acreage of such lease, contract, or permit embraced in such patent and the denominator is the total acreage of such lease, contract, or permit.*"

3. Competitive leasing

Section 13 of S. 1571 would put all Federal mineral leasing in Alaska on a competitive basis. As we have previously testified, most recently in our March 9, 1971 comments on S. 35:

We take no position on the issue of competitive leasing. However, if competitive leasing is required, we think it is necessary to make clear that leases which are not within the known geologic structure of a producing oil or gas field, the so-called "wildcat" leases, will continue to be for a primary term of 10 years and a maximum of 2,560 acres. Without this clarification, the competitive bidding requirement may not achieve its intended objective of generating additional revenue in which the Natives will share.

Section 13 apparently intends to take care of this point since it provides that the Secretary will dispose of minerals "under the provisions of the applicable mineral leasing law" except for the requirement of competitive bidding. However, we think the point is sufficiently important to be spelled out explicitly, instead of being left to implication.

We therefore suggest that the language underlined below be added to the second sentence of section 13 (line 10 to line 15 on p. 45 of S. 1571) so that it will read:

"Except as otherwise provided in section 12(e)⁴ herein, after the date of enactment 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 and in accordance with that law leases issued competitively under this section for lands which are not within any known geologic structure of a producing oil or gas field shall be for a primary term of ten years and may include up to two thousand, five hundred and sixty acres."

4. Revenue sharing

Section 8 of the Administration bill provides for revenue sharing in substantially the same terms as section 18 of S. 35.

In advancing the concept of revenue sharing, the Alaska Federation of Natives made clear that the Natives' share would come from the revenues reserved by the United States and the State of Alaska and would not affect the amount of payments required of lessees (see 1969 Senate Hearings, pp. 364, 567). This understanding was explicitly stated in this Committee's report (S. Rep. No. 91-925, p. 148) on the bill passed last year as S. 1830 and now pending as S. 35:

"Since the Natives' share comes out of the proceeds received by the United States or the State, it does not affect the amount of the royalties, bonuses, rental or other payments required from lessees or purchasers."

For the most part, section 8 of the Administration bill, like section 18 of S. 35, explicitly carries out this understanding of the revenue sharing concept. However, minor clarifying changes are needed in two subsections to spell out completely instead of leaving to implication, that the Natives' share comes from the Federal, and State revenues:

(a) Change section 2(a)(6), in lines 13-15 on p. 2 of S. 1571, to include the italicized language so that it will read as follows:

"(6) a right for the Native Corporation to receive a portion of the revenues *derived by the United States and the State of Alaska* from the leasing and sale of minerals on certain lands in Alaska."

(b) Change subsection (a)(3) of section 8, lines 13-22 on p. 18 of S. 1571, to include the italicized language so that it will read as follows:

"(3) All leases or other dispositions of such minerals made after the date of enactment of this Act shall provide that *the following payments shall be made from the revenues derived by the United States therefrom* prior to calculating the respective shares of the State of Alaska and the United States in such proceeds under the Statehood Act: (A) a royalty of 2 per centum 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 to the Corporation; and (B) 2 per centum of all revenues derived from rentals and bonuses shall be deducted and paid to the Corporation."

Although not specifically covered in our March 9, 1971, comments on S. 35, the same clarifying additions should be made in the corresponding sections 2(a)(4) and 18(a)(3) of S. 35.

We have no further changes to suggest in the Administration bill.

II. COMMENTS ON S. 835

A. Comprehensive description of the Native claims which are being settled and extinguished

1. The declaration of settlement in section 4(a) of S. 835 is deficient in the same two respects which have been discussed above in our comments on the Administration bill, namely, the failure to cover submerged lands, and the lack of a comprehensive reference to statutes and treaties. These deficiencies should be corrected by substituting the language of section 4(a) of S. 35 for section 4(a) of S. 835.

2. Section 4(b) of S. 835 is a new provision, not in any other bill. Its apparent intention is to void the settlement of the claims if the Natives do not get the land and money called for by S. 835. At first glance, this seems eminently reasonable as a general proposition. However, section 4(b) is so broadly drawn that if any part of the settlement package should be upset, the Natives would apparently keep the

⁴ S. 1571 refers to "section 13(e)". This is an obvious misprint. The intended reference is to section 12(e) which provides for certain mineral patents to the Alaska Native Development Corporation.

rest of the package and still have their claims to press for future settlement and they would be aided by the "recognition" accorded the claims in section 2(a) of S. 835. If the settlement of the claims is voided, the recognition of the claims should likewise be voided.

But there is a deeper difficulty with section 4(b) than its breadth and its failure to make provision for voiding recognition. That difficulty is the inconsistency of section 4(b).

With section 14 of S. 835, which recognizes the possibility that a part of the compensation package, revenue sharing by the State, may be upset and provides in that event for the Natives to select the mineral estate in an additional 5 million acres of land; and

With the basic purpose of the legislation which is to effect a final settlement of the claims.

Because of the inconsistencies and uncertainties which section 4(b) introduces into the settlement of the claims, it should be deleted.

B. Appropriate provisions for Federal and State mineral leases

1. General

All three of the bills pending before the Committee contain some provision spelling out how Federal mineral leases are to be handled in the event all or part of the lands covered by them are patented to the Natives. The need for such provisions for Federal leases was recognized, and appropriate provisions were included, in S. 1830 as passed by the Senate last July. These same provisions are, of course, continued in S. 35 which is a verbatim copy of S. 1830. Similar provisions are also contained in the Administration bill, S. 1571, but need improvement as discussed in our preceding comments on that bill, and the same is true of the instant bill (S. 835) favored by the Alaska Federation of Natives as we shall point out.

Neither S. 35 nor S. 1571 contains any provisions for handling State leases, and as we have stated above none are needed in those two bills since all lands patented or tentatively approved to the State are, by definition in those bills, excluded from the public lands which can be selected by and patented to the Natives.

S. 835, however, would permit the Natives to select lands tentatively approved to the State. Consistent with our position of neutrality on the settlement terms, we are not objecting to giving the Natives the right to select tentatively approved State selections so long as State leases on those selections are appropriately recognized, as we understand it is the intent of S. 835 to do.⁵

To carry out this intent, it is necessary to include in S. 835 provisions, not only for handling Federal leases, but also for handling leases which the State has issued on its tentatively approved selections pursuant to the authority of section 6(g) of the Statehood Act. This need is recognized in section 14(e) (1) (B) of S. 835 which contains, beginning at line 4 on p. 74 and ending on line 3 on p. 75, the same provisions for Federal and for State leases as appear for Federal leases in sections 15(k), 18(g) (1) (B), 22(c), and 23(r) of S. 35. Thus section 14(e) (1) (B) of S. 835, like those sections of S. 35, provides that patents are to contain provisions making them subject to outstanding leases, contracts, and permits and to the rights of the holders to complete enjoyment of all rights granted them by such leases, contracts, and permits; that the patentees succeed to the interests of the lessors, contractors, and permittees; that administration of the leases, contracts, and permits will continue to be by the lessors, contractors, and permittees; and that

⁵ In the 1969 Senate Hearings, the Alaska Federation of Natives stated that they were not challenging State leases although they were claiming the right to select tentatively approved State selections (e.g., p. 349).

There is, of course, a substantial question whether Congress has power to allow the Natives to select tentatively approved State selections. There are persuasive reasons for regarding tentative approval as creating vested rights, tantamount to the issuance of a patent—compare *Payne v. New Mexico*, 255 U.S. 367 (1921), and *Wyoming v. United States*, 255 U.S. 489 (1921)—particularly since the device of tentative approval with power to lease and sell conditionally in section 6(g) of the Statehood Act was adopted from section 202(d) of the Alaska Mental Health Enabling Act (70 Stat. 709) in order to allow the State to deal with the land during the lengthy term that the surveys needed for patents are being accomplished. (See H.R. Rep. No. 1399, 84th Cong., 1st Sess. (1955), p. 13, and *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.) Accordingly, the regulations under section 6(g) of the Statehood Act (43 CFR § 2222.94(d)) provide 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 survey of the lands or the issuance of patent or both." (Italic added.)

Nevertheless, if the leases which the State of Alaska has issued on tentatively approved State selections, pursuant to the express authority to lease granted by Congress in section 6(g) of the Statehood Act, are appropriately recognized in the settlement legislation, we have no reason for questioning the transfer of tentatively approved State selections to the Natives either by the State, or by the Congress if Congress believes it has the power and that it should do so as part of a fair and equitable settlement of the Native claims.

the revenues reserved by the lessor, contractor, or permitter will be apportioned on an acreage basis if the patent does not cover all of the land embraced within a lease, contract, or permit.

However, S. 835 fails to include the same careful provisions of section 14(e)(1)(B) in two other sections which also make grants to the Natives, sections 12 and 15. Changes should accordingly be made in those sections for both Federal and State leases, as described below, to conform them to section 14.

2. Changes in section 12

Section 12 of S. 835 is the basic provision for patents to the Natives. For the following reasons, it needs to be changed to incorporate provisions for handling Federal and State leases like the provision in section 14(e)(1)(B) which has been mentioned.

Section 12 provides for four kinds of patents:

(1) The surface of lands withdrawn for grants to villages is patented to the villages (§ 12(b)(1)).

(2) The leasable and locatable minerals in such lands are patented to the regional corporations (§ 12(b)(3)).

(3) The regional corporations also receive patents for all interests, surface and minerals, in the lands which they select to make up the total 60 million acre grant called for by the bill (§ 12(b)(4)).

(4) In addition, certain individual Native applicants may receive patents for the surface (and in some instances the locatable minerals) of lands outside the areas selected for the basic grants (§ 12(c)).

In each case, the patent is to be "subject to valid existing rights", and provision is made for the patentee to succeed to the lessors' interests in any existing leases.

However, there is confusion as to which patentees succeed to the lessors' interest in which leases. For example, the language of section 12(b)(1) is broad enough to vest a mineral lease in the surface patentee (the village), although it is clearly intended by section 12(b)(3) to vest mineral leases in the mineral patentees (the various regional corporations). Also, while the intent is to preserve the rights and privileges of the lessees, this is spelled out only in section 12(d)(1). However, that provision only relates to the patents to individual Natives under section 12(c). It does not cover the basic patents to the villages and the regional corporations under section 12(b). Also it is deficient in scope even with relation to the section 12(c) patents it does cover. Thus, although the patents under section 12(c) can only be for the surface and in some instances the locatable minerals, the language used would make those patents simply subject to leases for the "surface or mineral resources covered under such patent". Those patents must also be made subject to leases of leasable minerals, particularly since the leasable minerals cannot be covered by such patents.

In addition, unlike section 14(e)(1)(B), section 12 of S. 835 does not provide for what happens when only part of the land covered by a lease is patented. There are likely to be a number of such instances, given the size of the withdrawal and the uncertainty as to what 60 million acres of lands will eventually be selected and patented to the Natives. Accordingly, provisions should be included providing for apportioning of lease revenues and for continued administration of the leases by the issuing agency, the Secretary of the Interior or the State, as is done in section 14(e)(1)(B).

Also, since S. 835 unlike the other two bills permits the Natives to select State selections which have been tentatively approved but not yet patented, certain additional provisions are needed in S. 835. Tentatively approved selections which are not patented to the Natives should be confirmed to the State, so as to clear them from any cloud posed by the Native position. Also, since the leases issued by the State on tentatively approved selections under section 6(g) of the Statehood Act contemplate the eventual issuance of a patent to the State, it should be provided that, if the State selection is patented to the Natives, the lease will be treated the same as if patent had been issued to the State.

For the foregoing reasons, and for consistency with section 14, we suggest the following changes in section 12 of S. 835:

(1) Strike the last sentence of section 12(b)(1), beginning in line 4 and ending with line 8 on p. 60.

(2) Strike the last sentence of section 12(b)(3), beginning in line 23 on p. 61 and ending with line 2 on p. 62.

(3) Strike section 12(d)(1) in lines 13 through 25 on p. 64 and insert the following in its place, modeled on the language of section 14(e)(1)(B) of S. 835 and section 15(k) of S. 35.

"(d)(1) Where, prior to patent of any land or minerals under this section, a lease, contract, or permit (including a lease issued under section 6(g) of the Statehood Act) has been issued for the utilization of surface or mineral resources covered under such patent, 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 State or the United States as lessor, contractor, or permitter, in any such leases, contracts, or permits covering the estate patented (surface, minerals, or both surface and minerals, as the case may be). The administration of such lease, contract, or permit shall continue to be by the State or the United States. In the event that the patent does not cover all of the land embraced within any such lease, contract, or permit, the patentee shall only be entitled to the proportionate amount of the revenues reserved under such lease, contract, or permit by the State or the United States which results from multiplying the total of such revenues by a fraction in which the numerator is the acreage of such lease, contract, or permit which is included in the patent and the denominator is the total acreage contained in such lease, contract, or permit."

(4) Insert the following new subsection (e) between lines 13 and 14 on p. 65:

"(e) Nothing contained in this Act shall affect or prejudice the rights granted or reserved in any lease, contract, or permit issued by the United States or the State (including leases issued under section 6(g) of the Statehood Act) for utilization of surface or mineral resources which is outstanding on the effective date of this Act, and such rights are hereby confirmed subject, however, to the provisions for succession to the interests of the United States or the State and for distribution of the revenues reserved by the United States or the State thereunder which are contained in this Act. Any such lease issued under section 6(g) of the Statehood Act on land patented under this Act shall be treated for all purposes as if patent had issued to the State subject, however, to the provisions for succession to the interests of the State in such lease which are contained in this Act. All land selections by the State, which (1) prior to the effective date of this Act have been tentatively approved under section 6(g) of the Statehood Act but not yet patented to the State and (2) are not patented under this Act, are hereby confirmed and shall be patented to the State subject, however, to the provisions of section 14 of this Act."

3. Changes in section 15.

Section 15 revokes the Native reserves and provides for the following grants:

(1) Except for the Moquawkie and Annette Islands reserves, Native villages are given the option of selecting reserves set aside for their benefit either under sections 10-12 or under section 15(b). In either event the villages do not receive minerals, but it is not made clear that minerals will be patented to the regional corporations if the villages acquire title under section 15(b).

(2) The Village of Tyonek is given the option of receiving patent to all lands and minerals in the Moquawkie Reserve—section 15(c).

(3) The Annette Islands Reserve is granted to the Village of Metlakatla by section 15(e). Apparently this is a grant in fee, including minerals.

These grants of Native reserves authorized by section 15 of S. 835, like the grants authorized under sections 12 and 14, should be made subject to outstanding leases; however, since these reserves have not been subject to selection by the State of Alaska, provision need only be made for leases issued by the United States. Also, it should be made clear in section 15(b) that the appropriate regional corporation is to receive patent for minerals in lands granted to a Native village under section 15(b). Accordingly, the following changes are suggested in section 15:

(1) Consistent with section 14(e)(1)(B), and with the corresponding change we have previously suggested in section 12(d)(1), insert the following new subsection (g) after line 24 on p. 78:

"(g) Where, prior to patent of any land or minerals under this section, a lease, contract, or permit has been issued for the utilization of surface or mineral resources covered under such patent, 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 as lessor, contractor, or permitter, in any such leases, contracts, or permits covering the estate patented (surface, minerals, or both surface and minerals, as the case may be). The administration of such lease, contract, or permit shall

continue to be by the United States. In the event that the patent does not cover all of the land embraced within any such lease, contract, or permit, the patentee shall only be entitled to the proportionate amount of the revenues reserved under such lease, contract, or permit by the United States which results from multiplying the total of such revenues by a fraction in which the numerator is the acreage of such lease, contract, or permit which is included in the patent and the denominator is the total acreage contained in such lease, contract, or permit."

(2) Strike the period at the end of line 6 on p. 77 and insert the following: ", and the regional corporation for the region in which such village is located shall acquire title to the minerals covered by the mining and mineral leasing laws in such lands as provided in those sections 10-12, inclusive."

4. *Miscellaneous changes in other sections of S. 835*

In addition to the changes suggested above in sections 12 and 15, a few changes are also believed appropriate in sections 10, 13, 14, and 16 in order to achieve the objectives of S. 835, as described below:

a. *Change in section 10.* Section 10 revokes the existing land freeze made by Public Land Order No. 4582, but then goes on to enact an even broader freeze by withdrawing, for a period of five years, "all public lands in Alaska" from all forms of appropriation under the public land laws, including the mineral leasing laws. With respect to mineral leasing, at least, this new withdrawal is overly broad, unnecessary and frustrates the objectives of S. 835, as follows:

(1) One of the principal objectives of legislation to settle the Native claims has, of course, been to end the land freeze and the adverse effect it has had on the State's revenue and economy. It makes no sense to continue the freeze for another five years when it is not needed to protect the Native's rights to select their grant of 60 million acres, at least so far as mineral leasing is concerned.

(2) A five year bar on Federal mineral leasing also is inconsistent with the revenue sharing provisions of section 14 of S. 835 which contemplate continued Federal leasing with the Natives sharing in the Federal revenues derived from that leasing.

(3) In addition, the withdrawal which section 10 would make from Federal mineral leasing is not necessary to protect Native selection rights. As the courts have repeatedly held, the Secretary has discretionary authority whether to issue mineral leases. The Secretary thus needs no additional authority to refuse to issue a mineral lease if it appears that leasing would interfere with Native selection. Also, if the Secretary should in his discretion decide to issue a particular lease, the Natives are fully protected. Not only would they share in the Federal proceeds under section 14, but, if they select and receive patent to the land they succeed to the interest of the United States as lessor as provided in sections 12, 14, and 15 of S. 835, and during the interim between selection and patenting the Natives receive the revenues as provided in section 13(b).

Accordingly, we urge that, as a minimum, the withdrawal of all public lands in Alaska made by section 10 should be changed to permit Federal mineral leasing. This could be done by deleting the word "and" in line 14 on p. 45 of S. 835 and substituting in its place the words "but not the".

b. *Changes in section 13.* Section 13(b) provides that, pending selection by a Native village or regional corporation of withdrawn lands, the Secretary shall not, without the consent of the village or regional corporation, "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." This limitation on renewal could abridge rights granted under an existing lease. We therefore urge that the words "or renew" be struck in line 18 on p. 66, with necessary changes being made in lines 17 and 18 so that they will read: "the benefit of which the land was withdrawn, issue or enter into any lease, contract or permit covering with-".

Section 13(b) also gives the Natives the benefit of all revenues received from the use or disposition of withdrawn lands they select. Here, as recognized in section 14(e)(1)(B), and as we have recommended by the change we have suggested in section 12(d)(1), provision needs to be made for apportionment of revenues to cover the situation where only part of the land covered by a lease is selected. Accordingly, the following change should be made:

Strike the period at the end of line 11 on p. 67 and insert in its place the following: "Provided, however, That if the selected land does not include all of the land covered by a particular lease, contract, or permit, then the amount to be paid to such village or corporation shall be reduced to the proportion which results from

multiplying the revenues derived by the lessor, contractor, or permitter which are attributable to such lease, contract, or permit (after deducting the cost of administration thereof) by a fraction in which the numerator is the acreage of such lease, contract, or permit which is included in the selected land and the denominator is the total acreage contained in such lease, contract, or permit."

c. *Changes in section 14.* Section 14 provides for revenue sharing and, except for the fact that the sharing would be perpetual, it is generally comparable to section 18 of S. 35 and section 8 of S. 1571. However, S. 835 does not spell out as clearly as do S. 35 and S. 1571 the understanding that the Natives' share would come from the revenues reserved by the United States and the State as lessors and would not affect the amount of payments required of lessees. To make this understanding clear throughout the section, we suggest the following clarifying changes in four subsections of section 14 of S. 835:

(1) in subsection (a)(1) on line 8 on p. 69 insert the words "by the United States" after the word "derived";

(2) revise subsection (a)(2), lines 4 through 13 on p. 70, so that it will read:

"(2) All leases or other dispositions of such minerals made after the effective date of this Act shall provide that the following payments shall be made from the revenues derived by the United States therefrom prior to calculating the respective shares of the State and the United States in such proceeds under the Statehood Act: (A) a royalty of 2 per centum 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) 2 per centum of all revenues derived from rentals and bonuses shall be deducted and paid into the Fund."

(3) in subsection (b) on line 4 on p. 71 after the word "Fund" insert the words "from the royalties derived by the United States"; and

(4) in subsection (d) on line 4 on p. 72 after the word "lands" insert the words "from the royalties payable to the State".

In addition to these four minor clarifying changes, we have another clarifying change to suggest in section 14. This change involves section 14(b) which, like section 18(b) of S. 35, provides for competitive leasing of Naval Petroleum Reserve No. 4. As we have consistently stated, most recently in our letter dated March 9, 1971 commenting on S. 35, and in the preceding comments on S. 1571 in this statement, we take no position on the issue of whether competitive bidding should be required but if it is, we urge that it be made clear that leases for lands which are not within the known geologic structure of a producing oil or gas field—the so-called "wildcat" leases—will continue to be for a 10 year primary term and a maximum of 2,560 acres as provided by present law. Accordingly, we suggest the same change in section 14(b) of S. 835 as we have suggested in the comparable section 18(b) of S. 35, namely that:

After the period at the end of line 23 on p. 70 of S. 835 insert the following: "Leases issued competitively under this subsection for lands which are not within any known geologic structure of a producing oil or gas field shall be for a primary term of ten years and may include up to two thousand, five hundred and sixty acres as provided in that Mineral Leasing Act for leases covering such lands".

d. *Change in section 16.* Section 16 grants the Natives a right to use the public lands in Alaska for subsistence purposes for a period of 100 years. It is not within our competence to comment on whether the Natives require such subsistence rights on all the public lands in Alaska in addition to the 60 million acres they would be granted by S. 835. We are concerned, however, with the breadth and uncertainty of section 16, and particularly subsection (b)(1). This subsection is a new provision, not in any previous bill, which appears especially broad and uncertain in scope. Depending upon what is intended, and how it is administered, it could conceivably amount to another freeze against leasing or other use or occupancy of the public lands in Alaska.

To eliminate uncertainty and guard against such a result, we believe it should be made clear that any subsistence rights which the Natives require on the public lands, in addition to the 60 million acre grant called for by S. 835, will not preclude the disposition of such public lands for other uses under the public land laws. The disposition of public lands on which the Natives are granted subsistence rights could, of course, be made subject to or conditioned upon not unreasonably interfering with the subsistence rights of the Natives, if that is deemed necessary. But first it should be made explicit that any rights granted the Natives to use the public lands for subsistence purposes will not preclude disposition of the public lands for other uses authorized by the public land laws. Otherwise, the Native claims will continue for another 100 years, this time in the form of subsistence

rights on all the public lands in Alaska, and the legislation will not achieve the desired objective of a final settlement now.

This completes our comments and suggestions on S. 1571 and S. 835. We hope they will be helpful to the Committee in its consideration of the bills.

Juneau, Alaska, April 22, 1971.

HON. HENRY M. JACKSON,
U.S. Senate,
Washington, D.C.

DEAR SENATOR JACKSON: I have lived in Alaska fifty-five years, have two sons born and raised here and three grandsons who, I am sure, will continue to live in Alaska. I feel that we have some rights as Alaskans regarding the future of our land and resent strongly the 250,000 non-native Alaskans not being given more of a voice at the Native Land Claim hearings scheduled on April 29th.

I also feel settlement of the Native Land Claims is a Federal responsibility as it has been in every other state.

The native people have been accepted and taken into the mainstream of Alaskan living with all the rights of the whites as well as all of the rights of the Indians as provided by the Federal government. They serve as legislators and hold high posts in State government. To set aside large areas of Alaska exclusively for one segment of our small population is to bring about a polarization that will do nothing but tear this state apart for generations. Any lands awarded the natives should be only those tied to present villages, home and camp sites and subject to all the valid existing rights and the integrity of National Forest Reserves.

Sincerely yours,

CLAYTON L. POLLEY, D.M.D.

Juneau, Alaska, May 6, 1971.

TOM KIMBALL, *National Wildlife Federation,*
Washington, D.C.

DEAR SENATOR JACKSON AND MEMBERS OF THE COMMITTEE: It is our understanding you have before you for consideration numerous bills relating to settlement of native land claims including H.R. 7432. Did you know, Senator, we have expressed ourselves on a number of occasions regarding settlement of the native land claims question. Our position has not changed. We find H.R. 7432 currently referred to as the "Administration's bill," objectionable in many ways. It is a particular concern to us that this bill as presented proposes to take up to one and one half million acres from presently established national wildlife refuges and ranges as well as some national forest land dedicated for similar purposes. Alaskans have been and still are concerned with protection of key areas for wildlife habitat and management. Many areas which would be invaded by H.R. 7432 are of vital importance not only to all Alaskans but to many millions of people throughout the United States at this time and period when practically all Americans are concerned with the protection and management of areas recognized areas of vital importance to protection of our many species of wildlife and habitat. It is our opinion that H.R. 7432 would not be in the best interest of Alaska or the Nation as a whole.

We solicit your careful evaluation of this measure and sincerely hope the necessary changes will be made to assure that these areas will continue without disruption and loss of value. We respectfully request that this statement be made a part of the official record.

A. W. BUD BODDY,
Executive Director,

The Alaska Wildlife Federation and Sportsman's Council.

[From the *Southeast Alaska Empire*, April 26, 1971]

LEGISLATORS SURPRISED ENDORSEMENT INCLUDED STATE OIL RESERVE LANDS

(By Bob Mottram, Associated Press writer)

JUNEAU (AP)—Land claims settlement bills which about half of the legislators supported by petition could result in Alaska Natives selecting lands under which most of the state's known oil reserves.

Reaction among legislators who endorsed the bills ranged from indignation to aplomb.

Signatures were gathered in Juneau this week by Don Wright, president of the Alaska Federation of Natives.

"We the undersigned members of the (House of Representatives, Senate) are in support of the AFN land claims settlement proposal embodied in S385 and H7039," the petition reads.

The House bill is sponsored by Rep. Lloyd Meeds, D-Wash., and the Senate bill by Sen. Fred Harris, D-Okla.

The identical bills call for a 60 million acre land settlement, \$500 million in cash over a nine-year period, and a 2 per cent overriding royalty in perpetuity on Alaskan oil and gas production.

The bills would allow Native villages and corporations to select public lands, defining them as all federal lands in the state—including lands selected by the state but not yet patented to it.

This would include the Prudhoe Bay oil fields, some Kenai Peninsula fields and perhaps some of the Swanson River field.

Wright, speaking by phone from Anchorage, said "the way we define them in the bill includes those particular areas."

But he added, "Our primary concern is in and around villages in cooperation with the state and federal governments to treat everyone fairly."

Wright said the Native groups "don't intend to infringe on any person or business that has patented lands or prior legal right to property. But we don't consider the state's tentatively approved lands as falling in that category, because the state came later and T-A'd over villages."

To date, the state's patented land totals 5.8 million acres. That tentatively approved for patent totals 7.9 million acres, and the state has selected an additional 12.3 million which has not yet been tentatively approved. None of the patented land is at Prudhoe Bay.

"I'm writing Mr. Wright to withdraw my endorsement of it," said Sen. Ron Rettig, R-Anchorage. "I was led to believe the AFN position was that there would be more than 30 million of the acres from federal reserves and the balance from unreserved lands. Now I learn their position includes the Prudhoe Bay area, Swanson River and Kenai areas, too."

"Let's put it this way," said Bill Moran, D-Anchorage, "when we say we are supporting this position, I'm sure I as well as others who signed consider it more an expression of concern that we have a settlement rather than being wedded to the specifics of the bill."

House Speaker Gene Guess, D-Anchorage, another signer, said he is confident that "the only land they will have is that adjoining village sites. The main reason for signing is to show support in Washington that the elected representatives do support a favorable land grant section."

Wright said Friday, "we're looking at areas such as the (Kenai) moose range . . . some of the T-A'd lands in the Prudhoe Bay area, but not any of the lands the state has patent to—just a square deal."

He said the Naval Petroleum Reserve No. 4 on the North Slope "is a key target that the state should encourage and support Native entry into."

"I'm confident the Natives are going to be fair about it," he said. "We are not going to be unfair at all in this regard."

Other legislators signing Wright's petitions this week included Sens. Chancy Croft, Jay Hammond, Don Young, John Rader, Ray Christiansen, Willie Hensley, and Joe Josephson; and Reps. Dick Whittaker, Carl Moses, Marty Farrell, George Hohman, Dick McVeigh, Mike Miller, Willard Bowman, Chuch Degnan, Leslie Swanson, Mike Bradner, Bob Ditman, Frank Peratrovich, Martin Moore, Frank Ferguson, Genie Chance, Ed Naughton, Ed Barber, Josh Wright and Joe McGill.

DILLINGHAM CORPORATION,
Honolulu, Hawaii, April 23, 1971.

Hon. HENRY M. JACKSON,
U.S. Senate,
Washington, D.C.

MY DEAR SENATOR JACKSON: Your support is solicited to oppose the two undesirable provisions of Senate Bill No. 35 which adversely affect the mining industry and the economy of Alaska.

We are engaged in marine transportation to and from Alaska and also are prospecting there for minerals. Those activities would be directly and harmfully affected by the Senate Bill.

An expeditious and equitable settlement of the Alaska native land claims is indeed essential to the growth and progress of the State. However, legislation for that purpose need not include provisions halting mineral exploration so vital to the economy of Alaska as well as the entire nation. The proposed five-year land freeze would be extremely damaging to companies embarking on mineral exploration ventures, whether small or large.

Secondly, the proposed competitive leasing of mining rights in Alaska would permanently discourage the development of mineral resources as well as discriminate against the small miner. Such provisions constitute a fundamental change in the Mineral Leasing Act and would frustrate the development of natural resources based upon the traditional incentives under which the mining industry has progressed throughout the United States.

Your positive action in support of those important matters is respectfully requested.

Sincerely,

LOWELL S. DILLINGHAM.

THE IZAAK WALTON LEAGUE OF AMERICA,
Glenview, Ill., May 10, 1971.

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

DEAR MR. CHAIRMAN: We are gravely concerned about the terms of settlement of the Alaska Native Claims. We find our membership drawn between sense of fairness and justice toward the natives and what in the long run would be in the best interest of the Nation, the State of Alaska and the natives themselves. We doubt that a really sound program for settlement can be developed, that includes granting of substantial land areas, without first having developed a comprehensive land use plan for the entire State.

Such a development plan, based on natural resource opportunities and human resource requirements, could be blocked out in major elements within a couple of years and provide strong and workable guidelines for retention and protection of wildlife refuges, parks, forests, wilderness areas, and for state lands of similar purposes. It could determine in rough the transportation and communication network, the logical power generation and distribution grid. It could classify major watersheds and rivers for eventual highest use for fisheries, power, agriculture and municipal and industrial consumption. It could provide criteria for zoning out development on flood plains and other high hazard areas. It could point out areas which will be principally valuable for communities, agriculture, industry or mining. Moreover, it would give the State of Alaska better criteria for the selection of its allotment of lands and the natives their allotments whatever the amount. It would in the overall help keep Alaskans from the ill-considered, piecemeal decisions which characterized development of the lower 48, and which your land use planning legislation would belatedly hope to correct.

The settlement might call for a cash payment of whatever size over whatever period Congress determines; conveyance to each native village of adjacent acreage not to exceed 3 times the present acreage occupied; and a continued moratorium on further land selections by the State or by the natives (if Congress approves allotment of further acreage) until the comprehensive land use plan for Alaska has been approved by Congress. The moratorium should apply as well to any and all other types of land entry.

In the overall, the land use planning process should speed up rather than delay final settlement of the native claims and final selection of its lands by the State.

Respectfully yours,

J. W. PENFOLD,
Conservation Director.

