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ALASKA NATIVE CLAIMS SETTLEMENT ACT AMENDMENTS

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AMENDMENTS

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HEARINGS

BEFORE THE

SUBCOMMITTEE ON INDIAN AFFAIRS

OF THE

COMMITTEE ON

INTERIOR AND INSULAR AFFAIRS

HOUSE OF REPRESENTATIVES

NINETY-FOURTH CONGRESS

FIRST SESSION

ON

H.R. 6644

TO PROVIDE, UNDER OR BY AMENDMENT OF THE ALASKA
NATIVE CLAIMS SETTLEMENT ACT, FOR THE LATE EN-
ROLLMENT OF CERTAIN NATIVES, THE ESTABLISHMENT
OF AN ESCROW ACCOUNT FOR THE PROCEEDS OF CERTAIN
LANDS, THE TREATMENT OF CERTAIN PAYMENTS AND
GRANTS, AND THE CONSOLIDATION OF EXISTING RE-
GIONAL CORPORATIONS, AND FOR OTHER PURPOSES

HEARINGS HELD IN WASHINGTON, D.C.
MAY 12 AND 13, 1975

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H.R. 6644, TO AMEND THE ALASKA NATIVE CLAIMS SETTLEMENT ACT

MONDAY, MAY 12, 1975

U.S. HOUSE OF REPRESENTATIVES,
INDIAN AFFAIRS SUBCOMMITTEE OF THE
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
Washington, D.C.

The subcommittee met at 9:55 a.m., pursuant to notice, in Room 1324, Longworth Office Building, Hon. Lloyd Meeds (chairman of the subcommittee) presiding.

Mr. MEEDS. The Subcommittee on Indian Affairs of the full House Committee on Interior and Insular Affairs will be in order for the taking of testimony on H.R. 6644, providing for certain amendments to the Alaska Native Claims Settlement Act. In the absence of objection, a copy of the bill and the report of the Department will be made a part of the record at this point.

Without objection, so ordered.

[The bill and report follow:]

[H.R. 6644, 94th sess.]

A BILL To provide, under or by amendment of the Alaska Native Claims Settlement Act, for the late enrollment of certain Natives, the establishment of an escrow account for the proceeds of certain lands, the treatment of certain payments and grants, and the consolidation of existing regional corporations, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—GENERAL PROVISIONS

LATE ENROLLMENT OF CERTAIN NATIVES OTHERWISE QUALIFIED

SEC. 101. The Secretary of the Interior (hereinafter in this Act referred to as the "Secretary") is authorized to review those applications submitted within one year from the date of enactment of this Act by applicants who failed to meet the March 30, 1973, deadline for enrollment established by subsection (a) of section 5 of the Alaska Native Claims Settlement Act (hereinafter in this Act referred to as the "Settlement Act"), and to enroll those Natives under the provisions of that Act who would have been qualified if the March 30, 1973, deadline had been met: *Provided*, That Natives enrolled under this Act shall be issued stock under the Settlement Act together with distributions from corporations adjusted so as to make distributions to such Natives equal to distributions to Natives originally enrolled under the Settlement Act: *Provided further*, That land entitlement of any Native village, Native group, Village Corporation, Regional Corporation, or Corporation organized by Natives residing in Sitka, Kenai, Juneau, or Kodiak, all as defined in such Act, shall not be affected by any enrollment pursuant to this Act, and that no tribe, band, clan, group, village, community, or association not otherwise eligible for land or other benefits as a "Native village", as defined in such Act, shall become eligible for land or other benefits as a Native village because of any enrollment pursuant to this Act:

Provided further, That no tribe, band, clan, village, community, or village association not otherwise eligible for land or other benefits as a "Native group", as defined in such Act, shall become eligible for land or other benefits as a Native group because of any enrollment pursuant to this Act: *And provided further*, That any "Native group", as defined in such Act, shall not lose its status as a Native group because of any enrollment pursuant to this Act.

ESCROW ACCOUNT FOR PROCEEDS OF CERTAIN LANDS

SEC. 102. (a) From and after the date of enactment of this Act, any and all proceeds derived from contracts, leases, permits, rights-of-way, or easements pertaining to lands or resources of lands withdrawn for Native selection pursuant to the Settlement Act shall be deposited in an escrow account which shall be held by the Secretary until lands selected pursuant to that Act have been conveyed to the selecting corporation or individual entitled to receive benefits under such Act. As such withdrawn or formerly reserved lands are conveyed, the Secretary shall pay from such account the proceeds which derive from contracts, leases, permits, rights-of-way, or easements, pertaining to the lands or resources of such lands, to the appropriate corporation or individual entitled to receive benefits under the Settlement Act together with interest. The proceeds derived from contracts, leases, permits, rights-of-way, or easements, pertaining to lands withdrawn or reserved, but not selected or elected pursuant to such Act, shall, upon the expiration of the selection or election rights of the corporations and individuals for whose benefit such lands were withdrawn or reserved, be deposited in the Treasury of the United States or paid as would have been required by law were it not for the provisions of this Act.

(b) The Secretary is authorized to deposit in the Treasury of the United States the escrow account proceeds referred to in subsection (a) of his section, and the United States shall pay interest thereon semiannually from the date of deposit, such deposit to bear simple interest at a rate determined by the Secretary of the Treasury: *Provided*, That the Secretary in his discretion may withdraw such proceeds from the United States Treasury and reinvest such proceeds in the manner provided by the first section of the Act of June 24, 1938 (25 U.S.C. 162a): *Provided further*, That this section shall not be construed to create any trust relationship between the United States and any corporation or individual entitled to receive benefits under the Settlement Act.

EXEMPTION FROM INVESTMENT COMPANY ACT

SEC. 103. The Settlement Act is amended by adding at the end thereof the following new section:

"SEC. 28. Any corporation organized pursuant to this Act shall, through December 31, 1976, be exempt from the provisions of the Investment Company Act of 1940 (54 Stat. 789), as amended. Nothing in this section shall, however, be construed to mean that any such corporation shall or shall not, during the two years after such date, be subject to the provisions of the Investment Company Act of 1940."

TREATMENT OF CERTAIN PAYMENTS AND GRANTS

SEC. 104. The Settlement Act (as amended by section 103 of this Act) is further amended by adding at the end thereof the following new section:

"SEC. 29. (a) The payment and grants authorized under this Act constitute compensation for the extinguishment of claims to land, and shall not be deemed to substitute for any governmental programs otherwise available to the Native people of Alaska as citizens of the United States and the State of Alaska.

"(b) Notwithstanding section 5(a) and any other provision of the Food Stamp Act of 1964, in determining the eligibility of any household to participate in the food stamp program, any compensation, remuneration, revenue, or other benefit received by any member of such household under the Settlement Act, in connection with an aboriginal land claim of such member, shall be disregarded."

RATE OF INTEREST OF ALASKA NATIVE FUND

SEC. 105. For purposes of the first section of the Act of February 12, 1929 (25 U.S.C. 161a), the Alaska Native Fund shall be considered to consist of funds held in trust by the Government of the United States for Indian tribes.

RELATION OF THIS ACT TO SETTLEMENT ACT

SEC. 106. Except as specifically provided in this Act, (i) the provisions of the Settlement Act are fully applicable to this Act, and (ii) nothing in this Act shall be construed to alter or amend any of such provisions.

CONSOLIDATION OF CORPORATIONS

SEC. 107. (a) Notwithstanding any provision of the Settlement Act, any corporation created pursuant to section 7(d) or 8 (a) of such Act within any of the twelve regions of Alaska, as established by section 7(a) of such Act, may, at any time, merge or consolidate, pursuant to the applicable provisions of the laws of the State of Alaska, with any other of such corporations created for the same region.

(b) Any corporations resulting from such mergers or consolidations further may merge or consolidate with other such merged or consolidated corporations within the same region or with other of the corporations created in such region pursuant to section 7(d) or 8(a) of the Settlement Act. Such mergers or consolidations shall be on such terms and conditions as are approved by vote of the shareholders of the corporations participating therein, and may take place pursuant to votes of shareholders held either before or after the enactment of this Act. Upon the effectiveness of any such mergers or consolidations the corporations resulting therefrom and the shareholders thereof shall succeed and be entitled to all the rights, privileges, and benefits of the Settlement Act, including but not limited to the receipt of lands and moneys and exemptions from various forms of Federal, State, and local taxation, and shall be subject to all the restrictions and obligations of such Act which were applicable to the corporations and shareholders which participated in such mergers or consolidations or which would have been applicable if the mergers or consolidations and transfers of rights and titles thereto had not taken place.

(c) Notwithstanding the provisions of section 7(m) of the Settlement Act, in any merger or consolidation in which the class of stockholders of a regional corporation who are not residents of any of the villages in the region are entitled under Alaska law to vote as a class, the terms of the merger or consolidation may provide for the elimination of the right of such class to receive dividends pursuant to such section 7(m).

(d) Notwithstanding any other provision of this section or of any other law, no corporation referred to in subsection (a) of this section may so merge or consolidate unless that corporation's shareholders have approved the merger or consolidation.

TERMINATION OF COMMISSION

SEC. 108. Section 17(a)(10) of the Settlement Act is amended by striking out "its final" in the first sentence and inserting in lieu thereof "(a)", and by striking out the last sentence and inserting in lieu thereof the following: "The Commission shall continue its activities and make such additional reports and recommendations as may be appropriate after May 30, 1976 a final and comprehensive report shall be submitted on or before June 30, 1979. The Commission shall cease to exist effective June 30, 1979."

SEC. 109. Subsection 7(c) of the Alaska Native Claims Settlement Act (85 Stat. 688) is hereby amended by deleting that subsection in its entirety and inserting in lieu thereof a new subsection as follows:

"(c) The Secretary shall establish a thirteenth region for the benefit of Natives who are nonresidents of Alaska who elected to be enrolled therein, and they may establish a regional corporation pursuant to this Act."

SEC. 110. The Alaska Native Claims Settlement Act (85 Stat. 688) is hereby further amended by inserting at the end thereof a new section 30 as follows:

"SEC. 30. (a) A Native who elected to be enrolled in a thirteenth region, pursuant to subsection 5(c) shall be so enrolled, notwithstanding the fact that a majority of the Natives eligible to elect enrollment in that region may not have so elected.

"Any Native who, on or before December 1, 1973, had filed with the Secretary or his delegate any application to amend his enrollment application regarding his election whether or not to be enrolled in the thirteenth region shall, within not less than sixty nor more than ninety days of the enactment of this section, inform the Secretary whether or not he wishes to be enrolled in the thirteenth region. Any Native who so informs the Secretary shall be enrolled according to his preference as indicated in the information so submitted to the Secretary.

"(b) Any Native who fails so to inform the Secretary shall be enrolled according to the information provided in that Native's original enrollment application. The Secretary shall take such action as may be necessary to insure that every Native affected by this section is aware of his option to change his enrollment decision. Within one hundred and twenty days of the enactment of this section the Secretary shall prepare and certify a final roll which when certified shall supersede the temporary roll authorized by this subsection. When the final roll is certified, the Secretary shall take such steps as may be necessary to make appropriate adjustments in the distribution of funds pursuant to this Act. The final roll shall incorporate changes in enrollment pursuant to this subsection as well as other changes made by the Secretary in accordance with the Act.

"(c) Within thirty days of the certification of the final roll pursuant to this section, any bona fide organization representing nonresident Natives shall submit to the Secretary the names of not more than five Natives who have elected to be enrolled in the thirteenth regional as nominees for the positions of the five incorporators of the thirteenth regional corporation. Not less than thirty days nor more than sixty days after such certification, the Secretary shall mail to all eligible voters ballots containing the names of all nominees and their associational affiliations for the purpose of an election by mail of the five incorporators who shall serve as the initial directors of the thirteenth regional corporation. Eligible voters in the election shall be only Natives eighteen years of age or older on the date of election of incorporators pursuant to this subsection who are enrolled in the thirteenth region. Valid ballots shall be only those ballots mailed to the Secretary or his designee not later than ninety days after such certification. The five nominees for whom the most votes are cast shall be elected incorporators of the thirteenth regional corporation and shall promptly take all steps authorized by this Act for such incorporators. All rules, regulations, and information relating to the election shall be transmitted directly to all known organizations representing nonresident Natives, the twelve regional corporations representing resident Natives, and all eligible voters.

"No moneys distributed or to be distributed pursuant to this Act may be expended or obligated by any Native, Native corporation, Native organization, representative thereof, or adviser thereto, to assist in, communicate on, or otherwise influence the election.

"(d) The articles of incorporation of the thirteenth regional corporation shall be submitted to the Secretary for approval in accordance with subsection 7(c) within eighteen months of the enactment of this section.

"(f) In the event the Secretary of the Interior, prior to the enactment of this subsection, has certified a roll pursuant to subsection 5(a) of this Act, such certification shall be rescinded and a new temporary roll certified within ten days of the enactment of this subsection. Any distribution of funds pursuant to subsection 6(c) of this Act made by the Secretary or his delegate on the basis of the rescinded roll shall not be affected by this subsection.

"The Secretary shall make any necessary adjustments in future distributions to accommodate changes in the temporary roll reflected in the final roll in order to insure a final distribution of such money in accordance with the final roll. The Secretary is authorized to make payment from the Alaska Native Fund to the thirteenth regional corporation, once established, during the period prior to the next regularly scheduled distribution from the fund pursuant to this Act. Such payment shall be in the form of an advance on such corporation's adjusted share of such regularly scheduled distribution.

"(g) Any stock issued by a corporation under subsection (g) of section 7 of the Settlement Act to any Native who is enrolled in the thirteenth region pursuant to this section shall, upon enrollment of that Native, be canceled by the issuing corporation without liability to it or the Native whose stock is so canceled."

SECTION-BY-SECTION ANALYSIS OF H.R. 6644

Section 101 opens the Alaska Native Claims Settlement Act roll for one year from the date of enactment of this Act to those Natives who failed to file an enrollment application by the March 30, 1973 deadline established in the original Act, who would have been qualified had they met that deadline. Such Natives will be issued stock under the terms of the Act together with distribution from the existing Native corporations in an amount equal to that received by those Natives originally enrolled. The section provides that the land selection rights of the various corporations authorized by the Settlement Act will not be affected by new enroll-

ment, nor will the status of "eligibility" of Native villages be affected. It further provides that no Native group, which is not otherwise eligible for land selection rights, shall become eligible by reason of new enrollments. Conversely, no such group shall lose any land selection rights by reason of the new enrollments.

Section 102(a) provides that the Secretary of the Interior shall hold all revenues derived from lands withdrawn by him to facilitate Native land selections in an escrow account after the date of enactment until lands selected pursuant to the Act are conveyed to the corporation or individual entitled thereto. Upon such conveyance, the Secretary will transfer to the credit of the appropriate corporation or individual that portion of the funds in the escrow account derived from the withdrawn lands which are patented to the corporation or individual. The balance will be paid into the Treasury of the United States or paid as would have been required by law if it were not for the provisions of this section.

Subsection (b) provides that the Secretary may deposit the escrow account funds in the Treasury in interest-bearing accounts at a simple interest rate to be determined by the Secretary of the Treasury. Additionally, the Secretary may, in his discretion, withdraw such funds from the Treasury and invest them according to the laws governing the investment of the trust funds of Indian tribes. This section is not to be construed to create a trust relationship between the United States and any corporation or individual entitled to receive benefits under the Settlement Act.

Section 103 amends the Settlement Act by adding a new section exempting Native corporations organized under the Act from certain provisions (relating to filing financial information with the Securities and Exchange Commission) of the Investment Act of 1940 until December 31, 1976. This amendment is not to be construed to exempt or not exempt such corporation from such requirement during the two-year period following such date.

Section 104 amends the Settlement Act by adding a new section 29 which provides (1) that payments and grants authorized by the Settlement Act shall not be considered substitutes for governmental programs otherwise available to Native people as citizens of the United States and Alaska and (2) that any compensation, remuneration, revenue, or other benefit derived by an individual Native pursuant to the Act shall be considered in eligibility for participation in the Food Stamp program.

Section 105 provides that for the purpose of 25 U.S.C. 161a, relating to the rate of interest paid on Indian trust funds in the United States Treasury, the Alaska Native Fund shall be considered to consist of trust funds held by the United States for Indian tribes.

Section 106 provides that except as specifically provided in H.R. 6644, nothing contained therein shall be considered as altering or amending the Settlement Act and that its provisions are fully applicable to the provisions of H.R. 6644.

Section 107(a) provides that, notwithstanding the provisions of the Settlement Act, regional and village Native corporations may merge or consolidate under Alaska law.

Subsection (b) provides that corporations resulting from such mergers may further merge with other regional or village corporations. Such mergers must be by vote of the shareholders of the merging corporations and may take place pursuant to votes held before or after date of enactment of this Act. Upon such mergers, the resultant corporations will be entitled to all the rights and bound by all the obligations of the predecessor corporations.

Subsection (c) provides that, notwithstanding the provisions of section 7(m) of the Settlement Act (relating to dividend rights of village corporation shareholders not residents of the village), the terms of mergers under this section may eliminate their right to such dividends.

Subsection (d) provides that notwithstanding the provisions of this section or other law, no corporations organized under subsection (a) of this section may merge or consolidate unless such merger or consolidation is approved by the shareholders.

Section 108 amends section 17(a)(10) of the Settlement Act by extending the life of the Joint Federal-State Land Use Planning Commission from December 31, 1976 until June 30, 1979.

Section 109 amends section 7(c) of the Settlement Act by striking that subsection and inserting in lieu a subsection providing that the Secretary shall establish a thirteenth region for the benefit of Natives who are not permanent residents of Alaska who elect to be enrolled therein and that they may establish a thirteenth regional corporation.

Section 110 amends the Settlement Act by adding a new section 30. Subsection 30(a) provides that any non-resident Native electing to be enrolled in the thirteenth region will be so enrolled. Any non-resident Native who had filed any application with the Secretary or his delegate amending his enrollment application regarding his election to be in the 13th region before December 1, 1973 would be given a further opportunity to make such an election and would be enrolled according to his preference.

Subsection (b) provides that any such Native who fails to notify the Secretary of his intent would be enrolled according to his original application. The Secretary must adequately inform such Natives of his option to make such a new selection. The Secretary will certify a new Alaska Native roll incorporating changes mandated by the creation of the thirteenth and will make adjustment in distribution from funds made available by the Settlement Act required by the creation of the thirteenth region.

Subsection (c) provides for the selection of nominees for incorporators of the thirteenth regional corporation and directs the Secretary to hold an election by mail among such nominees for incorporators. It provides that no funds distributed pursuant to the Settlement Act may be used to influence such election.

Subsection (d) provides that the articles of incorporation shall be submitted to the Secretary for approval under the terms of subsection 7(c) of the Settlement Act.

Subsection (f) provides for the rescinding by the Secretary of any permanent roll certified pursuant to the Settlement Act and a new temporary roll certified. Distribution of funds pursuant to section 6(c) of the Act are not to be affected by this subsection.

The Secretary is directed to make any adjustments necessary in future distributions of funds from the Alaska Native Fund to take into consideration the creation of the thirteenth region and regional corporation.

Subsection (g) authorizes the Alaska-based Native regional cocorporations to cancel stock issued to Natives enrolled in the thirteenth region without liability to itself or to the Native whose stock is so cancelled.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., May 12, 1975.

HON. JAMES A. HALEY,
Chairman, Committee on Interior and Insular Affairs,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This responds to your request for the views of this Department on H.R. 6644, a bill "To provide, under or by amendment of the Alaska Native Claims Settlement Act, for the late enrollment of certain Natives, the establishment of an escrow account for the proceeds of certain lands, the treatment of certain payments and grants, and the consolidation of existing regional corporations, and for other purposes."

We recommend enactment of H.R. 6644, if amended as suggested herein.

Section 101 of the bill authorizes the Secretary of Interior to review all applications filed within one year after the date of enactment of the bill by persons who missed the March 30, 1973, deadline for filing applications for enrollment as Alaska Natives. The deadline was established by regulations issued pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688). Under section 101, the Secretary would enroll those Alaska Natives who meet the qualifications for enrollment set out in the Alaska Native Claims Settlement Act except for their failure to meet the March 30, 1973 deadline. The section also provides for the issuance of regional corporation stock to those Alaska Natives enrolled pursuant to this provision as well as the distribution of payments to those Natives enrolled pursuant to this section that are equal to payments made to those Natives originally enrolled. It further states that Natives enrolled pursuant to this provision shall not affect the eligibility status of land entitlement of eligible village corporations, regional corporations, the four named cities, or groups as defined by the Alaska Native Claims Settlement Act.

We strongly support the reopening of the rolls of Alaska Natives eligible to receive benefits under the Alaska Native Claims Settlement Act (ANCSA), and to allow otherwise eligible Alaska Natives who missed the enrollment deadline to enroll. Although we make no apology for the manner in which we handled in a

very brief period of time one of the largest enrollment campaigns ever conducted, we recognize that not every eligible Alaska Native learned about the benefits of ANCSA in time to meet the filing deadline of March 30, 1973. Our estimate is that as many as 2,000 otherwise eligible persons had not applied for enrollment by that date. Some of these cases involve substantial equities. For example, some are minors whose guardians neglected to enroll them; others did not receive the enrollment forms or were under misapprehensions concerning their ancestry.

We are also in agreement with the provisions of section 101 that would not allow the addition of these late enrollees to result in changing the status of those villages and groups whose eligibility status was determined pursuant to the figures that were established by the roll certified by the Secretary of the Interior on December 18, 1973. That roll would, under the provision of section 101, establish the proportionate shares of villages, groups, and regional corporations as to their land entitlements and the new enrollment authorized by this amendment would not affect the proportionate share, nor would it be used to disqualify a group because it had more than 24 Natives enrolled as a result of the addition of late filers. We question the need for the inclusion of the four named cities, Sitka, Juneau, Kenai, or Kodiak, in this section because their land entitlement is not determined by the number of Natives enrolled to each of these locations. Therefore, we recommend that all reference to the four named cities be omitted.

Section 101 refers to the enrollment deadline of March 30, 1973, as having been established by section 5(a) of ANCSA. That deadline was established by regulation (25 C.F.R. 43h *et. seq.*). We recommend that the reference to the authority of section 5(a) of ANCSA be deleted.

Section 102(a) of the bill provides the Secretary of the Interior with authority from and after the date of enactment, to deposit receipts derived from contracts, leases, permits, rights-of-way or easements pertaining to lands or resources of lands withdrawn for Native selection pursuant to ANCSA in an escrow account until such time as disposition is made of the land and then to transfer them to the person or entity receiving title to the land. Upon the expiration of the selection rights of the Natives for whose benefit such lands were withdrawn or reserved, the proceeds from lands withdrawn but not selected shall be deposited in the U.S. Treasury or paid out as required under law. Section 102(b) provides the authority needed to pay interest on the funds held in the escrow account and to allow the Secretary of the Interior to reinvest them to obtain a higher return pursuant to the Act of June 24, 1938 (25 U.S.C. 162(a)). However, the section specifically prohibits the creation of a trust relationship with regard to the funds authorized for investment and reinvestment by the section.

There presently exists no authority in the Secretary of the Interior to pay over to the Alaska Natives the proceeds derived from actions which he must take with regard to lands that are withdrawn for Native selection but which are not yet conveyed. The Alaska Natives have indicated to the Department the need for this authority, and we support the establishment of an escrow account.

While we support the creation of the escrow account, we cannot support the provisions of section 102(b), which would authorize interest payments on such account and give authority to the Secretary to reinvest the proceeds in the account. There are many other similar accounts administered by the Federal Government on which no interest is paid and in which there is no reinvestment authority. In our judgment, section 102(b) would establish an unfavorable precedent.

Section 102(a) contains two separate time periods for paying out the funds in the escrow account and we recommend that they be conformed. The proceeds derived from the activities on lands withdrawn for Native selection, which are deposited in the escrow account, are to be paid to the selecting corporation or individual at the time of conveyance. However, receipts in the escrow account from lands withdrawn but not selected shall be paid to non-Natives "upon the expiration of the selection or election rights of the individuals for whose benefit such lands were withdrawn or reserved." We advise that payments to non-Natives from the escrow account be made at the time of conveyance to the Natives, thereby making the two payments operative at the same time.

While subsection 102(a) establishes an escrow account, and addresses the issue of the disposition of receipts from activities by the Secretary on lands withdrawn for Native selection but not yet conveyed, it does not clarify certain accounting procedures related to these activities. A system is necessary to accurately relate revenues to specific tracts producing the revenues and tracts selected. To clarify these accounting procedures we recommend the addition of subsections (c) and (d) to section 102.

Subsection 102(c) relates to public easements reserved in any conveyance pursuant to subsection 17(b)(3) of ANCSA. Many of the actions arising from these reserved easements may not be performed until years after the conveyance has been issued. Although the reservation has been made in the conveyance, subsection 102(c) would insure that proceeds derived from these subsection 17(b)(3) reserved easements at any time after conveyance has been issued, shall be paid to the grantee of such conveyance in accordance with such grantee's proportionate share:

(c) Any and all proceeds from public easements reserved pursuant to subsection 17(b)(3) of the Alaska Native Claims Settlement Act (85 Stat. 688), from or after the date of enactment of this Act, shall be paid to the grantee of such conveyance in accordance with such grantee's proportionate share.

Without the certainty provided by subsection 102(c), it would be administratively prohibitive to distribute the income to the owners of the land covered by the easement reservation.

Subsection 102(d) will clarify accounting procedures under ANCSA, so that although most contracts, leases, permits, rights-of-way and easements may be paid on lands withdrawn from Native selection on an annual basis, payment to be made at the beginning of the year, if a conveyance should be made in the middle of the year, the grantee would receive proportional income from such contracts, leases, permits, rights-of-way, and easements:

(d) Any and all income on all earnings from contracts, leases, permits, rights-of-way, or easements issued for the surface or minerals covered under the conveyance prior to the issuance of such conveyance under the Alaska Native Claims Settlement Act (85 Stat. 688), shall be paid to the grantee of such conveyance on that portion of the lands conveyed pro-rated from the date of enactment of this Act.

Subsection 102(a) refers to "any proceeds derived" from certain less-than-fee interests which may be derived from Native lands prior to conveyance. On certain types of applications, the applicant must pay for a Federal processing fee and for the cost of the environmental impact statement. The language of subsection 102(a) should be amended in order to exempt these two payments from the application of this provision.

Section 102 should contain a provision parallel to that of section 26 of ANCSA. We recommend that a new subsection (e) be added:

(e) To the extent that there is a conflict between the provisions of subsection (2) of this section and any other Federal laws applicable to Alaska, the provisions of subsection (a) of this section shall govern. Any payment made to any corporation or any individual under the authority of subsection (a) of this section shall not be subject to any prior obligation under sections

9(d) and (9f) of the Alaska Native Claims Settlement Act (85 Stat. 688).

Section 103 of the bill would add a new section 28 to ANCSA. Section 28 would exempt until December 31, 1976, any corporation organized pursuant to ANCSA from the provisions of the Investment Company Act of 1940 (54 Stat. 789, as amended). We defer in our views concerning the provisions of section 103 of H.R. 6644 to those of the Securities and Exchange Commission who, we understand, will shortly submit its report to the Congress.

Section 104 of this bill would add a new section 29 to ANCSA. New subsection 29(a) would provide that payments and grants made under ANCSA are compensation for extinguishment of claims to land by Alaska Natives and are not to be deemed to substitute for any governmental program that would otherwise be available to Alaska Natives as citizens of the United States and of the State of Alaska.

New subsection 29(b) of ANCSA would specifically exempt any benefits an Alaska Native might receive pursuant to ANCSA from consideration in determining the eligibility of any Native household to participate in the food stamp program under the Food Stamp Act of 1964.

With regard to the provisions of section 104 of this legislation, we have not yet formulated a position and, therefore, we are not able to offer comments at this time. This provision is currently under examination within the Administration.

Section 105 of the legislation provides that the funds deposited in the Alaska Native Fund under ANCSA are to be considered funds held in trust by the United States Government for Indian tribes pursuant to the provisions of Section 1 of the Act of February 12, 1929 (25 U.S.C. 161(a)).

We object to the classification of these funds as trust funds. Section 2(b) of ANCSA specifically declares that the settlement of aboriginal claims by Alaska

by Alaska Natives should be accomplished "... in conformity with the real economic and social needs of Natives ... without creating a reservation system or lengthy wardship or trusteeship. . ."

Under section 106, except as specifically provided in H.R. 6644, the provisions of ANCSA are fully applicable to this legislation and this bill shall not alter or amend any such provisions. We have no objection to this section.

Section 107 of the bill authorizes mergers or consolidations among regional and village corporations within the same region and would apply only to corporations authorized pursuant to sections 7 and 8 of the Alaska Native Claims Settlement Act. All mergers would be subject to the applicable provisions of the laws of the State of Alaska, as would any resulting corporations. Section 107 would also allow the subsequent merger or consolidation of merged corporation with each other, provided they are in the same region. The mergers authorized by corporation shareholders either before or after passage of this bill would be covered and could take place under the provisions of the bill. This provision would allow a merger that was approved by corporation stockholders with the merger vote contingent upon enactment of legislation of the type set out in this bill to be completed upon enactment of the bill. This provision is necessary because of ongoing efforts to merge village corporations, particularly in the NANA Region of Alaska.

The section gives to the merged corporation, upon the effectiveness of the merger, all rights, and benefits that ANCSA confers upon the individual corporations and also makes them subject to all the restrictions and obligations that were made applicable to the individual corporations by the Alaska Native Claims Settlement Act. The section specifically states that transfers of rights and titles made pursuant to a merger would not affect the tax exemptions granted by the Alaska Native Claims Settlement Act.

Subsection (c) deals specifically with the rights of enrolled Alaska Natives who are shareholders of a regional corporation but are not residents of any of the villages in that region. Section 7(m) of the Alaska Native Claims Settlement Act gives those Alaska Natives a right to receive dividends that represent their pro-rata share of the dividends paid to village corporations when the regional corporations make distributions to the village corporations under section 7(j) of the Settlement Act. This provision would allow the elimination of this right to dividends if it is part of a merger or consolidation plan but only if those non-village residents can, under the laws of the State of Alaska, vote as a class on the question of the merger or consolidation which contains the elimination provision. However, after any merger in which the special dividend rights were not affected and the at-large shareholders did not vote as a class on the merger, distributions to the at-large shareholders would continue as if the merger had not taken place.

Subsection (d) specifically provides that notwithstanding the provisions of this bill or any other law, no merger or consolidation of corporations can take place without the approval of the shareholders of the corporations being merged or consolidated.

Since enactment of the Settlement Act, many of the village corporations have found that they are too small to effectively manage their resources and responsibilities under the provisions of ANCSA. In the remote areas of Alaska, there is a shortage of trained managers who can run the many corporations, a demand that would be lessened by the bringing together of several of the smaller villages into one management unit. It would also be easier for the regional corporations to deal with one or two village corporations rather than ten or fifteen. The multiplicity of villages also dissipates the funds that are distributed to the villages, funds that can be used for improvements for Native people rather than being paid out to large numbers of professional managers necessitated by the large number of villages.

This section is needed to allow mergers or consolidations to take place because the Alaska Native Claims Settlement Act prohibits for a period of twenty years from the date of its enactment the alienation of corporation shares issued pursuant to the Act except under certain limited circumstances. There is no exception concerning alienation for the purpose of merger or consolidation. H.R. 6644 will modify this restriction on alienation sufficiently to authorize mergers and consolidations.

In our judgment this section offers sufficient safeguards and offers the Alaska Natives the opportunity to bring about mergers and consolidations that will better enable them to manage the benefits they are receiving under ANCSA. We recommend its enactment.

Section 108 extends the life of the Joint Federal-State Land Use Planning Commission, created by section 17(a)(10) of ANCSA, to June 30, 1979. We have no objection to the provisions of this section.

Section 109 amends section 7(c) of the Settlement Act. The new amendment directs the Secretary of the Interior to create a 13th region for those Alaska Natives who are non-residents of Alaska and gives them authority to establish a regional corporation. Section 110 of the bill creates a new section 30 of ANCSA which sets out the procedures to be followed by the Secretary of the Interior in carrying out his responsibilities in creating the thirteenth region. These responsibilities include: (1) enrolling therein those Alaska Natives who wish to participate; (2) how the corporation for the thirteenth region shall be created and how its interim Board of Directors is to be selected; (3) the instructions for submission of the articles of incorporation for the thirteenth regional corporation; (4) provisions covering the distributions made from the Alaska Native Fund and the impact of the thirteenth region on that fund; (5) authority to make adjustment in the distributions from the Alaska Native Fund when the thirteenth region enrollment is completed; and (6) the authority of regional corporations to cancel, without any liability, the stock of those of their members who shift their enrollment to the thirteenth region.

While we support the enactment of sections 109 and 110, we recommend that section 110 be amended as suggested herein.

It appears that little purpose would be served in prohibiting a potential enrollee in the 13th region from notifying the Secretary of his decision before the end of 60 days after enactment of this section. A Native should not be punished for immediately notifying the Department of his decision. Therefore, we recommend that the phrase "not less than 60 days nor" be deleted from the new section 30(a) of ANCSA.

In carrying out the provision of ANCSA, some of the time constraints under which the Department has had to operate have been extremely limited. We recommend that the time provided for each Alaska Native to inform the Secretary of his intention be extended.

Further, some Natives attempted to amend their enrollment applications before December 1, 1973, to indicate a change in whether they wished to be enrolled in the 13th region. Section 110 provides in the new section 30(a) of ANCSA that any Native who does not file a change with the Secretary within the 60 to 90 day period must return to the status in his "original enrollment application." It would seem more appropriate to place such Native under the "election last filed," and we recommend that this language be substituted instead.

New section 30(a) requires the Secretary to prepare and certify a "final roll" within 120 days which will supersede the temporary roll authorized by "this subsection." Subsection 30(a) does not authorize a temporary roll. This could result in a construction in subsection 30(a) of reference to the roll of December 18, 1973. New subsection 30(f) of ANCSA created by section 110 of this bill authorizes a temporary roll, and if subsection 30(a) refers to this temporary roll then the word "subsection" should be changed to "section."

The fourth provision of new section 30(a) directs the Secretary to prepare and certify a final roll under that section within 120 days of the section's enactment. New section 30(a) would require a second enrollment campaign in addition to that authorized by section 101 of this legislation. In our judgment, the enrollment requirement upon the Secretary of 120 days after enactment under new section 30(a), running simultaneously with the one year enrollment requirement under section 101, would impose a prohibitive administrative burden. We recommend that the words "Within one hundred and twenty days of the enactment of this section" in the fourth provision of new section 30(a) be amended to read "Within one year of the enactment of this section."

The final provision of new section 30(a) allows the Secretary to incorporate in the final roll authorized here "other changes made by the Secretary in accordance with the Act." The changes presently being made in the roll are not literally "in accordance with the Act" but are changes made on earlier principles of law which have been construed as applicable to the Settlement Act. Therefore, this last phrase should be deleted. The presence of this last sentence raises the possibility of the construction that the temporary roll referred to earlier will be the roll of December 18, 1973. It cannot be expected that all corrections in that roll will be made in time for the applicability of this section.

New section 30(c) of ANCSA provides the instructions for the submission of the articles of incorporation for the 13th region. The time periods specified are so

short for each of the proposed steps that carrying them out will be administratively prohibitive. We recommend these time periods be extended.

New section 30(d) requires that articles of incorporation for the 13th region be approved in accordance with subsection 7(c) of the Settlement Act. Section 109 of this bill amended that section and the amended language is inapplicable to the last sentence of section 30(d). The reference intended is probably to that of section 7(e) of ANCSA.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely yours,

STANLEY D. DOREMUS,
Acting Assistant Secretary of the Interior.

Mr Meeds. In 1971, Congress enacted historic legislation providing for the settlement of long-standing claims of the Natives of the State of Alaska to their rights to the lands of that State. These rights had been recognized and preserved in the treaty with Russia acquiring Alaska; in the Territorial Enabling Act; and in the Statehood Act.

In 1971, a series of factors came together which permitted the legislative settlement of these just claims. While the primary force behind the legislation was the necessity to do justice and equity to the rights of the Natives, there were many other interests involved in the legislation.

As a consequence, the final act was a delicate balancing of interests and considerations.

The act was complex and often confusing. The Congress placed upon the Department of the Interior a heavy burden in implementing such a comprehensive act.

While recognizing the difficulties the Department was faced with in implementing the act, the history of their actions in doing so has led to much controversy and has given rise, many times it seems to me needlessly, to the necessity for Native groups to expend valuable time and money in defending their rights under the Settlement Act.

In many cases, the Department and its officials have evidently overlooked the prime reason for enactment of the legislation, that is, to fairly and equitably settle Native claims.

The Federal courts of this Nation have seen fit to adopt a rule of construction that ambiguities in laws enacted for the benefit of the Indians shall be resolved in favor of the Indians and that such laws will be construed strictly against the United States and liberally in favor of the Indians. In many cases, the Secretary and his officials have adopted exactly the opposite rule of construction. Ambiguities and uncertainties in the complex Settlement Act have have been construed strictly, sometimes harshly, against Native affairs and interests.

Funds awarded by the Congress to the native as compensation for land claims extinguished by that act and intended to be used for the economic, social and cultural advancement of the Alaska Native as a people have had to be expended in fighting the United States and its officials in Federal courts across the land and in innumerable administrative tribunals.

Time allotted to the Natives in the act to enroll their members; organize their corporations; assess and select their land entitlements; and plan for the future of their people has been eaten up in interminable conflict with Departmental politicians and bureaucrats.

These officials seemed to have forgotten that the act was entitled the "Alaska Native Land Claims Settlement Act." They have tended to view it as an act for the advancement of national parks, national forests, national wildlife refuges, and national recreation areas.

Of particular concern to me has been the Department's record of implementing provisions of the act relating to the creation of a 13th region for the benefit of nonresident Alaska Natives. In a discerning Federal district court decision, Judge Gasch documents the unfairness of the Department in implementing that portion of the act.

We have now before us a bill proposing several amendments to the Settlement Act which the Native groups, either separately or as a whole, feel are necessary in order to adequately carry out the basic intent of the Congress and to remedy the erroneous interpretation placed by the Department on several aspects of the act.

As we begin to hear from the witnesses, the record will reflect the rather poor record the Department has made in dealing fairly with the Natives and in giving effect to moral, if not legal, trust that they, as administrators of the United States, owed the Native people.

The purpose of these hearings is to try to remedy some of those problems.

The Chair recognizes the gentleman from Alaska for an opening statement.

Mr. YOUNG. Mr. Chairman, I do not have a prepared statement. I would just like to compliment you for having the interest that you have had in the past and your present interest in the problem that faces us here today.

The bill that I have introduced, of course, as you have mentioned in your opening statement will possibly be amended as you have stated, as a future course of action, and possibly amendment would come on the date this bill is introduced. But there should not be much objection to what is in the present bill as far as the Alaska Native Claims Settlement Act is concerned.

It appears to me it is time to solve this problem, to put aside those differences that we have and to improve the original act as passed with the addition of these new amendments. For those of you who wish and desire additional amendments to the bill, let me remind you that this act itself is a very complex act. This bill will not go through the Congress with ambiguities if there is a possibility to have this act amended. If justification can be shown, you can be sure that this committee will go forth with vigor to see that we amend the act accordingly. But those amendments in the present bill are those studied and proposed by corporations and usually in consistency with the entire group all together.

Mr. Chairman, let me thank you for your consideration in this very complex problem and I do compliment you on what you have done in the past in this very important area.

Mr. MEEDS. Thank you.

Our first witness is Roger Lang, president of the Alaska Federation of Natives. This, of course, was the very strong organization which was really responsible for passage of this act.

STATEMENT OF ROGER LANG, PRESIDENT OF THE ALASKA FEDERATION OF NATIVES, 670 WEST FIREWEED LANE, ANCHORAGE, ALASKA

Mr. MEEDS. Roger, we are happy to have you before the committee to testify on this very important legislation.

Mr. LANG. Thank you.

Mr. MEEDS. You have a rather long prepared statement. You may proceed to read it into the record or summarize it.

Mr. LANG. Yes, Mr. Chairman, I would rather summarize just very briefly each section of our concern.

Mr. MEEDS. Without objection the prepared statement will be made a part of the record at this point.

[The complete statement follows:]

STATEMENT OF ROGER LANG, PRESIDENT, ALASKA FEDERATION OF NATIVES

Mr. Chairman: My name is Roger Lang and I am President of the Alaska Federation of Natives, which is located on 670 West Fireweed Lane in Anchorage, Alaska. We wish to express our appreciation for the opportunity to testify on the various amendments to the Alaska Native Claims Settlement Act that you have before you.

We are all aware of the effort that went into the passage of the Settlement Act in 1971, and we are also aware that the Conference Committee met to resolve the differences between the House and the Senate and wrote the final bill in a fairly short period of time. The amendments that we have before us relate to areas that were not anticipated at the time the bill was originally passed. There are several issues that are involved and I will try to discuss each of them separately.

LATE FILERS

Because the Department of Interior allowed only fifteen months for Alaska Natives to file for enrollment to obtain benefits under the Native Claims Settlement Act, many people eligible to receive the benefits are not on the roll. There are over a thousand and may be many more who just for one reason or another despite the best efforts of the Bureau of Indian Affairs, the Regional Native Corporations, and others were not notified in time to meet the March 30, 1973 filing deadline set by the Department of Interior.

The amendment on late filers is designed to allow these people to enroll and to receive the benefits under the Act.

Since the time this bill was introduced we have been made aware of another problem which relates to enrollment. Approximately thirty people have been enrolled to groups on St. Lawrence Island. Because St. Lawrence Island was a reserve and chose to take an option under the Land Claims Act which placed all the land on the island under the control of the village corporations of Gambell and Savoonga, there is no land available for these groups on the island. In order to solve this problem we suggest the following language be added to the late filers section:

The Secretary is authorized to poll individual Natives properly enrolled to Native villages or Native groups which are not recognized as village corporations under Section 11 of the Settlement Act and which are included within the boundaries of former reserves who elected to receive surface and subsurface entitlement pursuant to Section 19(b) of the Settlement Act. The Secretary may allow these individuals the option to enroll to a village corporation which elected the surface and subsurface title under Section 19(b) or to enroll to the regional corporation in which the village or group is located on an at large basis.

ESCROW ACCOUNTS

A portion of the legislation deals with an amendment to set up escrow accounts for development which takes place on lands withdrawn for Native selections prior to conveyance of lands to the appropriate Native corporation. As you know the

Land Claims Act provides for a three year selection period for villages which is passed and a four year selection period for regions which ends this year.

Various regional and village corporations have been working with private companies to negotiate agreements on lands which have been withdrawn for their selections or has been selected by the Native corporation. Presently if any of these agreements are consummated the money from the agreement would go to the Federal Government and the Federal Government would keep it in the U.S. Treasury. Even though the Native corporation would negotiate the agreement, they would not receive any financial benefits from the agreement prior to the time the land was actually conveyed. On those lands that have already been selected the Bureau of Land Management is estimating a minimum of nine months for processing and some selections have been waiting for processing for fifteen or sixteen months and have yet to be conveyed to Native corporations.

This escrow account section would allow the U.S. Government to hold monies from lands that have been withdrawn and/or selected by Native corporations into an escrow account until final determination of entitlement is made. This protects the Natives financial interest in the land.

The bill as it is now written would provide for escrow payments to take place from the date of enactment of this Act. We recommend a change in this language so that proceeds are put in escrow from the date of enactment of the enactment of the Alaska Native Claims Settlement Act which is December 18, 1971. We feel this is only fair because there is substantial agreement among all parties involved, the Natives, the State, and the Federal Government that escrow accounts are necessary. Escrow accounts would have been set up prior to this date if the Department of the Interior felt they had any authority to do so. Because all this legislation does is give the department this authority we feel that any money which has been received since December 18, 1971 by the Federal Government as a result of any kind of lease, permit, contract, right-of-way, or easement on Native lands should be protected for the Native corporation involved.

INCOME FROM PUBLIC EASEMENTS

This section provides that any income from public easements reserved pursuant to Section 17(b) of the Act to be paid to the owner of the land. As you know many easements will be placed on Native lands and we feel it is only fair that if there is any revenue from these easements the land holder be the one that benefits not the U.S. or State Government.

INCOME FROM CONTRACTS, LEASES, PERMITS, RIGHT-OF-WAY, ETC.

This section allows Native corporations to share on a proportionate basis any income from contracts, lease, permits, right-of-way, or easements that are issued for surface or minerals when such agreements are made prior to conveyance to the Native corporation. The Native corporations will share on a proportionate basis in relationship to their land and ownership. Again we believe that this section should take effect on December 18, 1971.

INVESTMENT COMPANY ACT OF 1940

Most Native regional and village corporations are now subject to regulations under the Security & Exchange Commission because of the Investment Company Act of 1940. The situation comes about because corporations have begun to receive their money but have not received their land. Because most of the money is held in some form of investment these companies are now investment companies. However, when the land is transferred these corporations will no longer be investment companies because in most cases land and not investment will be primary business of the Native corporations. Therefore, we are recommending an exemption from the 1940 Act. Originally we had asked for an exemption through 1976. We are now changing that to request that the exemption be through 1980, because of the unforeseen delay in conveyance of Native lands. We feel that it will be at least 1980 before the land is actually conveyed to the Native corporations.

FOOD STAMPS

We are asking for some specific language which would prevent the Department of Agriculture from determining that payments under the Alaska Native Claims

Settlement Act can be used to reduce food stamp eligibility. We feel that the Claims Settlement Act is fairly clear on this subject and that food stamps should not be reduced because of Native payments. I think that it is important for you to know that the Department of Health, Education, and Welfare has looked at the Land Claims Act and based on the language in it and the Congressional history has concluded that welfare payments should not be reduced by payments under the Native Claims Settlement Act. However, the Department of Agriculture has come to the opposite conclusion and therefore we are asking for specific language on the Food Stamp Act. We feel all this section does is to clarify what was the original intent of Congress in the first place.

INTEREST ON THE ALASKA NATIVE FUND

The United States Government determined that they could pay interest on the Alaska Native Fund only for the first two years of the funds existence. This was the period when all monies were being held in the fund prior to the completion of the Alaska Native roll by the Secretary of Interior.

The language we are suggesting in this Act would allow the Federal Government to pay interest on the Alaska Native Fund while monies are being held each quarter. At times the amount of money is fairly substantial and we do not feel that it was the intent of Congress that this money should sit idle in the U.S. Treasury and draw no interest.

MERGER LEGISLATION

The NANA Regional Corporation has developed an amendment to the Claims Settlement Act which would allow for merger of village corporations into the regional corporation or allow villages to merge among themselves within a region. We feel that this legislation is absolutely necessary if many of the village corporations are to survive. Those people that have closely studied the cash flow of village corporations in relation to their administrative costs find that many of the corporations may well end up bankrupt.

There has been some discussion as to whether or not dissident shareholders should be allowed the right to have their stock bought by the corporation if they do not agree with the merger. We think this is a very bad precedent. The original congressional intent was obviously the intent that individuals not alienate their stock for at least twenty years, which we believe is a good concept. We also believe that it would be virtually impossible to value the stock of the village corporations at this time in order for individuals to be "bought out". Therefore, we recommend that dissident shareholders be subject to the will of the majority in any merger situation.

LAND USE PLANNING COMMISSION

There is an amendment to extend the life of the Land Use Planning Commission through 1978. The Alaska Federation of Natives has not always agreed with the decisions of the Commission, but we feel that they have performed a very important function. We therefore, support this extension of their authority.

COOK INLET LAND SELECTIONS

AFN does not intend to go into a great deal of detail on the Cook Inlet land selection problem. Cook Inlet will do that themselves in their testimony. However, I think you should know that AFN is 100% behind Cook Inlet in their attempt to find a solution to their land selection problem. They are in the unfortunate position of being a region whose boundaries encompass much of the settled land in the State of Alaska and therefore their selection options have been extremely limited. We urge that you listen to Cook Inlet and pass the legislation they are requesting.

13TH REGION

The 13th Regional Corporation question is something that has haunted us for several years and is probably best settled by Congress rather than by any further expensive and lengthy battles in the court system. In considering amendments relating to the 13th Region we think there are a couple important things that Congress should keep in mind. First of all there was a great deal of misinformation provided about the 13th Region both pro and con by regional corporations in Alaska and by proponents of the 13th Region outside the State. People who

had to make the decision and at the spur of the moment often did not have complete information and were confused about what they were doing. In light of this we think it is particularly important that Congress allow all non-resident Alaskan Natives a final choice as to whether they want to be in or out of the 13th Regional Corporation.

We also request that, in the 13th Region legislation, Congress provide some protection for those village corporations whose selections were based on the original December 18, 1973 enrollment. If people are taken out of the village corporation either willingly or unwillingly this may affect the total land entitlement of the village corporation. We therefore suggest that Congress provide language that protects village land entitlement based on enrollment figures prior to individuals being enrolled in to any 13th Regional Corporation.

Another major problem that has arisen since the 13th Region was declared by Judge Gasch is the formation of the corporate structure.

The regional corporations in Alaska have generally not taken a stand on what this structure should be or how it should come about. We feel this is an issue that is best solved by the people who will be in the 13th Region. However, it is our opinion that this region should be set up in as a democratic manner as possible.

CONCLUSION

Once again, I would like to thank the Committee for the opportunity to testify. We have come a long way since December 18th of 1971 when the Alaska Native Claims Settlement Act was signed into law. The amendments which I have discussed above are evidence that the Alaska Native community as well as the State and Federal Government are looking at problems and attempting to meet them head on. We look at the Alaska Native Claims Settlement Act as a contract between the Congress of the United States representing the U.S. Government and the Alaska Native community. As such we expect this contract may have to be amended again if the future as we see other problems that were not anticipated at the time of the Settlement Act was passed. The amendments discussed above are in general, technical amendments which either clear up situations which have arisen since the passage of the Act or provide further clarification on the original intent of Congress. These amendments make no change in the structure or the purpose of the Act and we therefore urge that you adopt them. Thank you for your consideration.

Mr. LANG. For the record, Mr. Chairman, I am Roger Lang, and I am president of the Alaska Federation of Natives, Inc., which is located at 670 Fireweed Lane in Anchorage, Alaska.

We wish to express our appreciation for the opportunity to testify on the various amendments to the Alaska Native Claims Settlement Act that you have before you.

With your permission, Mr. Chairman, I will deviate from the testimony and go to each specified item.

On late filers, I would only like to say as it relates to late filers, Mr. Chairman, that these were the only people in the whole section of the act and the enrollment regulations who were not subject to appeal. There was no appeal for a late filer. There was an automatic rejection upon his filing and upon review by the Solicitor's Office in Alaska, again a rejection. We feel that is wrong.

There are numerous cases where there are mitigating circumstances for late filers.

It is also our feeling that any native who meets the criteria for enrollment should be allowed to do so.

We do have one section that we would like to propose as a further amendment to the late filers section and this is because of a strange circumstance on St. Lawrence Island. There are two large villages on St. Lawrence Island. Gambell and Savoonga.

They had an option under the act to either take their island, the

land on their island in lieu of a revocation of a reserve and not to participate further in the act.

Also, on St. Lawrence Island are two smaller areas called groups. They didn't get to elect. They fell between the cracks of a revoked reservation and participation in the act. Our amendment handles this strange situation and allows the Secretary an opportunity either to enroll them to Gambell or Savoonga and thus be a part of the reservation or to revoke the reservation or be at large in the Baron Straits Regional Corp. and enjoy the benefits of the act.

It came later to our attention, Mr. Chairman, and we offer it as an amendment.

On the escrow accounts, there is a strange quirk in the act which sets severe deadlines for native lands identification and selection. We have met those.

The villages have selected their lands. But the problem is that there is a large amount of time that will happen as it relates to transfers. Even the issuance of an interim document means that for years there could be gray areas where we know Native lands will be Native lands and thing are happening in Alaska. Pipelines, roads, gravel is being sold, all kinds of things are happening.

Interior agrees with us about establishment of an escrow account. At one time we thought they had authority to do it without legislation and we find that they don't have now. We do disagree with one portion of the escrow bill and that is the fact that it mentions the time of passage. That is, time of passage of this act, this amendment. We feel it ought to go back to the time of passage of the act. It's a little item but if we all agree that escrow accounts ought to go, then we agree they ought to start when Native lands have been identified and selected.

And the amendment relating to the Investment Company Act of 1940, the structure of the act was such that we received moneys quicker and moneys are not the total assets of the regional corporations; the larger asset will be the land. But because we receive money before we receive lands, we became investment corporations.

We asked for a waiver of that and we have secured letters of no-action from the Securities and Exchange Commission which I hear they are reconsidering, but we feel that because of the time lag in the transfer of lands, we asked originally for an exemption through 1976. It is out feeling based on the experience since the passage of the act that the exemption ought to be through 1980 because of these unforeseen delays in the conveyance of Native lands.

As to the food stamp problem, we have worked very much with the Department of Agriculture trying to convince them that the act meant what it said when it exempted benefits of the act from the act as criteria for any other family assistance plan. But we are unable to move the Department of Agriculture. For some reason, they equate the poorest people on earth with those people that have municipal bonds and other tax-free things and since they are unable to know a poor person who has municipal bonds we feel that the language that we are talking about will help them make up their minds.

Interest on the Alaska Native Fund; we have the only fund of Indian moneys in the Treasury of the United States which is not drawing interest. We feel that is wrong mainly because we do not feel

that a trust relationship as it deals with the handling of Indian funds has been broken by the passage of the Native Claims Settlement Act.

We have introduced language, because of some feeling that we have that Congress doesn't appropriate the same day every year, and there are times according to the act itself where the money could be sitting there for 90 days; and we would like for interest to be reinstituted on the Alaska Native Fund.

On the merger legislation, this is a new concept, Mr. Chairman, but it's not one which people are not aware of. Any village with less than 600 people is in financial straits if it follows all the rules of incorporation that provides for yearly audit and develops a budget.

If it does all of these things, if it has annual stockholders meetings and sends out proxies and solicitations and annual statements, when it meets all of those criteria it quickly develops that that corporation must have an administration and we are dissipating capital in providing administration for very small corporations and this merger legislation is permissive. We feel it is good legislation and one which needs to happen eventually. It allows villages to merge with villages or villages to merge with regional corporations and share the administrative costs of being a viable entity under the act.

So then we do have one problem with the legislation as introduced and that relates to dissident stockholders. We have talked with NANA Regional Corp. and we find that they agree with us, that this section of the introduced legislation ought to be stricken.

As to the Land Use Planning Commission, Mr. Chairman, as you well know there have been many things that the Land Use Planning Commission has said and done that we do not agree with. However, they are a novel instrument in the function of Federal and State lands in America. We feel that they have performed an important function and we do support the extension of their authority.

On Cook Inlet land selections; I am aware, Mr. Chairman, that Cook Inlet will introduce as an amendment probably at the end of this week or at the beginning of next week, for consideration probably in the Senate before it comes to the House, a problem that they have in land selections which is almost unique to Cook Inlet.

I am sure that their representatives in their testimony will go into detail and probably have already submitted documents in your office on their intents to find a solution to land selection problems.

The Alaska Federation of Natives does back their efforts and does endorse their willingness both to attempt to secure agreement with the State and the borough of Anchorage and others interested, by the Department of the Interior. And we urge that you seriously consider any legislation that they request at a future time.

As to the Thirteenth Regional Corp., this is something that has haunted the Alaska Federation of Natives, those Alaska Natives not resident of the State of Alaska, for several years.

It is our conclusion that the problem is best settled by congressional action rather than any further expensive and lengthy battles in the courts.

When we consider amendments to the Thirteenth Regional Corp.'s establishment, we feel that there are two things that Congress should keep in mind.

One is the section 2(b) of the act. Section 2(b) of the act says that this act shall be accomplished rapidly with certainty and in conformity with the real economic and social needs of the Natives without litigation and maximum participation by Natives in decisions affecting their rights and property.

We take that section of the act very seriously. It is our lever on the Department of the Interior. We use that whenever they pass or promulgate regulations, whenever they do something new to us and our participation is being directly affected by their actions.

This is a tool that we use, not the first concern that we have of the establishment of this. Our concern, our feeling is that anything that affects the benefits of Alaska Natives no matter where they reside, that they should have a part in the decision that is eventually going to affect them more realistically than anything else.

Our feeling is that everyone should have a vote or a voice in their destiny.

The Alaska Federation of Natives has established their criteria for the Thirteenth Regional Corp. as being exactly that. We are not concerned with who shall be the interim board of directors. That is their concern.

We are not concerned about money, although we have been accused of it.

The cash flow is not that significant in any case.

Our concern is for those people, those individual stockholders who eventually will be in or out of the Thirteenth Regional Corp. and we feel that they should have a say in it.

The second part is that there is much doubt, still doubt about the fact of the first election. We have studies that, all the records, all the testimony and the statements and our feeling is that if there was that much doubt to create in the judge's mind for overturning Interior's feeling, then certainly there still must have been in the minds of the individuals that voted.

So we feel, finally, that a final choice ought to be made by those that wish to be in or out of the Thirteenth Regional Corp.

We have some concerns, Mr. Chairman, which we have enunciated before about the Thirteenth Regional Corp. One we would like to talk about at this time, the case where villages selected their lands based upon the population of those villages. Although we trust that Interior won't upset village land selections because of the establishment of the Thirteenth Regional Corp, we have found in our last 2 years of history since the passage of the act that it's much easier to convince Interior about congressional intent if Congress says what it means very clearly at the time of passage.

Mr. MEEDS. We have been trying to do that for years.

Mr. LANG. Yes, yes.

Mr. MEEDS. I don't know that we have succeeded.

Mr. LANG. And it's a problem for us because as of December 18 of this last year the rights of villages to identify and select lands has passed. Anything that affects that now really would raise serious problems with the villages. We would want some language and we leave it to the wisdom of this committee that would insure that village selections made as of December 18 are good and valid selections.

Finally, I would like to thank you for allowing your time in scheduling these hearings this early in the session of your new Congress; and I would wish to advise you that since the passage of the act, Alaska Natives have come a long way.

We feel that all of these amendments proposed and the amendments introduced are simply technical and working amendments which clear up gray areas in there and the contract agreement between the Congress and the Alaska Natives will not be upset.

All of the amendments in the situations we suggest in these amendments make no change in the structure or the purpose of the act and we urge that they be adopted.

Thank you.

Mr. MEEDS. Thank you, Mr. Lang.

As I understand it now, in the exemptions to SEC regulations you are not asking any more than you presently have. What you are asking is an extension of what you originally had; isn't that correct?

Mr. LANG. Right.

Mr. MEEDS. So there are really no exceptions to the situation which presently exists.

Mr. LANG. No exception to date. I am not sure what they will do to us later.

Mr. MEEDS. Does the bill provide for merger of regional corporations?

Mr. LANG. Yes, with a time limit.

Mr. MEEDS. Why is that?

Mr. LANG. I don't know. I think there was a fear at one time that we would all merge and becomes the largest and biggest political entity in the State of Alaska. I am not quite sure why.

There is no provision for the merger of village corporations into regional corporations.

Mr. MEEDS. There is a provision?

Mr. LANG. There is no provision. There is a provision for merger of regional corporations, yes.

Mr. MEEDS. In the bill which we are considering today, there is a provision for the merger of regional corporations?

Mr. LANG. No. This would be—this one allows only for the merger of village corporations with villages and regional corporations. It doesn't allow for the merger of regional corporations.

Mr. MEEDS. You are not in favor of any change in the original act providing for the merger of regional corporations, an extension of that time, for instance?

Mr. LANG. I never considered it, Mr. Chairman, but there are other options available to us, I think, those not dealing with regional or village corporations.

Mr. MEEDS. Are the regional corporations in relatively good financial health?

Mr. LANG. I would say probably 99 percent of them.

Mr. MEEDS. Ninety-nine percent?

Mr. LANG. Yes.

Mr. MEEDS. What is 99 percent of 12?

Mr. LANG. I would say with the exception of AHTNA Corp., yes.

Mr. MEEDS. With exception of what?

Mr. LANG. AHTNA. AHTNA Corp. is a very small corporation as it relates to numbers. As you well know, the dollars are predicated on population. AHTNA has I think 1,300 people enrolled and that is smaller than some village corporations as it relates to numbers. But they are doing—they are alive and very strong because of some other outside interests and outside contracts that they have been able to secure.

Mr. MEEDS. Approximately how much has been distributed under the Alaska Native Claims Settlement Act?

Mr. LANG. Four payments, I think it amounts to about \$200 million.

Mr. MEEDS. \$200 million?

Mr. LANG. \$209 million I am told it is now.

Mr. MEEDS. How much has the smallest regional corporation received approximately?

Mr. LANG. I have no idea offhand.

Mr. MEEDS. Does anyone know?

Mr. LANG. We can figure it out in about a minute.

Mr. MEEDS. OK, we will go on and come back to that point.

Mr. LANG. Yes.

Mr. Chairman, you did ask if the act related to the merger of regional corporations.

It does.

Mr. MEEDS. The original act, yes. For a 1-year period.

Mr. LANG. Yes.

A 1-year period, yes, and providing the 12 regions may not be reduced to less than 7.

In other words, if four—

Mr. MEEDS. And that period of time has now passed, however.

Mr. LANG. Yes.

Mr. MEEDS. Would you be in favor of changing that in any way?

Mr. LANG. Oh, yes.

Mr. MEEDS. To allow another period of time during which regional corporations can merge?

Mr. LANG. I have no fear of that at all. If you could simply delete "within 1 year of the date of enactment of this act" it would surely be a fair section.

Mr. MEEDS. I don't know how the Alaska Representative would feel about that.

Going now to the Cook Inlet problem, I am aware that it is not part of the act we are considering here today but I think we all realize that it is a problem.

Mr. LANG. Yes.

Mr. MEEDS. And that negotiations as I understand it are now under way to resolve it. Is that correct?

Mr. LANG. That is correct.

Mr. MEEDS. Our counsel tells me that Cook Inlet will testify tomorrow, but can you give us some idea of what that situation is?

Mr. LANG. Yes.

Mr. MEEDS. I maybe should withhold questions on that; but it's my understanding that AFN's position is that they will support the accommodation which they might reach.

Mr. LANG. Yes.

Mr. MEEDS. If Cook Inlet region agrees with Interior on some plan then that is acceptable to AFN?

Mr. LANG. Yes.

Mr. MEEDS. All right.

Mr. YOUNG. Mr. Chairman.

Mr. MEEDS. I yield to the gentleman from Alaska.

Mr. YOUNG. Mr. Chairman, it could be that Interior will not agree with Cook Inlet even if they agree with the borough up there. That's why we are legislating, of course, to address that eventuality.

The original negotiations were within the State on this, and because of problems there we had this legislation to get that taken care of.

And that's why we are here now.

Mr. MEEDS. But we don't have that provision in the act.

Mr. YOUNG. I understand that.

Mr. MEEDS. But I think we all recognize that, in the event there is not agreement between Interior and Cook Inlet and the boroughs and the villages so that Cook Inlet's requirements are satisfied, we will indeed legislate on it.

In fact with this one individual, the problem of Cook Inlet is one of the glowing examples of Interior's insensitivity to the meaning of the Alaska Native Lands Settlement Act in the first instance, of placing moose over people, if you will. I hate to get into that problem.

Mr. LANG. Mr. Chairman—

Mr. MEEDS. In any event you have the Chair's assurance that, in the absence of a reasonable agreement satisfactory to Cook Inlet, we will legislate on that matter.

Mr. LANG. Thank you.

Mr. Chairman, might I say one other matter not found in my testimony?

This relates to the matter which is very serious to us about easements across Native lands. The reason it is not in our testimony, Mr. Chairman, is very simple because we have been negotiating with Interior for approximately 9 months about the matter. We started out with a situation, a combination of requests by the State of Alaska, by Interior, by Trout Unlimited, by Preserve the Mosquito—by everybody—to almost where you reach a point of, as a matter of fact it did reach a point where we said to the Alaska Task Force in February of this year that we will take the easements and you take the rest and we have reached a fair agreement.

We do have some severe problems because of the onset of offshore drilling in Alaska and we have identified that continuous linear easements on the Alaska Native ocean fronts of 25-foot width, for public access, which is an interest in land, and the passage of coastal zoning management bills, which the State of Alaska is very interested in, which is a police power on lands, puts us in almost an untenable position as it relates to easements.

We have not been advised as to the philosophy of the new Secretary-Designate and we have a meeting with him prior to our departure from Washington, and should we run into trouble we certainly shall be back about that one.

With that, I am through, Mr. Chairman, unless you have any questions.

Mr. MEEDS. Is it your intent by your late filer provision that late filers also be entitled to become members of the Thirteenth Regional Corp?

Mr. LANG. Oh, yes. That is a benefit, a benefit under the elective power which they have and not one which we would want to deny anyone.

Mr. Chairman, you asked me a question earlier——

Mr. MEEDS. Pardon?

Mr. LANG. You asked me a question about the smallest corporation.

Mr. MEEDS. Right.

Mr. LANG. Out of \$209 million distributed, AHTNA's remaining share as a regional corporation is \$2,926,000 in its distribution to villagers.

Its share as a regional corporation is \$1,316,700.

Mr. MEEDS. \$360,000?

Mr. LANG. \$1,360,000.

Mr. MEEDS. That's after the villages?

Mr. LANG. That is the regional share after village distribution of \$1,609,000.

Mr. MEEDS. The gentleman from Alaska.

Mr. YOUNG. Thank you, Mr. Chairman.

Roger, I am glad you have an amendment to the bill. On the merger you say you have no objection to the elimination of 1 year as the provision as far as merger of corporations is concerned.

You would also support the concept of it being no less than seven corporations?

Mr. LANG. Yes, I think so.

You must realize you are putting me in a strange position.

Mr. YOUNG. I realize that.

Mr. LANG. This is not a matter which the board has considered and this is only Roger Lang speaking.

Mr. YOUNG. I understand that, and I asked Roger Lang to answer.

But I would say this, I personally see no objections to this because eventually I just don't want to come back to this bill.

Mr. LANG. No, that's right.

Mr. YOUNG. And we would like to solve most of these problems now, of course. I do think that the allowance of villages to do this is of prime importance and should be taking place. If there is no objection by the time this bill is passed you would have time to check with the board to see if they would be agreeable to the deletion of the 1-year provision and also to continue with the seven regional corporations.

Mr. LANG. Right.

Mr. YOUNG. I think we are both realists in the sense that it might be taken, the State of Alaska may take this as a threat.

I don't myself though.

Mr. LANG. I don't either.

Mr. YOUNG. But I think it might be an advantage to the smaller corporations that need the help to work with them when necessary.

Mr. LANG. Yes.

Mr. YOUNG. One other thing. The comment you have on easements, the reason it isn't in this bill as you were informed is we do

believe it has been the case that there have been serious attempts to negotiate with the Department.

Mr. LANG. Yes.

Mr. YOUNG. And it is within your corporation to take care of this problem. I am quite interested in your meeting with the Secretary-Designate and you can be sure if you don't reach some comparable compromise we will be looking very closely at that, also.

Mr. LANG. Thank you.

Mr. YOUNG. Keep us informed of your endeavors in this matter.

Mr. LANG. Yes.

Mr. MEEDS. I have several more questions.

What is the status of the AFN's appeal from the Gasch decision?

Mr. LANG. As of today?

Mr. MEEDS. As of right now.

Mr. LANG. We have entered an appeal to Judge Gasch's decision. I think it cost \$10. I am not quite sure.

That's exactly where it's at.

Mr. MEEDS. You have entered an appeal but have you carried out those procedures which are necessary to perfect that appeal?

Mr. LANG. No, not to my knowledge.

Mr. MEEDS. Is your counsel here?

Mr. LANG. Yes, he is, and we have to make up our minds on it.

Mr. MEEDS. Who is your counsel?

Mr. LANG. He is here.

Mr. MEEDS. Would you identify yourself, please?

Mr. BASS. I am Kenneth Bass.

AFN has docketed the appeal and paid the fee. That was done on the 28th of April. The briefs for AFN would be due sometime in June unless there were extensions of the time to file the briefs. Briefs have not yet been filed but we are on file with them for appeal.

Mr. MEEDS. So it is true that you are in proper order for your appeal?

Mr. BASS. Yes, sir.

Mr. MEEDS. The Aleut League also appealed, I think.

Mr. LANG. Yes.

Mr. MEEDS. Does anyone know about their appeal?

Mr. TRUITT. I am Steven Truitt, I am an attorney and I represent the corporation in connection with the litigation before Judge Gasch.

Like AFN, we have taken an appeal both formally and in substance. We, too, have docketed the record and our brief is due in June and my present instructions are to file it timely.

Mr. MEEDS. Thank you.

Now, Roger, you said that you were in favor of all those who manifested an interest in changing one way or the other having an opportunity to vote on whether they should be in or out of the 13th region.

Would you, therefore, be in favor of all people who registered as Alaska Natives under the Alaska Native Claims Settlement Act who at one time or another changed from one corporation to another, one village to another, or anything like that; would you be interested in seeing them have an opportunity to reregister or change their minds at this time?

Mr. LANG. Yes.

Mr. Meeds. So you would be in favor of a reelection for all of the Alaskans at this time?

Mr. LANG. Yes.

Mr. MEEDS. You would.

Mr. LANG. I forget that I am talking to a machine, too, as well as to yourself. The answer is, "Yes."

Mr. MEEDS. I hope I don't look like a machine.

Mr. LANG. I am vastly interested in this thing punching holes in the paper in front of me.

Mr. MEEDS. You would be interested in a redecision type of election?

Mr. LANG. Yes.

Mr. MEEDS. Do you think that would cause any problem in the present workings of the corporations and the villages?

Mr. LANG. I would imagine.

Mr. MEEDS. But you are in favor of it despite that?

Mr. LANG. Well, if I say to Interior that I want Natives to have a say in how they are treated then I got to say it to myself.

Mr. MEEDS. You have to be consistent, don't you?

Mr. LANG. At least to myself.

Mr. MEEDS. Then why don't you say you are being consistent?

Mr. YOUNG. Mr. Chairman?

Mr. MEEDS. The gentleman from Alaska.

Mr. YOUNG. For the record, Mr. Chairman, in the bill that is before you, of course, there will be a revision written by the chairman concerning the 13th region.

Mr. LANG. I have his comments, yes.

Mr. YOUNG. It is my understanding from the chairman, again for the record, and I have had the assurance of the chairman on this, in no way would the creation of the 13th region change the enrollment as far as the selection of lands in Alaska is concerned. That is what we are going to specifically spell out in the legislation that the chairman is going to introduce. So that there is no way there will be any lands lost to a village that had 26 members because the enrollment is whatever. The land would be—the villages would still be eligible.

I think this is the Litz area, and other areas with smaller villages. But if that is written in there, and written in the way that they understand it I think we have some of our problems taken care of.

Mr. LANG. Yes.

Mr. MEEDS. One final question, Roger; you say everyone should be given the choice to opt in or out, to manifest their own choice about this.

Would you think that giving that opportunity after the 13th region had been in operation a period of time, but not proven whether it was effective or ineffective, would meet your criterion?

Mr. LANG. That's a double-barreled question I am not quite sure how to answer.

Mr. MEEDS. Take it one barrel at a time.

Mr. LANG. First, I am not sure what you mean by that period of time.

Mr. MEEDS. All right. Let's specify.

The bill that I am introducing provides for selection again after the period of 3 years has elapsed from the time the corporation begins to

function; and that those persons who had manifested that they either wanted in or out by a change in their original decision, that all those people who manifested that desire to change up to August 15, 1973, would have an opportunity to opt in or out after the 3-year period.

Mr. LANG. That's a new concept to me and I have not had time to think about it, but I will think about it. I would like time probably to augment what I've said. My whole board is here, 90 percent of my board is here. Probably we will meet during the week. I would like to do two things; answer this question; and answer the merger question as an official action of the board while we are here.

Mr. MEEDS. If you do take official action, I ask that the results be forwarded to this committee and it will be made a part of the record at this point.

Mr. LANG. Yes, that is what I mean.

Mr. MEEDS. Without objection, so ordered.

[The answers to both questions follow in letter dated May 20, 1975:]

ALASKA FEDERATION OF NATIVES, INC.,
Anchorage, Alaska, May 20, 1975.

HON. LLOYD MEEDS,
Chairman, Indian Affairs Subcommittee,
House of Representatives,
U.S. Congress, Washington, D.C.

DEAR CONGRESSMAN MEEDS: The Alaska Federation of Natives, Incorporated was asked two specific questions during recent testimony concerning the amendment to the Alaska Native Claims Settlement Act. We asked for additional time to prepare written answers to the questions, please accept this as our official reply.

Would you endorse a three years period of grace, for the Thirteenth Regional Corporation to operate, prior to allowing everyone to vote either in or out of the Thirteenth Regional Corporation? The Board of Directors of AFN, Incorporated have always advocated a concern for individual Natives to make a choice as to their final destinies by enrollment. We have not changed that stance. The question then becomes, when should they make that choice, and could they make it with good judgement? We feel, that the choice *must* be made now, so that divisive and the competition for a number/dollar game will cease. Other testimony at the Hearings raised the question of dissident stockholders, enrolled both to Alaska and to a Thirteenth Corporation. This is a serious consideration for your committee to make. If there were a chance that the disparity of choice as to final enrollment could be made by allowing a vote in three years, we would not be questioning the theory. But it is apparent, that "equity" in choices will not be based on operation of a corporation either in Alaska or outside of Alaska. That choice will be made on other considerations, and they include family ties, land, and familiarity of who is in control of a stockholders rights, and a need to identify with home. These considerations will not change with time. To equate an individuals rights as to where they shall enroll in three years, is to put too much emphasis on time and not enough on the effect of that individual's right to choose. The Alaska Federation of Natives has not opposed a creation of the Thirteenth Regional Corporation since last December, we have only said that everyone concerned with its creation should have a say.

Our only difference with your question then, is timing. We feel that for a 13th to operate as a representative of its stockholders, it should start with only those that wish to be enrolled to it. A vote at the beginning would indicate a better solution as to who will be enrolled, and should de-fuse a potential situation of competitiveness of a final number/dollar could for all regional corporations. We agree with a legislative solution as the fastest and best, and would reiterate the fact that this should not be considered a question of dollars alone. I have stated repeatedly that the affect of a 13th Corporation is not rationalized by simple numbers. The smallest of Alaskan corporations are affected most, even though the actual numbers lost may be the least. If there is to be a viable 13th Regional Corporation, and it wishes to function without interference by the other twelve regional corporations, we feel that this is best accomplished by a vote now for its potential enrollees. Three years may widen the disparity of views between the proponents of both sides of the

issue, and could result in a continual battle for a body count. That would be tragic. The Alaska Native Claims Settlement Act ought not be weighed on its dollar impact, but that by passage of the Act, Congress determined that individual Natives would be able to consider their futures and to make a determination of where they wanted to be enrolled. Those considerations are still paramount in the minds of existing corporations, and we feel should be the criteria for choice, rather than a simple consideration of dollars and who will be administering a corporation.

Whether the proposed merger consideration should be expanded to further amend that section by allowing regional corporations an opportunity to merge, provided that the lowest number of regional corporations would be seven in Alaska? The question of allowing regional mergers, absent a one year from passage stipulation, has not been considered by the Board of Directors of AFN, Incorporated. However, it has been opposed, and may offer some interesting options that have been thought of to date. I would endorse the proposed amendment, and ask its consideration.

I would like to thank the members of your committee and yourself both for their past actions for the Alaskan Natives, and for a special concern evident in your committee that the Alaska Native Claims Settlement Act shall work. It has been a joy and a privilege to work with fair and honorable gentlemen.

Sincerely,

ROGER LANG,
President, Alaska Federation of Natives, Inc.

Mr. MEEDS. I think that is all.

Thank you very much.

Mr. LANG. Thank you.

Mr. MEEDS. Excuse me, did you have any questions? The gentleman from Colorado.

Mr. JOHNSON. No questions, thank you.

Mr. MEEDS. The next witness is Helen Marie Klein, accompanied by her attorney, Mr. Thomas Carr.

STATEMENT OF HELEN MARIE KLEIN, CHAIRMAN OF THE EXECUTIVE COMMITTEE, ALASKA FEDERATION OF NATIVES INTERNATIONAL; ACCOMPANIED BY: THOMAS B. CARR, LEGAL COUNSEL, OF MILLER, CASSIDY, LARROCA & LEWIN.

Mr. MEEDS. Ms. Klein, I see you have a rather lengthy statement. You may read it if you wish, but the committee would be pleased to hear you summarize.

Ms. KLEIN. Mr. Chairman, I think I could read it in a shorter time than the last witness took, so I would prefer to read it.

Mr. MEEDS. Please proceed.

Ms. KLEIN. Mr. Chairman, members of the subcommittee; my name is Helen Marie Klein; I am here today to testify to this subcommittee on legislation affecting the 13th region under the Alaska Native Claims Settlement Act. I thank the subcommittee for this opportunity to discuss a matter of vital concern to myself and my people. I personally have long been active in, and concerned with, matters affecting the rights of Alaska Natives. I support the Alaska Native Claims Settlement Act and I testified before this subcommittee 1 year ago regarding then pending legislation to create the 13th region.

I am currently a member of the Alaska Native Sisterhood and AFN Washington chapter; I am a past president of Tlingit and Haida, California chapter, and am currently a member of the council

of that chapter. I am also an officer of several American Indian organizations.

However, I am appearing today before this subcommittee on behalf of and as chairman of the executive committee of the Alaska Federation of Natives International, which I shall refer to as "AFNI." AFNI was organized by representatives of the Native associations in the lower 49 States to represent and protect the rights of those Natives who wished to be enrolled in the 13th region under the act. In addition to advising all nonresident Alaska Natives of their right of being enrolled in the 13th region, AFNI assisted in the enrollment process and submitted articles of incorporation for the Thirteenth Regional Corp. prior to the June 18, 1973 deadline.

When the Department of the Interior announced that the proposition to establish the 13th region had been defeated, AFNI brought suit challenging the Interior's interpretation of the election results.

On December 30, 1974, the U.S. District Court for the District of Columbia granted AFNI's motion for summary judgment in that lawsuit and declared that the election had resulted in the creation of the 13th region. The district court ordered the Department of the Interior to establish the 13th region pursuant to the Act, to approve articles of incorporation for a Thirteenth Regional Corp. and to pay to that corporation its share of appropriated funds.

Since the date of that order, the Department of the Interior has set aside certain funds required to be escrowed by the court's order but has not taken any steps to establish the 13th region or approve articles of incorporation for a Thirteenth Regional Corp.

Last week the Department of the Interior filed papers in the U.S. Court of Appeals noting that their appeal was to be dismissed. The two intervenor-defendants, Alaska Federation of Natives and the Aleut League, however, have docketed their appeals and appear prepared to litigate the existence of the thirteenth region in the court of appeals.

We have spent the past 4 months seeking to fashion a compromise settlement between AFNI and the other parties to the lawsuit, AFNI representing 11 of the 12 regions in Alaska, the Aleut League, the Alaska Native Association of Oregon and the Department of the Interior, which would satisfy the predominate concerns of each of these parties regarding the 13th region.

We have not been successful in this effort to date. Thus, the likelihood is that the litigation will continue.

Also, while the Department of the Interior will apparently soon commence implementing the court's order regarding the 13th region, Department spokesmen have indicated that they will not recognize AFNI as the Native association of the 13th region under the act and that they will not review the articles of incorporation for the Thirteenth Regional Corp. submitted by AFNI in 1973.

So, some 16 months after the statutory deadline for the certification of the role of the 13th region, the matter of the 13th is still not resolved.

While we feel confident that the district court's order will be sustained on appeal and hopeful that there is still some chance of a settlement of the litigation acceptable to AFNI, we feel that as

matters currently stand, it is appropriate for the Congress, once again, to address the matter of the 13th region.

While AFNI would prefer that the Department of the Interior promptly implement the December 30, 1974 court order and recognize AFNI as the Native association of the 13th region, AFNI would support legislation, if necessary, which would establish the 13th region by law without regard to the number of natives who elected to be enrolled therein and which provided for an election of incorporators by the shareholders of the 13th region, as long as all of the other safeguards provided in the court's order are also included in the bill.

We understand that Congressman Young introduced H.R. 6644 last Thursday which, in part, deals with the 13th region. We feel that the bill is inconsistent with the December 30, 1974 court order and could jeopardize the vitality of a 13th region. A key provision of H.R. 6644, as it affects the 13th, is the open election provision of section 110 of that bill.

That section would require any native who amended this enrollment application at any time prior to December 1, 1973, to confirm that amendment in writing to the Secretary of the Interior, or be enrolled according to his enrollment election in his original application. This confirmation would have to be received by the Secretary during the period not less than 60 nor more than 90 days after the enactment of that bill.

In light of the fact that many natives enrolled into the 13th by amendment than enrolled out; that no Native has received any money from the 13th region, that the 12 regional corporations are organized, money-distributing, influential, multi-million dollar operations, and that a Native will automatically have his amendment voided if he fails to confirm it in writing, H.R. 6644's open election provision is in fact a one-way street by which the 13th would be stripped of most, if not all, of its members who enrolled therein by amendment.

Notwithstanding the foregoing specific problems as we see in the H.R. 6644 open election provision, any provision whereby persons could elect out of the 13th region prior to the organization of that region and the distribution of funds to that region, would place the 13th region in an unfair and disadvantaged position. Due to the failure of the Department of the Interior to establish the Thirteenth Regional Corp. on a par with the other 12 over a year ago, the 13th region simply cannot at this time effectively compete with the already-established corporations in any enrollment election.

H.R. 6644's election for incorporators also raises some problems. First of all, it provides that nominations can be submitted by "any bona fide organization representing nonresidents." This is not an adequate criterion for selecting organizations to nominate incorporators for the 13th region, since the 13th region will consist not of all nonresidents but only those nonresidents who elected to be enrolled in a region outside of the State of Alaska.

In light of the fact that the interests of nonresidents enrolled in the 12 regions are in many respects different from, if not adverse to, those of nonresidents who elected to be enrolled in the 13th, if organizations are to be selected to nominate incorporators for the 13th region, they should be organizations which primarily represent nonresidents who elected to be enrolled in the 13th region.

Finally, H.R. 6644 does not make adequate provision for the distribution of funds to the 13th region and the adjustment of prior distributions to the 12.

We also understand that Congressman Young may submit, or may have already submitted, a bill which contains alternative provisions for establishing the 13th region.

Under that bill, the Thirteenth Regional Corp. would not be permitted to commence operation until at least 1 year from the date of enactment of the bill; the bill does not require the submission of articles of incorporation for the Thirteenth Regional Corp. until 1½ years after the enactment of the bill.

During that interim, the bill provides for an open election in or out of the 13th region by all Natives who are not permanent residents of the State of Alaska.

For the reasons stated above, this would unfairly and unduly disadvantage the 13th region and place an unorganized nonentity in an election contest with 12 organized multi-million dollar corporations.

Congressman Young's alternative bill would also place crippling restrictions on the leadership of the 13th region, if and when it was ever established, providing for a 12-man board, none of whom could succeed themselves and each of whom would have a maximum 4-year term of office.

There is no way even remotely similar restriction on the leadership of any of the 12 existing regional corporations.

Congressman Young's alternative bill would also permit the Secretary to "appoint" the five incorporators of the Thirteenth Regional Corp. While the bill provides that these incorporators shall be selected from nominations submitted by organizations of nonresident Natives, it completely removes the final selection of the incorporators of the 13th region from the hands of the Natives who enrolled to be in the 13th region.

Finally, the alternate bill does not appear to contain any mechanism which would assure that the 13th region will receive all of the appropriated funds to which it would have a right.

We have also been advised that Congressman Meeds has submitted a bill, or will submit a bill, which, in substance, legislates into law the court's order of December 30, 1974, and provides for an open election in or out of the 13th region at a point in time where the nonresident natives could be given a meaningful choice. We are in substantial agreement with Congressman Meeds' bill. However, we feel that the provision in the bill for the nomination of incorporators does not adequately assure that the incorporators will be nominated by organizations representing nonresident natives who elected to be enrolled in the 13th region, and we feel that in light of the track record of the Department of the Interior in conducting elections, that the election of incorporators should be conducted by an impartial, disinterested party such as the American Arbitration Association.

Gentlemen, I have attempted here today to outline the nature of our concerns regarding legislation affecting the 13th region and stand ready to provide you with more detailed, written comments on specific proposals at your convenience.

I am accompanied here today by Thomas B. Carr of the law firm

of Miller, Cassidy, Larroca & Lewin, our legal counsel, and we are prepared to answer any questions that you may have at this time.

Thank you.

Mr. MEEDS. Thank you, Ms. Klein.

Let me ask you some questions about bona fide organizations. Does AFNI have constitution and bylaws?

Ms. KLEIN. Yes, it does.

Mr. MEEDS. Does it have a membership roll?

Ms. KLEIN. I can give you an outline here which is a corporate summary of the corporation if you care to have it.

Mr. MEEDS. Without objection we will make it a part of the record at this point.

Hearing no objection, so ordered.

[The information follows:]

APPENDIX TO STATEMENT OF HELEN MARIE KLEIN, CHAIRMAN OF THE EXECUTIVE COMMITTEE, ALASKA FEDERATION OF NATIVES INTERNATIONAL

Pursuant to the request of the Chairman, we are submitting for the record as an appendix to the foregoing statement of Helen Marie Klein copies of three letters which explain the origin and make-up of AFNI. The first of these letters, dated February 4, 1975, was hand-delivered to the Secretary of the Interior along with a copy of the second letter, dated February 4, 1975 and addressed to the Assistant Solicitor for Indian Legal Activities of the Department of the Interior. We are also enclosing the Secretary's reply to these letters which was received *three months* to the day from the date these letters were delivered to the Secretary.

ALASKA FEDERATION OF NATIVES INTERNATIONAL,
Seattle, Wash., February 4, 1975.

Re Establishment of a Thirteenth Region Pursuant to the Alaska Native Claims Settlement Act.

Hon. ROGERS C. B. MORTON,
Secretary, Department of the Interior, Washington, D.C.

DEAR MR. SECRETARY: As you are aware, on December 30, 1974, the United States District Court for the District of Columbia ordered that the thirteenth region contemplated by the Alaska Native Claims Settlement Act be established, its members enrolled, the regional corporation established and the region's share of appropriated funds distributed to that corporation.

The purpose of this letter is to offer you the full resources and cooperation of the Alaska Federation of Natives, International (AFNI) in accomplishing that goal and to suggest a procedure for implementing the order.

1. *Establishment of the Region.*—The order states that the "Secretary of the Interior shall establish a thirteenth region under Section 7(c) of the Alaska Native Claims Settlement Act." Order at p. 2.

It would appear that this could be implemented by a Department Notice, signed by the Secretary, announcing the establishment of a thirteenth region.

2. *Enrollment.*—The order's directive as to enrollment specifically instructs the Secretary to "*forthwith* enroll every eligible non-resident native who elected in favor of a thirteenth region" on or before August 15, 1973. (Emphasis added.) Order at p. 2.

The most expeditious way to implement this directive would be to enroll at once those eligible natives (as well as their dependents) who are listed on Department worksheets (as submitted to the Court) as having elected on or before August 15, 1973, to be enrolled in the thirteenth region. AFNI supports this approach, subject to provision for later adjustment for errors in the worksheets.

This task could be completed in two phases: first, by enrolling all those who originally elected to be in the thirteenth region and who did not amend their enrollment application in writing on or before August 15, 1973; second, by enrolling all those who amended their enrollment applications on or before August 15, 1973, and who clearly elected by that amendment to be enrolled in the thirteenth region or whose amendment did not clearly alter an original election to be enrolled in the

thirteenth region. We accept the fact that this will preclude enrollment of those persons who did not unequivocally elect to be enrolled in the thirteenth region on or before August 15, 1973. On the other hand, this procedure will enroll all persons who timely elected in writing to be enrolled in the thirteenth region and did not unequivocally retract that election, in writing, on or before August 15, 1973.

3. *The Regional Corporation.*—Section 1606(d) of the Act specifies that regional corporations shall be incorporated by five incorporators named by the native association in the region. Section 1606(e) requires the five incorporators to submit proposed articles of incorporation and bylaws to the Secretary on or before June 18, 1973.

These provisions have already been fully complied with with respect to the regional corporation for the thirteenth region. The proposed articles of incorporation and by-laws for ESK-IND-AL were timely submitted to the Department by five incorporators named by a representative committee of native associations. (Please refer to the attached letter to Charles M. Soller, Esq., Assistant Solicitor for Indian Legal Activities for the Department of Interior, for a detailed description of ESK-IND-AL's origin.) All that remains to be done is the updating and correction, if necessary, of those documents and the regional corporation for the thirteenth region can be incorporated and commence functioning. As one of the five incorporations, and as spokesman for the other four, I personally offer to meet with the appropriate persons in your Department as soon as possible to review those articles and by-laws.

4. *Funding.*—Per the December 30, 1974 order, as soon as ESK-IND-AL is incorporated, the Secretary is directed to distribute to it the region's share of money already appropriated from the Alaska Native Fund. That share is to be the amount of money ESK-IND-AL would have received to date had it been established by December 18, 1973, including interest accrued before the first payment from the Fund but reduced by the amount actually received from the Fund by individual natives enrolled in the thirteenth region.

As soon as the list of enrolled natives is available, the Department should be able to determine (a) the percentage of total fund distributions due the thirteenth region; (b) the amount which would have been paid to date had ESK-IND-AL been established by December 18, 1973; and (c) the amount already received from the Fund by individuals enrolled in the thirteenth region. The first payment could then be made soon thereafter.

We hope that you find these suggestions helpful and constructive. We at AFNI feel that this procedure will best implement the stated Congressional policy that goals of the Act "... should be accomplished rapidly, with certainty, in conformity with the real economic and social needs of Natives, without litigation, [and] with maximum participation by Natives in decisions affecting their rights and property. . . ." 43 U.S.C. § 1601(b). If we can be of any further assistance to you in implementing the Court's order of December 30, 1974, we will be happy to meet with you at any time and offer to you the full resources and cooperation of our organization for that purpose.

Sincerely yours,

HELEN MARIE KLEIN,

Executive Secretary and Chairman of the Executive Committee, Alaska Federation of Natives, International.

ALASKA FEDERATION OF NATIVES INTERNATIONAL,
Seattle, Wash., February 4, 1975.

Re Establishment of a Thirteenth Region Pursuant to the Alaska Native Claims Settlement Act.

Mr. CHARLES SOLLER, Esq.
*Assistant Solicitor,
Department of the Interior,
Washington, D.C.*

DEAR MR. SOLLER: At our January 24, 1975 meeting to discuss implementation of the Court's December 30, 1974, order regarding the establishment of the thirteenth region, you asked us to supply you with additional information concerning the background of the Alaska Federation of Natives, International (AFNI) and ESK-IND-AL. While we are sure you are and have been for some time familiar with most of the facts of their history and origin, we agree that it might be helpful to review those facts at this time.

Origin of ESK-IND-AL. After the enactment of the Alaska Native Claims Settlement Act of 1971, the officers of various associations of non-resident Alaska

natives began meetings to explore the feasibility and desirability of the establishment of the separate region for non-resident natives provided for in that Act.

The associations involved included all of the then existing Alaska native organizations with chapters outside the State of Alaska, *viz.*: Tlingit and Haida, Washington Chapter (T & H, Wash.); Tlingit and Haida, California Chapter (T & H, Cal.); Alaska Native Brotherhood, Washington Chapter (ANB); Alaska Native Sisterhood, Washington Chapter (ANS); Alaska Federation of Natives, Inc., Washington Chapter (AFN, Wash.); Alaska Federation of Natives, Inc., Port Angeles Chapter (AFN, P.A.); Alaska Native Association of Oregon (ANAO); Confederation of Alaska Natives (CAN); and Southern California Association of Native Alaskans (SCANA).

After several exploratory meetings, the consensus among the officers of these associations was that the establishment of a thirteenth region was feasible and desirable. It was decided that the associations would collectively pursue that goal by forming the "Thirteenth Regional Committee."

Pursuant to the directive of the Act, the Thirteenth Regional Committee named five incorporators of the regional corporation for the thirteenth region. The name designated for the corporation was ESK-IND-AL to signify the representative makeup of its incorporators and its future shareholders—Eskimos, Indians and Aleuts.

The five incorporators were: Helen Marie Klein, President, T & H, Cal., Member AFN, Wash., 1st Vice President, CAN, Member, ANAO, Member, ANS; Axel Anaruk, Vice President, AFN, Wash., Member, ANAO; Frank D. Price, Jr., President, AFN, Wash., Member, ANAO; Ken Boire, President, ANAO; and Thomas Durand, Vice President, ANAO. These Alaska Natives participated in the founding of ESK-IND-AL on behalf of and with the full authority of the native associations with which they were affiliated.

These five incorporators met on many occasions to work on and to draft articles of incorporation. They unanimously agreed on an interim board of directors of 21 members after reviewing over 200 proposed names. The 21 proposed directors reviewed the articles of incorporation and unanimously approved them after making several recommended changes. The approved articles were submitted to the Department of Interior in early 1973.

Subsequently, two of the incorporators (Ken Boire and Thomas Durand) withdrew as incorporators and as proposed directors. The members of the Thirteenth Regional Committee named William Paul, Sr., Secretary, ANB, and Dennis Small, Member, ANB, to replace them as incorporators. The newly constituted five incorporators timely filed amended articles of incorporation for ESK-IND-AL with the Department of Interior on June 12, 1973. Those articles provided for an interim board of 21 directors. To date, 18 persons have been named to that proposed board. The names of the proposed directors of ESK-IND-AL and their Native association affiliations are listed in Exhibit A hereto.

The incorporators and directors of ESK-IND-AL have planned carefully for the future role of ESK-IND-AL in the implementation of the Alaska Native Claims Settlement Act. Competent legal counsel were retained to advise them on all pertinent legal matters; sound financial advice was obtained from the Seattle First National Bank; and specific financial plans and operational goals were set. (See attached documents.)

Origin and Role of AFNI. The Alaska Federation of Natives, International (AFNI) is a non-profit corporation consisting of the same directors and officers as those proposed for ESK-IND-AL. AFNI was incorporated by the members of the Thirteenth Regional Committee to carry on the work of and to represent the interests of those persons who desire the establishment of a thirteenth region and the incorporation of ESK-IND-AL.

AFNI has built a competent staff to coordinate and expedite the enrollment, enrollment amendment and appeal of persons desiring to be enrolled in the thirteenth region; AFNI has established and maintained comprehensive files on each person seeking assistance from AFNI in matters pertaining to the thirteenth region; AFNI has advised and assisted Alaska Natives and regional corporations on matters pertaining to overpayments, custody and duplicates.

AFNI is recognized by Alaska Native groups as the most representative and competent Native association representing eligible Alaska Natives who desire to establish and be enrolled in a thirteenth region. (See recent letters of support attached.)

AFNI has testified on proposed amendments to the Act by Congressional committees as the spokesman for eligible Alaska Natives who desired a thirteenth

region. (See Hearings Before the Subcommittee on Indian Affairs of the Committee on Interior and Insular Affairs of the House of Representatives, held February 4, 1974, at pp. 15-38.)

AFNI has continuously dealt with the Department of Interior in Washington and in Alaska as the spokesman for eligible Alaska Natives who desired a thirteenth region.

AFNI is looked to by thousands of persons who are now to be enrolled in the thirteenth region as their representative for purposes of matters pertaining to the thirteenth region.

AFNI prevailed in a lawsuit on behalf of Alaska Natives who desired to establish and be enrolled in a thirteenth region. (See Memorandum of the Court dated December 23, 1974, in *Alaska Federation of Natives, International v. Rogers C. B. Morton*, Civil Action No. 2141-73.)

In all pertinent respects, AFNI is and has been the representative association of the lower 49 Alaska Native associations and their members with regard to all matters pertaining to the thirteenth region and in particular with respect to the thirteenth regional corporation.

In our desire to work with the Department of Interior in implementing the court's order and giving effect to the Act, AFNI is prepared to enter into discussions with any particular Native group the Department feels is not represented on the proposed board of directors of ESK-IND-AL with the intent of making that board as representative as possible, bearing in mind that this has always been AFNI's and the incorporators' goal. However, it is AFNI's feeling that complete and true representation of all of the members of the thirteenth region will be assured without question and soon by the provision in the Act and in ESK-IND-AL's proposed articles for an early election *by the shareholders* of a board of directors which will replace the interim board—and that facilitating that election is the primary concern and objective of both AFNI and the Department of Interior.

In conclusion, the officers and staff of AFNI offer you their full cooperation and assistance in all matters pertaining to the thirteenth region and in particular to the establishment of the thirteenth regional corporation.

Sincerely yours,

HELEN MARIE KLEIN,

Executive Secretary and Chairman of the Executive Committee, Alaska Federation of Natives, International.

EXHIBIT A—CURRENT BOARD OF DIRECTORS OF AFNI AND PROPOSED INTERIM BOARD OF DIRECTORS OF ESK-IND-AL

NAME AND AFFILIATIONS

1. James S. Williams, President, AFNI, President, ESK-IND-AL, Sergeant-at-Arms, CAN, Council Member, T. & H.
2. Corinne M. Leach, First Vice President, AFNI, ESK-IND-AL Member, ANS Member, T. & H., Member, AFN.
3. Virginia Thomas, Second Vice President, AFNI, ESK-IND-AL Secretary, AFN, Wash., Member, T. & H.
4. Helen Marie Klein, Executive Secretary, AFNI, ESK-IND-AL Chairman of the Executive Board, AFNI, ESK-IND-AL Member, ANAO Member, AFN, Wash., Council Member, T. & H. Past President, ANS Member, T. & H., Wash.
5. Dennis Small, Treasurer, AFNI, ESK-IND-AL Treasurer, ANB Member, AFN, Wash. Member, T. & H., Wash.
6. Axel Anaruk, Director, AFNI, ESK-IND-AL Member, AFN, Wash. Member, ANB, Wash. Member, ANAO.
7. Frank Alby, Director, AFNI, ESK-IND-AL Member, ANAO.
8. Embert L. Demert, Director, AFNI, ESK-IND-AL Member, ANB Member, T. & H., Wash.
9. Raymond E. Combs, Jr., Director, AFNI, ESK-IND-AL Member, T. & H., Cal.
10. George E. Hamilton, Jr., Director, AFNI, ESK-IND-AL Member, ANB Member, T. & H., Wash.
11. William Jackson, Director, AFNI, ESK-IND-AL Member, T. & H., Wash. Vice President, ANB Member, AFN, Wash.
12. Nick Philemonof, Director, AFNI, ESK-IND-AL Member, CAN.

13. James Price, Director, AFNI, ESK-IND-AL Member, ANB Member, T. & H., Wash. Member, AFN, Wash.
14. Sam Walkoff, Director, AFNI, ESK-IND-AL President, AFNI, Midwest Chapter.
15. Harvey Kelley, Director, AFNI, ESK-IND-AL Member, CAN Council Member, T. & H., Cal.
16. Nelly Sears, Director, AFNI, ESK-IND-AL Officer, AFNI, Midwest Chapter.
17. Jim Mallott, Director, AFNI, ESK-IND-AL Member, AFN, Washington Chapter Member, T. & H., Washington Chapter.
18. Shirley Aga, Director, AFNI, ESK-IND-AL Member, ANAO.

LETTERS FROM REGIONAL CORPORATIONS

1. Letter dated January 29, 1975 from Cook Inlet Region, Inc.
2. Telegram from Calista Corporation.

OTHER LETTERS OF SUPPORT FOR ESK-IND-AL

3. Letter dated January 9, 1975 from Senator Hugh Scott.
4. Letter dated March 16, 1973 from the National American Indian Council.

CIRI,
COOK INLET REGION, INC.,
Anchorage, Alaska, January 29, 1975.

ALASKA FEDERATION OF NATIVES, INTERNATIONAL,
Seattle, Wash.

DEAR MEMBERS OF THE BOARD: This letter is to inform you and whomsoever you would wish to tell, that yours is the only out-of-State organization that has been dealing with Cook Inlet Region, Inc., in matters related to the 13th Region.

We feel your organization is honest, capable, and has the right attitude. Also, is the best informed in matters pertaining to the 13th Region.

Cook Inlet Region, Inc., will be happy to work with you and your staff as representing the 13th Region until the official organization problems are resolved.

Sincerely,

RALPH A. JOHNSON,
President, Cook Inlet Region, Inc.

ANCHORAGE, ALASKA, *January 16, 1975.*

HELEN MARIE KLEIN,
*Le Enfant Plaza Hotel,
Washington, D.C.*

Regarding 13th Region Calista Corporation firmly stands behind Alaska Federation of Natives International and Esk-Ind-Al in its pursuit of final establishment of the 13th. Use of pressing business commitments here it is very difficult for personal attendance by Calista in Washington at the present time. However, I can be contacted by phone during normal business hours for any consolation you feel is necessary in furthering the establishment of the 13th in conjunction with Judge Gasch's ruling.

FRED NORTH.

UNITED STATES SENATE,
Washington, D.C., January 9, 1975.

HON. ROGERS C. B. MORTON,
*Department of the Interior, Interior Building,
Washington, D.C.*

DEAR ROG: As you are aware, I have long been interested in the efforts of the Alaska Federation of Natives, International, to form a thirteenth corporation under the Alaskan Native Claims Settlement Act to represent those natives residing outside the State of Alaska.

Following the recent decision of Federal District Court Judge Gash ordering the Interior Department to establish the thirteenth corporation, it is my hope

that the Interior Department moves quickly to approve the articles of incorporation already submitted by the Alaska Federation of Natives, International.

I would appreciate receiving your views on this matter at your earliest opportunity.

With kind regard,
Sincerely,

HUGH SCOTT,
U.S. Senator.

NATIONAL AMERICAN INDIAN COUNCIL,
San Francisco, Calif., March 16, 1975.

To Whom It May Concern:

Region 13 is a much needed program for the Alaskan Native and the National American Indian Council is in full accord with ESK-IND-AL, Inc. as the 13th Regional Corporation and hereby sponsors and supports the Corporation as the recipient of the Alaskan Land Claims Act for the non-resident Alaskan Native in the lower 49 States.

Hopefully this consolidated approach will assist in strengthening all Native American programs in our continuing effort to open areas of opportunity for all our people.

If we can be of further assistance to you, do not hesitate to call on us.

Most sincerely,

JOHN A. FOLSTER,
Chairman, National American Indian Council.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., April 1, 1975.

HELEN MARIE KLEIN,
Executive Secretary and Chairman, of the Executive Committee, Alaska Federation of Natives, International, Seattle, Wash.

DEAR MS. KLEIN: This responds to your letter of February 4, 1975, which offers the support of your organization in the implementation of the order entered on December 30, 1974, in the consolidated cases of *Alaska Native Association of Oregon, et al. v. Morton, et al.*, Civil No. 2133-73, and *Alaska Federation of Natives International, et al. v. Morton, et al.*, Civil No. 2141-73, U.S.D.C., D.C.

As you are aware, the subject of your letter has been discussed in recent meetings between your attorneys, representatives of this Department, attorneys for the plaintiff Alaska Natives Association of Oregon, and attorneys for the intervenors Alaska Federation of Natives, Inc., and the Aleut Corporation. Although Notices of Appeal were filed by the defendants and the intervenors, we remain hopeful that an accommodation of the divergent views of the parties can be worked out so as to obviate the prosecution of the appeals. The position of your organization will be given due consideration.

Sincerely yours,

ROYSTON C. HUGHES,
Assistant Secretary of the Interior.

Mr. MEEDS. Is it incorporated under the laws of any State.

Ms. KLEIN. It is incorporated under the laws of the State of Washington.

Mr. MEEDS. As of what time?

Ms. KLEIN. As of April 10, 1973.

Mr. MEEDS. Do you know of any other nonresident Alaska Native, or Native organizations which are either incorporated under the laws of some State; have a constitution and by-laws; or have an active membership roll as of, say, January 1, 1975?

Ms. KLEIN. Yes, Congressman Meeds, there are several.

Mr. MEEDS. OK, who are they? What are they?

Ms. KLEIN. Well, off the top of my head—

Mr. MEEDS. AFNI?

Ms. KLEIN. AFNI; AFNI-Washington Chapter; Tlingit and Haida.
Mr. MEEDS. What is the difference between AFNI and AFNI-Washington Chapter?

Ms. KLEIN. AFNI is only for people who elected to go into the 13th region. Our by-laws and everything are set up for the 13th regional members.

Mr. MEEDS. What about AFNI-Washington Chapter?

Ms. KLEIN. They represent all nonresidents both in or out.

Mr. MEEDS. And do they have a corporate policy of being for or against the 13th region?

Ms. KLEIN. According to the newspaper, the Seattle Times, they published a point of view that they are for people enrolling back to Alaska and not for the 13th.

Mr. MEEDS. Now do you know of any other organizations which fit the criteria I stated?

Ms. KLEIN. The Alaska Native Brotherhood, Inc., in the State of Washington.

Mr. MEEDS. What is that about?

Ms. KLEIN. I think that was the original one, the Alaska Native organization. The one in Alaska, the original one. The one in Washington is Camp—I think it's Camp-39. I am not sure.

Mr. MEEDS. It's what?

Ms. KLEIN. It's Camp-39. They have maybe A and B up in Alaska and they have a chapter in the State of Washington. The Alaska Native Brotherhood.

Mr. MEEDS. Are you aware of whether or not it has a corporate policy or organizational policy for or against the Thirteenth Regional Corp.?

Ms. KLEIN. They have not been for or against. They have been very neutral in it.

Mr. MEEDS. OK, are there other organizations that you know of?

Ms. KLEIN. The Alaska Native Sisterhood.

I don't know whether or not they are incorporated. But that is one of the organizations that was listed as a bona fide organization by the Interior Department.

They have not—

Mr. MEEDS. When were they listed by the Interior Department?

Ms. KLEIN. Well, I was given a list by Charles Sollers over 2 years ago or 3 years ago with several names of organizations on it. The Alaska Native Association of Oregon is a bona fide nonresident organization; and as far as I know is for the Thirteenth region.

Mr. MEEDS. Now, do you know if it is incorporated under the laws of the State of Oregon or has an active membership roll or has a constitution and bylaws?

Ms. KLEIN. I am sure, yes.

Mr. MEEDS. Is that also known as ANAO?

Ms. KLEIN. Yes, ANAO.

Mr. MEEDS. All right.

Are there other organizations which might fit the criteria which we have discussed?

Ms. KLEIN. The Tlingit and Haida Council in the State of California; and that is about all I can think of.

Mr. MEEDS. Is the Tlingit and Haida Council incorporated in the State of California or does it have an active membership roll?

Ms. KLEIN. It has articles and bylaws.

Mr. MEEDS. Articles and bylaws? Do you know whether it has a corporate or organizational policy for or against the formation of the Thirteenth Regional Corp.?

Ms. KLEIN. To my knowledge, Mr. Chairman, they have been very neutral. They have not gotten involved one way or the other.

Mr. MEEDS. Any other organization that might fit the criteria, any one of the criteria enumerated previously?

Ms. KLEIN. I have heard of the Aleut League in the State of Washington. However, I got the—I do not know anything about their organization, whether they are incorporated or not and I think there is someone here in the room from there, so they would be better able to state that.

Mr. MEEDS. At this point, let's just ask.

Counsel for the Aleut League, could you tell us if there is an Aleut League affiliate outside of Alaska which meets any one of the criteria I have mentioned?

And your name, again, please, sir, for the record.

Mr. TRUITT. I am Steve Truitt. I represent the Aleut Corp., Mr. Chairman.

I am attempting to determine that right now. May I supply that information in a few minutes?

Mr. MEEDS. Certainly.

Mr. TRUITT. Thank you.

Mr. MEEDS. Any others?

Ms. KLEIN. Well, I can't think of them, Congressman Meeds.

Mr. MEEDS. Just at this point I am going to ask anyone in the audience if they know of an organization which would fit any one of the criteria which I have mentioned.

Yes, sir? State your name, please.

Mr. WABAUNSEE. I am John Wabaunsee, attorney representing the Alaska Native Association of Oregon. I have one in Spokane, an Alaska Native organization. We contacted them about a year and a half ago, and I understand there were membership lists but I don't know the status of their incorporation or whether they are still in existence at this time either.

But approximately a year and a half ago they were in existence. They contacted us about litigation. They had discussed intervention in litigation but decided not to do so.

Mr. MEEDS. OK, thank you very much, sir.

There is another hand back there. Yes, ma'am.

Ms. LINDSAY. I am Lolita Lindsay, president of the Alaska Federation of Natives, Washington Chapter. I do know the San Diego Native Alaska Association. Two years ago they were incorporated and they had a large population for the establishment of the Thirteenth Corp.

Mr. MEEDS. Did they take any position, if you know of it, as a matter of policy of the organization for or against the Thirteenth Corp.?

Ms. LINDSAY. No, they had created a 13th committee for those people interested in establishment of the Thirteenth Regional Corp.

Mr. MEEDS. Thank you very much.

Ms. LINDSAY. I also would like to clarify that the Washington chapter has not made a policy statement regarding the Thirteenth

Corp. Last year the Washington chapter was pro-13th but since March 8 we have had a new election and our policy has been also to create a 13th for the people that are interested in it. And we are, you know, we have tried to not interfere with the 13th. However, they don't have an organization in Washington for the 13th now so we are at a very awkward position of where we are concerned for their rights.

Mr. MEEDS. You have no policy one way or other other on this as an organization policy; is that what you are saying? You have members of your group who are both for and against?

Ms. LINDSAY. We have a large membership for the Thirteenth Corp.

Mr. MEEDS. Thank you very much.

Are there others now?

Mr. JOHNSON. I am Billy B. Johnson, past president of the Alaska Federation of Natives-Washington Chapter.

You asked for people interested in the Thirteenth Regional Corp. and I—

Mr. MEEDS. Wait a moment, so we don't get too far afield.

I asked if anyone knew of organization other than the ones that have been stated here which might fit the criteria I have mentioned. I don't want to get into a big argument about whether there should or should not be a Thirteenth Regional Corp. Understand?

So please confine your remarks solely to the question of "do you know of organizations which fit that criteria?"

Do you? Do you know of any other than the ones named here so far?

Mr. JOHNSON. Another organization did come into existence but they have not incorporated but they will incorporate today.

Mr. MEEDS. All right. I see. Instant corporation.

OK, that's enough from the audience.

Thank you very much.

Mr. TRUITT. Mr. Chairman, may I?

Mr. MEEDS. Yes, will you respond now?

Mr. TRUITT. I am informed that there is an organization known as "The Pacific Northwest Aleut League Council" which is not a corporation but which does have bylaws and does have a membership roll from the time of its organization in November 1972. It is primarily active in the voter education. I do not know whether it has a formal policy of the sort to which you have adverted as pro or con. But if it did have such a policy it would meet some of the criteria you have listed.

Mr. WEINBERG. Mr. Chairman?

Mr. MEEDS. Yes, Mr. Weinberg.

Mr. WEINBERG. I am Ed Weinberg, I am Washington counsel for Koniag, Inc.

There may be in the State of Washington an organization made up of people who claim an affiliation with Koniag which meets some or all of the criteria you have mentioned.

President-elect Jack Wick was weathered in in Kodiak and just arrived in town and will be here this afternoon or shortly, and we will be able to supply you definitely with that information.

Mr. MEEDS. Thank you, sir.

Mr. WEINBERG. Yes, sir.

Mr. MEEDS. Ms. Klein, you testified that you felt it would be an unfair burden to require a fledgling corporation to have an in-house vote at this time on the question of membership. Do you feel a 3-year period is a sufficient time in which that fledgling corporation should have graduated and been doing a good job or poor job in such a fashion as to be judged properly?

Mr. KLEIN. Yes, I do Mr. Chairman.

Mr. MEEDS. Now, as for people who manifested an intent early on and never changed that intent to be in the 13th region, do you think that they should have a new opportunity to opt out of the 13th region?

Ms. KLEIN. I feel that in all fairness, if the 13th was established in an ongoing corporation like the other 12, I see no reason why the people of the 13th shouldn't have the option to go in or out.

But I think they should at least have their corporation and be in the running like the rest of them before this is done.

Mr. MEEDS. Should we then open up all the 12 regions at the end of the 3-year period and let them opt in or out of those, too?

Ms. KLEIN. I think that would be a disaster. I don't think that that would be fair. I don't want to interfere with the 12 regional corporations. They have enough to do as it is.

All I am interested in is that the people who elected for the 13th and want to be in the 13th have a fair chance with out interference from the 12 regions or organizations that are primarily made up of people voting to Alaska.

Mr. MEEDS. The gentleman from Colorado.

Mr. JOHNSON. I think I better pass, Mr. Chairman.

Thank you.

Mr. MEEDS. Just one moment then, and I think Mr. Young wanted to ask some questions.

[Brief recess.]

Mr. JOHNSON. Would you tell me what your corporation intends to do if you become a representative of the 13th?

Mr. KLEIN. If our corporation was permitted to choose the five incorporators, et cetera, what we would do is have an open election immediately for all the constituents or shareholders of the 13th to vote for their board of directors. It would just be a base to get the proper election and have the people of the 13th run it.

Mr. JOHNSON. I understand it. But what is it you want to do after you are incorporated and all this is settled. What will your function be. Are you going to invest, or what will you do with the funds? What salaries will you pay the members of the board and what salaries will you pay the officers? What will be the nature of the investments which you make?

Mr. CARR. Perhaps I can clarify a point. I am Thomas Carr, attorney with the Miller, Cassidy law firm.

Mr. JOHNSON. Yes.

Mr. CARR. It's our understanding that our client would only set up the corporation that would then conduct an election for directors and the policy of the corporation would be the business of those directors.

Mr. JOHNSON. They have no proposals for it, regardless of what the corporation contains?

Mr. CARR. Articles of incorporation were submitted by AFNI. I don't know that there are any specific investment proposal on statements in those articles?

Mr. KLEIN. Sir, it was basically done to the prudent man's rule and in compliance with the State of Alaska law. If five incorporators were chosen, I'm sure Interior has certain guidelines that we would have to follow and restrictions placed on the five incorporators. Because basically, it's just to have a start.

The five incorporators may not even be elected on the Thirteenth Regional Corp. The point we are trying to get across is that we should have a fair election from our constituents, not from outside interference and it would be completely up to the shareholders as to who their board of directors was and we would like to have it done as soon as possible in the quickest time.

Mr. JOHNSON. Thank you.

Thank you, Mr. Chairman.

Mr. MEEDS. The gentlemen from Alaska.

Mr. YOUNG. Thank you, Mr. Chairman.

First let me say, Helen, that your testimony was well-received, and Mr. Chairman, if I may, I would like to welcome all my Alaskan people that are in the audience today. I forgot to do that in my opening statement.

Mr. Hensely, my worthy opponent in the last election is in the back of the room, and Mr. Borbridge and numerous others in the audience. Again, Mr. Christiansen and Mr. Johnson are here.

One question, on page 5 you refer to H.R. 6644. In all due respect, although it may be inconsistent with the court order, I am sure you are aware, I am sure your counsel is aware, that this is the exact language of the bill that was the last act of the 93d Congress, passed on the floor of the House.

Are you aware of that?

Mr. CARR. Yes; we are aware, sir.

Mr. YOUNG. It was strongly supported at that time possibly before came aboard by the Thirteenth Corp.

Mr. CARR. It's my understanding that the circumstances have changed somewhat since then in that there are different needs and different problems today than there were a year ago.

Mr. YOUNG. Second, Helen, I would like to make the record perfectly clear that the alternative bill that I suppose we have has not been introduced.

After consultation with the chairman, it probably had not been introduced. I would say that it was a bill that possibly had no merits as far as my constituents go.

Mr. Chairman, I have discussed that at great length; and, if I may, the last four pages of your testimony were basically not necessary. I would like to again remind your counsel about that.

Mr. CARR. Yes, your honor.

Mr. YOUNG. Other than that, Mr. Chairman, I have no questions.

Mr. MEEDS. Thank you.

One final question. In the proposal which I will be making shortly, the so-called bona fide organizations will nominate five incorporators and I set forth some criteria for what is a bona fide organization.

In addition, we have provided or will provide in that bill that 200 people can sign a petition and nominate anyone to run. Would you be in favor or opposed to that provision?

MS. KLEIN. I have no objection to that, Congressman Meeds, because had the Interior approved our articles and had we been running the election, we would have left an open slate for anyone to fill in their name, whoever wanted to be nominated without any signatures.

This was basically because of the interference in some of the 12 regional corporations like the Fair Deal which I didn't go along with.

So I would have no objections to that.

MR. MEEDS. Thank you. I think that's all.

MS. KLEIN. Thank you.

MR. CARR. Thank you very much, sir.

MR. MEEDS. Now Mr. Durand, president of the Alaska Native Association of Oregon, accompanied by Mr. Wabaunsee, who spoke earlier.

STATEMENT OF THOMAS DURAND, PRESIDENT, ALASKA NATIVE ASSOCIATION OF OREGON, ACCOMPANIED BY JOHN WABAUNSEE, LEGAL COUNSEL

MR. MEEDS. Do you have a prepared statement, sir?

MR. DURAND. Due to limited time, we are still in the process of preparing our prepared testimony. If it may be forwarded to you later, we will do so at the earliest possible moment.

MR. MEEDS. Why don't we just substitute your oral testimony for it? Go ahead, please testify.

MR. DURAND. Gentlemen, I am Thomas Durand, I am the president of the Alaska Native Association of Oregon. This is a nonprofit corporation organized under the laws of Oregon. It has a definite membership and it has also a constitution and bylaws.

To further introduce myself, I am also the editor of the Alaska Native News. This is a newspaper which the association has printed at various times in the past and which has a policy to promote Alaska Native interests and especially those of nonresident Alaskan Natives.

You have heard of our participation in the litigation, and the outcome of that. During the time of the enrollment, the high pressure time of the enrollment activities, we were busy conducting a publicity campaign which located approximately 50 percent of the Alaska Natives in Oregon.

With regard to H.R. 6644, we are highly concerned with the establishment of the 13th region. Indeed we have been a principal defender of the 13th region. We believe that it should exist so that an individual may protect his rights and property properly and have the option of enrolling outside of Alaska or back home.

We further endorse the reopening of the enrollment. The Alaska Native has a right to his inheritance. We know of many who do not at this moment, are not enrolled under the terms of the Settlement Act. We believe they should be.

MR. MEEDS. May I interrupt you right at that point, sir?

MR. DURAND. Yes, sir.

Mr. MEEDS. Is it your position that a person can belong to a 13th region, a nonresident Native Alaska region and also claim land rights in Alaska?

Mr. DURAND. No, sir.

Mr. MEEDS. I'm sorry, that is the way you came through.

Mr. DURAND. Then let's correct it.

Mr. MEEDS. Let's do.

Please go over that again.

Mr. DURAND. We believe in the reopening of the enrollment process. These people have a right to share in their heritage, in accordance with whatever conveying documents provides that heritage. In this case the Alaska Native Claims Settlement Act.

We believe it should not be denied them if it's simply a matter of administrative process.

We also believe that the nonresident Alaska Native should be allowed to amend his enrollment application.

With special regard to the 13th region, we believe that he should have the right to exercise a choice in either being in the 13th or out of it. We can live with any decision that an individual makes provided he is allowed to make it. We further believe that those non-residents who have been rejected should be allowed to have the process of appeal.

We have cases in which the children have been enrolled and the parent providing the Alaska Native line has been rejected. We consider this ludicrous. These people should have one more hearing to establish whether they are in fact eligible.

And especially those people who receive notice after the August 15, 1973, deadline. We have notices of rejection coming in as late as last January. There should be an end to this some time.

We also endorse the election of the 13th region incorporators.

Our position is this: The Settlement Act states that the regional association will name five incorporators.

In point of fact there is no regional association for 13th region. No coalition of existing associations could provide that association to represent the 13th region.

We feel there is only one way out of this dilemma, that is an election of incorporators by a general vote of the 13th regional shareholders.

We would ask you to consider the completion of all these processes above within 120 days of the enactment of this amendment.

We further endorse that no settlement funds be expended to influence the outcome of any nonresident election or influence any nonresident's decision on the above matters.

With regard to the question of a bona fide association, we believe that any association which participated in some way in the settlement should be allowed to name five incorporators to be placed on a ballot by the Bureau of Indian Affairs and so presented to the 13th regional shareholders. We believe these matters are of grave concern to the nonresidents. They should be concluded as expediently as possible. However, they should not be executed without proper reflection.

Thank you very much.

Mr. MEEDS. Thank you, Mr. Durand.

As I understand it, you say that those that participated in the legal action should be entitled to nominate——

Mr. DURAND. No, sir.

Mr. MEEDS. Members as incorporators, is that incorrect?

Mr. DURAND. Any of those that participated in the settlement in any way.

Mr. MEEDS. In the settlement?

Mr. DURAND. And the enrollment process.

Mr. MEEDS. Well, we have a number of processes here. In order to get a board of directors, you first have to have an incorporation. You have to have incorporators. So the first election if you want an election, or selection if you want a selection, is for a board of incorporators, or a group of incorporators.

How would you propose we do that?

Mr. DURAND. By nominations from bona fide nonresident Alaska Native associations to the limit of five in number.

Mr. MEEDS. How do you define a bona fide organization?

Mr. DURAND. Any such association that in any way participated in the settlement or the enrollment.

Mr. MEEDS. How do you determine whether they have participated as an organization?

Mr. DURAND. Well, sir, one would have to look at the individual histories. Alaska——

Mr. MEEDS. You would let the Secretary pick those organizations, as I understand it?

Mr. DURAND. Oh, I see what you mean.

Mr. MEEDS. He would pick them without any guidelines?

Mr. DURAND. Just those two that I stated, sir.

Mr. MEEDS. Well, an organization might be in opposition to the creation of the 13th region and yet be nominating incorporators; is that what you are saying?

Mr. DURAND. That is a possibility. However, I do feel——

Mr. MEEDS. Don't you feel that is a little inconsistent?

Mr. DURAND. Not if they are limited to nominating shareholders, sir.

I feel that in my dealings with the nonresident associations I have found none absolutely irresponsible. It would be my opinion that if an association chosen by the Secretary did not wish to become involved in that matter, they would simply not reply to the call for nominations. I think it would solve that question rather simply.

Mr. MEEDS. Let's look at it a different way. Let's say under your criteria, Organization "A" would be qualified to nominate incorporators and yet Organization A was entirely opposed to the creation of the 13th region.

They would then go out and nominate incorporators who really would set forth to destroy the organization. Do you think that makes much sense?

Mr. DURAND. No, sir, I don't. I have heard—none of the dealings that I have had, never have I heard any intonation of doing the 13th region in.

I have more often heard people say, "Yes, those nonresidents who wish to form it should have the right to do so."

The worst I have heard is that we will do nothing to help such a formation.

Mr. MEEDS. Well, that's gratifying.

The gentleman from Alaska.

Mr. YOUNG. Thank you.

What you are saying basically is that you want all those nonresident natives to have a choice.

Mr. DURAND. Yes, sir.

Mr. YOUNG. That's what H.R. 6644 says.

You are also saying that those people that participated in supposedly anti-Thirteenth Region Corp. move, it was really a difference of opinion and if they were to allow the nomination of five and we have a list of them here, ANAO, your outfit, Tlingit, and Haida, there are seven, eight of them.

We can go through them. Each one would be allowed to nominate five members for the incorporating of the 13th region. And then in turn, they would be picked.

Mr. DURAND. Yes, sir.

Mr. YOUNG. You are also saying that the individual should have the decision to file in the State of Alaska or in the 13th region.

Mr. DURAND. Yes, sir.

Mr. YOUNG. And which this bill would do and I believe the chairman's bill would do, also, there would be a time lapse in between. I can't agree more, Mr. Durand, in your position of getting this done most expediently. It's been a long time now. I wouldn't worry about submitting your written testimony, because you explained yourself very clearly.

Again, Mr. Chairman, I think we can accept it if you would like to have it typed up.

I have no further questions.

Mr. MEEDS. Without objection, any additional statement that you wish to submit will be made a part of the record at this point.

[Additional remarks are included in letter of May 15, 1975, to Mr. Meeds from Mr. Wabaunsee which follows:]

NATIVE AMERICAN RIGHTS FUND,
Boulder, Colo., May 15, 1975.

Re Creation of Thirteenth Regional Corporation.

Hon. LLOYD MEEDS,
U.S. House of Representatives,
Cannon House Office Building,
Washington, D.C.

DEAR CONGRESSMAN MEEDS: Mr. Thomas Durand, President of the Alaska Native Association of Oregon (ANAO), and I who testified before you on Monday, May 12, 1975 concerning H.R. 6644 and the creation of the Thirteenth Regional Corporation found ourselves in a difficult position, in that at times, we felt that we were testifying about a draft bill which has not been introduced, and not about H.R. 6644. On behalf of ANAO, I would like to restate their position on the problems of the creation of the Thirteenth Regional Corporation and process of insuring that all persons who want to be in the Thirteenth will be enrolled.

The basic position of ANAO is that all persons who want to be in the Thirteenth Regional Corporation should be allowed to do so, and all persons who want to be a shareholder of one of the twelve regional corporations should be allowed to do so. In *Alaska Native Association of Oregon v. Morton*, we argued that all the deadlines set by the Department of Interior with respect to amendments or appeals were void, including the August 15, 1973 deadline. The August 15, 1973 deadline is the only deadline which was published in the Federal Register, but we argued that it was void for failure to comply with the emergency rule making provisions in the Administrative Procedure Act, in that there was no "good cause" shown for use of the emergency rule making.

One of the problems with Judge Gasch's December 30, 1974 decision concerning the Thirteenth is his acceptance of the August 15, 1973 deadline as having some sort of effect or meaning. The August 15, 1973 deadline was a date used by the Department of Interior which has no basis in substance or reality. To further compound the error created by the Department of Interior with respect to the August 15, 1973 deadline, Judge Gasch gave it an unwarranted credibility by stating that he would count all amendments or appeals filed by that date. I think it would be a serious mistake for Congress to follow the arbitrary August 15, 1973 time as the cut-off for amendments to enrollment applications. In line with our previous positions, we suggest that all persons have the right to amend their enrollment applications. Given the confusion and misinformation which existed in peoples' minds during the enrollment period, non-residents should be given one more chance to amend their enrollment applications.

Since H.R. 6644 made no provision for people who received notice of an adverse action concerning the enrollment application after the August 15, 1973, deadline, these adverse decisions not only included the placement in a region, but also the eligibility of a person to be enrolled. As Thomas Durand stated in his testimony, some persons received initial decisions on their enrollment application as late as January, 1975, with the information they can appeal by August 15, 1973. In light with our position on opening the amendment process, we would also suggest that the appeal process be reopened so as persons may be able to have other decisions concerning their enrollment application reviewed without the imposition of an arbitrary and unlawful August 15, 1973 deadline.

Some people have been concerned that the Thirteenth would lose all its shareholders if there was an open enrollment process prior to the creation of the thirteenth Region, and that people should be allowed to change regions once the Thirteenth has an established track record. I feel that the problem of twelve regions "stripping the Thirteenth" of its shareholders is more fiction than reality. If Congress provides that land entitlements of any village or region corporation will not be affected by the shifts of people in or out of the Thirteenth, then the main reason why the twelve regions should fight the creation of the Thirteenth will be absent.

The Alaska Native Association of Oregon feels that it is crucial that the amendment process be as open as possible so as that all persons may have a chance once and for all to decide which corporation they want to be placed in. Judge Gasch's decision documents the confusion which existed in Alaskan Natives minds concerning the enrollment period. To limit the process of amendment to the 800 persons who filed amendments prior to August 15, 1973, would do great injustice and inequities to all non-resident Alaskan Natives who need one more chance to decide what corporation they wish to be placed in. ANAO is not concerned with the size of the Thirteenth Regional Corporation. They are willing to accept a small corporation consisting of shareholders who are willing to work for the interest of the non-residents rather than a relatively large corporation made up of dissatisfied persons who would rather be a shareholder in one of the twelve regions.

I wish to thank you once again for allowing Mr. Durand and I to testify before the Indian Affairs Sub-committee on Monday. We look forward to working with you and your staff concerning the creation of the Thirteenth Regional Corporation.

Sincerely yours,

A. JOHN WABAUNSEE.

Mr. DURAND. We will point out that the amendment process in H.R. 6644 limits those—limits the amending process to those who have filed an amendment prior to December 1.

Mr. YOUNG. I am quite aware of that, Mr. Durand. You would like to have it opened up.

Mr. DURAND. Opened up as far as possible.

Mr. MEEDS. That does not include people who voted definitely yes to the 13th region originally and never changed their minds?

Mr. DURAND. Pardon, sir? I don't follow.

Mr. MEEDS. You don't give a reoption to people who voted for a 13th region originally and never changed their minds?

Mr. DURAND. Yes, I would say we do, sir.

Mr. MEEDS. Well, then, what about people who voted against the 13th region originally and never changed their minds? The bill does not give that option.

Mr. WABAUNSEE. Mr. Chairman, we would give that option to the people who voted against it.

Mr. MEEDS. What you are saying is that all nonresident Native Alaskans should have an opportunity to reopt?

Mr. WABAUNSEE. The bill does not provide that, and——

Mr. MEEDS. You are now testifying in favor of that.

Mr. WABAUNSEE. Yes, we are testifying in favor of that in the sense that the whole enrollment process was so fraught with confusion, and misleading information, that it's our feeling that people never had a chance to make a considered decision and that they should have a chance once more to make that decision.

That was the argument we submitted to Judge Gasch.

What H.R. 6644 does is limit it to people who filed amendments but because of the confusion of what the amendment cutoff date was we have, again, in litigation we pointed out there were at least three separate deadlines, March 30, an early May date and August 15, which purported to cut off the amendment process.

So the people would get this information saying, "You have missed the March 30 deadline." They would not file an appeal at all, then, though they did not agree with the action.

Especially those people who received notice—many people we know received notice of an adverse decision after the August 15, 1973, deadline which was published in the Federal Register. They were sent an appeals packet which said they had the right to appeal by August 10. Many of them said this doesn't make sense to me, and they accepted the decision.

Mr. MEEDS. The Chair is aware of the confusion surrounding the 13th region's election. The Chair is also aware that there was a great deal of confusion involved in the entire process of election not only just in the 10th but in the whole election.

Should we then allow every Alaskan native to report at this time? Give them a chance to change their selection based on that premise?

Mr. DURAND. Mr. Chairman——

Mr. MEEDS. Mr. Wabaunsee?

Mr. WABAUNSEE. Yes, Mr. Chairman, if their participation is permissible under the law, if it meets the criteria set out in the Claims Settlement Act.

For example, if they are a resident of Alaska and then I think their choices are much more narrow for the resident for changing regions or villages.

Mr. MEEDS. You might be aware there were just seven heart attacks in the room here.

[Laughter.]

Mr. WABAUNSEE. Maybe I am misreading the act, but our concern is with the nonresidents and their ability to make the decision once and for all whether they want to be a member of one of the 12 regional corporations or the 13th.

Mr. MEEDS. You are a lawyer and I will just ask you a philosophical question. Do you believe in the statute of limitations?

Mr. WABAUNSEE. Depends upon whether I am a plaintiff or defendant.

Mr. MEEDS. Whether it's for you or against you?

Mr. WABAUNSEE. I think the statute of limitations has value when it does equity. Our key concern is doing equity——

Mr. MEEDS. On an individual basis they often do injustice, do they not?

Mr. WABAUNSEE. That is precisely the point.

Mr. MEEDS. You are against them when they do injustice and for them when they do equity. A very good lawyer's answer, that was.

[Laughter.]

Mr. MEEDS. The gentleman from Colorado?

Mr. Johnson.

Mr. JOHNSON. No questions.

Mr. MEEDS. Thank you, very much.

Mr. WABAUNSEE. Thank you, very much.

Mr. DURAND. Thank you.

Mr. YOUNG. The chairman has to go and testify in another committee, among other things more money for Alaska Natives, at ten to twelve.

The next witness is Mr. Dalrymple.

Can you finish your testimony by a quarter to, we'll proceed otherwise; we'll proceed now and you will be the first witness this afternoon.

Mr. DALRYMPLE. I beg your pardon, sir.

Mr. MEEDS. Would you prefer to proceed now?

Mr. DALRYMPLE. I think I can wrap it up very quickly.

Mr. MEEDS. Very good, please come forward.

STATEMENT OF DAVE DALRYMPLE

Mr. DALRYMPLE. I am Dave Dalrymple. I have come here from Seattle——

Mr. MEEDS. Do you have a prepared statement?

Mr. DALRYMPLE. Yes, I have a prepared statement, but I will not read from it because I think a great deal has been covered. I will try to summarize and be brief.

Mr. MEEDS. All right, but do you have a copy for the court reporter. Please proceed.

Mr. DALRYMPLE. Thank you, Mr. Chairman.

The people that have signed these petitions come from basically the Puget Sound area of Washington, and northern Oregon, and there are some from California in here. These are people who felt they did not have sufficient information from the Government at the time they enrolled. As other people have testified, there was a great deal of confusion and confusion was the rule, not the exception during the entire enrollment process.

The business of the 13th certainly was a very confusing matter.

The 12 corporations in Alaska were established as nearly as practical of natives who had a common heritage or shared common interests and the option of forming a 13th was left up to the applicant, who was a nonresident.

However, column 16 of the application asked the applicant for his permanent residents on April of 1970 and the instructions accom-

panying that column stated, "The place you name here is where you will be enrolled."

That simple statement left many people believing they had no option as to enrollment in the 13th or any other. They felt they were locked into it.

The Department of the Interior apparently hired numerous people to assist the residents of Alaska and apparently hired a public relations firm to reach the people living outside of Alaska but most of the people here and myself did not hear or read or see anything from a public relations firm or anybody else to assist in the enrollment to give you pros and cons on it.

The rumors that were in the Puget Sound area made it even worse. There were stories of large amounts of money you get if you joined here and none if you enrolled there, and some people believed that if they enrolled in one of the twelve regions in Alaska, they would have to move immediately. Some people said they would have to pay taxes on 100 acres of lands for the rest of their lives as individuals.

And one woman said that the 13th would be so powerful, they would force Congress to allowing their children with only one-eighth blood quantum to participate.

And as I stated earlier, many, many people just did not believe they had a choice.

So the Interior Department was going to give people the opportunity to amend their enrollment. However, I didn't hear a thing about an amendment. These people did not hear anything about them and even as Judge Gasch stated, those people who did receive notification, "the regulation was deliberately drafted in negative terms so as not to give the impression that amendments were ever permitted as right."

He said it best when he said at best this was insufficient information to enable a Native to make an informed and intelligent decision.

Now I am not representing any group, I am representing a group of people only. We are not an organization, we are not opposed to the 13th. Many of the people on this list are strong proponents of a 13th. But then all believe that, one, the Government provided insufficient information to the people on their enrollment, and that all the Americans should have the right to make a decision which is so profound with the proper information and one of the big things is that the Thirteenth Regional Corp. will stand an infinitely better chance of being a successful operation if the people in it want to be there rather than being forced into it.

This is all we are asking, is that the bills that you are considering be amended to allow those people a free choice in or out of the 13th region. Those non-Natives.

In almost all other areas, we are given a chance to amend our vote. We are given the opportunity to repeal laws and ordinances that turn out unsatisfactorily, we have the right to oppose candidates. We can do almost anything but change our votes. But this bill could lock in a number of people.

One of the frightening aspects of locking in opponents of the 13th is the prospect of extended litigation and appeals dragging this thing on.

This is one of the reasons that strong proponents of the 13th signed the petition. They want it over and done, but they want it right and reasonable. They don't want it dragged out.

We realize that such an amendment could create additional administrative tasks. But its our opinion that previous administrative failures have put us in the position that we are in now and we believe it would be better to remedy the errors rather than bury them.

In closing, I wish to restate that we are not opposing the Thirteenth Regional Corp. We believe it will be more successful if the shareholders are people who wish to be shareholders and that all the people should have the right to get in or get out of the 13th.

Thank you.

Mr. MEEDS. Mr. Dalrymple, thank you for your testimony.

Without objection, your prepared statement will be made a part of the record.

[The statement follows:]

STATEMENT OF DAVID DALRYMPLE

I have come here from Seattle, Washington on behalf of some two hundred-plus Alaska Natives residing in the Puget Sound area of Washington and from Northern Oregon. We are not an organization in the formal sense of the word; rather we are a very informal group who feel we had insufficient information from our Government at the time we completed our enrollment applications under the Alaska Native Claims Settlement Act two and three years ago.

During the enrollment period, confusion was the rule—not the exception. That application form and the limited instructions accompanying it were extremely difficult for educated persons to comprehend; virtually impossible for the many elderly and undereducated Natives. This confusion was particularly true in the areas concerning the formation of a 13th Regional Corporation.

For background purposes, the Alaska Native Claims Settlement Act established twelve regional corporations within the State of Alaska. The regions were formed, as nearly as practical, of "Natives having a common heritage and sharing common interests". The Act, however, provided for the establishment of a 13th Corporation which would represent the interests of non-resident Natives if a majority of eligible voters chose to establish one. However, column 16 of the applications asked the applicant for his permanent residence as of April 1, 1970. The accompanying instructions stated, with reference to column 16: The place you name here is where you will be enrolled if you are found eligible under the Act.

This statement, in the opinion of many non-resident Natives precluded the possibility of enrollment in one of the twelve Alaska regions. Many non-resident Natives felt they had *no* options even though they would rather have been in the "home" regions. This is especially true for those Alaska Natives who have since made plans to return to their homes in Alaska. The Department of the Interior hired many enumerators to assist Natives living in Alaska with their enrollment applications and apparently hired a Public Relations firm to reach those Natives residing outside of the State. The firm was engaged to provide instruction and enrollment assistance to nonresident Natives. However, I did not see, hear, or read any such information in any of Seattle's media. As Judge Gasch, of the U.S. District Court for Washington, D.C., stated in his opinion' "... non-resident Natives experienced difficulty in completing the application with only the assistance of the instruction sheets."

To make matters even worse, in the Puget Sound area, at least, there were many rumors regarding the enrollment. Some of these were simple misunderstandings of the technicalities of the Act; some appear to have been deliberate falsifications. For example:

1. Several Natives (predominately elderly) were told that they would receive one million dollars if they enrolled in the 13th Region; nothing if they chose one of the Alaska regions. When one of the persons responsible for this statement was asked to clarify it, he replied that the Native's share of the Native Fund would probably be sufficient to educate two to four children through college and that

education would enable them to reach earning levels of possibly \$250,000 during their lifetimes which would be a net of over a million dollars to the family. In my mind, this amounts to fraud—especially to an elderly person living on welfare.

2. Many non-residents held the opinion that if they chose one of the 12 Regions, they would have to move back immediately.

3. Several persons spoke of being obligated to pay taxes on 100 acres of land in Alaska if they enrolled north.

4. One woman was told that shareholders in the 13th would have enough power to force the Congress into allowing children with only one-eighth blood quantum to participate in the Act, and

5. As stated previously, many thought they had no choice whatsoever!

Because the confusion was so great, the Interior Department decided that column 17 (also pertaining to residence) would simply be disregarded.

To help remedy the problem Interior decided to allow applicants to amend their enrollment. However, many persons were never informed of this option and those that did receive notification were faced with yet another contradiction. As Judge Gasch wrote, "The Regulation (permitting amendments) was deliberately drafted in negative terms so as not to give the impression that amendments were ever permitted of right."

The best summation of this entire problem was written by Judge Gasch when he stated: At best this was insufficient information to enable a Native to make an informed and intelligent decision.

As I stated in the beginning, I am not representing any organization formally created for Alaska Natives. The people who signed these petitions believe, sincerely believe, that they were let down by their government in a matter which will have the most profound effect upon their lives and the lives of their children. These people do not oppose the formation of a 13th Regional Corporation. Indeed many persons who strongly support the concept of the 13th have endorsed this petition on the basis of a free and informed vote. Several of the petitioners are presently enrolled in one of the 12 Alaska Corporations and want the opportunity to become shareholders in the 13th. All of them, however, agree on three points:

1. The Government provided insufficient information for a truly informed rumors and misinformed statements further clouded the issues.

2. All Americans have the right to a free and informed vote on matters affecting their well-being, and

3. The 13th Regional Corporation will stand a better chance of success if the shareholders are there by choice rather than by Congressional edict.

This then is our petition to you: We are asking for the opportunity to make a new choice on whether or not we wish to be enrolled in one of the 12 Regional Corporations in Alaska or in the 13th Corporation.

In almost all other matters in which Americans are allowed to vote, they are given an opportunity to amend their decision. In the case of elected officials, the electorate can choose to vote for another candidate in two to four years. Repeal procedures are established for unsatisfactory laws and ordinances. The bills being considered by this committee, however, will "lock-in" many Americans without the normal and constitutional protection and redress.

Another frightening aspect of this "locking-in" provision is the distinct possibility of further appeals and extended litigation by and on behalf of some of the people who have signed these petitions. As you may already know, two of the parties in the suit have already docketed their notices of appeal even though the Department of the Interior did not. That was one of the factors which motivated a number of strong proponents of the 13th Region to sign the petitions: They do not want the matter drawn out any longer—they want it settled once and for all in a right and reasonable manner.

We realize such an amendment process could create additional administrative tasks. Some have stated it would open a "new can of worms", but I do not believe this. It is because of previous administrative failures that we are in the position we are today. We feel the most equitable solution is to remedy the past mistakes—not bury them.

In closing, I wish to restate that we are not opposing the 13th Corporation. We are only asking for the opportunity to amend our enrollment either into or out of it now that it has been formed.

Thank you.

Mr. MEEDS. You are an officer on the Seattle Police Force, are you not?

Mr. DALRYMPLE. Yes.

Mr. MEEDS. What grade in school did you attain? You obviously have special training.

Mr. DALRYMPLE. In the police force?

Mr. MEEDS. Well, you graduated from high school.

Mr. DALRYMPLE. Yes, sir.

Mr. MEEDS. What beyond that?

Mr. DALRYMPLE. The University of Washington, the Seattle Police Academy and many schools the department sent me to.

Mr. MEEDS. You have a full college education and special training beyond that in investigating, is that correct? And even you are confused, is that correct?

Mr. DALRYMPLE. Yes, sir. I didn't receive any information except the application form and I was confused.

Mr. MEEDS. By the forms which you received?

Mr. DALRYMPLE. And the applications and—

Mr. MEEDS. Rumors or what?

Mr. DALRYMPLE. Well, both. Mostly the form and accompanying instructions particularly in this area of the 13th region. They didn't tell you any good or bad. There were just a number of people that I talked to—I am representing these folks and they just didn't know a darn thing about it.

Mr. MEEDS. You made a decision very early to belong to the 13th region?

Mr. DALRYMPLE. That's correct, I did.

Mr. MEEDS. And you didn't change your mind after that?

Mr. DALRYMPLE. I didn't know I had an option of changing my mind.

Mr. MEEDS. You were unaware of that?

Mr. DALRYMPLE. I was not notified of an amendment process, no, sir.

Mr. MEEDS. How many people other than you were in that position that you know of?

Mr. DALRYMPLE. These people did not know there was an amendment. The people who signed these petitions were not aware of an amendment procedure.

Mr. MEEDS. The people on the petition were all unaware that there was an amendment process?

Mr. DALRYMPLE. They had not been notified either by the Interior or through the news media that there was even an opportunity for amendment.

Mr. MEEDS. How did they receive their first petition or their first application?

Mr. DALRYMPLE. I don't know how some of these did. My mother was up in Kodiak and got hers, for all of us.

Mr. MEEDS. How did you get yours, in the mail?

Mr. DALRYMPLE. No; from my mother. I don't believe I ever received much of anything from Interior in the mail except when my initial application my mother got for us, myself and my two sisters. They were mailed in to us.

Mr. MEEDS. OK, but after you filed that application, you were then on the Interior Department's list as a nonresident Alaska Native.

Mr. DALRYMPLE. I would think so. However, I was told a little bit ago, this morning, that my name did not appear on the printout of nonresidents.

Mr. MEEDS. By whom were you told?

Mr. DALRYMPLE. Someone said they checked the printout and couldn't find my name on it.

Ms. KLEIN. Congressman Meeds?

Mr. MEEDS. Yes.

Ms. KLEIN. I checked the computer printout and Mr. Dalrymple's name was not on it. I called the enrollment office up in Alaska and they said his was pending and that just this year did it pass through the appeal pending into reality.

So his was not on the computer printout at all.

Mr. DALRYMPLE. Thank you, Ms. Klein.

I don't know why I wasn't, but I wasn't.

Mr. MEEDS. I am going to have to go now, but I hope you will stay around so we can come back after lunch if you would, please.

We are going to convene again at 1:30.

[Whereupon, at 11:49 a.m., the hearing was recessed, to reconvene at 1:30 p.m., this same day.]

AFTER RECESS

[The subcommittee reconvened at 1:55 p.m., Hon. Lloyd Meeds, chairman of the subcommittee, presiding.]

Mr. MEEDS. The hearing will be resumed.

Mr. Dalrymple, you were testifying last. Will you please resume the witness chair?

I will ask the clerk, do we have an extra copy of the petition?

The CLERK. Yes.

Mr. MEEDS. Would you hand one to Mr. Dalrymple?

Now, you said earlier that these people were in the same position that you were, they had not received information about their rights to belong or not belong?

Mr. DALRYMPLE. That is right, sir. These people are not expressing a "for" or "against" the matter of the 13th. They just feel they don't have sufficient information.

Mr. MEEDS. If they were in the same position you were, that is to say, had not received information about their opportunity to amend and their petitions filed by them to amend, then they wouldn't be in the same position you are, would they?

Mr. DALRYMPLE. Not if they had filed an amendment. These people I spoke with, I believe none of them had even known of the amendment procedure.

Mr. MEEDS. This request is based on information which was not available to us at the time of the initial enrollment.

Does that mean that they didn't have the opportunity to amend?

Mr. DALRYMPLE. They didn't feel they had sufficient information on the enrollment process or on the merits or liabilities of the 13th.

Mr. MEEDS. So it was a subjective judgment on their part? In other words, even if they had a ton of information, if they felt they hadn't had enough, that would still qualify under this terminology?

Mr. DALRYMPLE. They did not feel they had sufficient information. Yes, sir.

Mr. MEEDS. Do you know the people who signed this?

Mr. DALRYMPLE. Many of the people I know personally. Some of the signatures I gathered personally. This group here was gathered since I have been back here.

Mr. MEEDS. Do you know a Christian A. Anderson?

Mr. DALRYMPLE. I don't believe I know him, no, sir.

Mr. MEEDS. 3419 Densmore Avenue North in Seattle?

Mr. DALRYMPLE. No. These were gathered since I was in Seattle.

Mr. MEEDS. You are a detective, aren't you?

Mr. DALRYMPLE. That is right.

Mr. MEEDS. Would you look in the middle of that page under the name "Christian A. Anderson," and the Christian P. Anderson, and so forth?

I used to be a prosecuting attorney; and I would almost bet those who signed that are the same person.

Mr. DALRYMPLE. I would guess the same thing. I would assume it was a parent signing for dependent children.

Mr. MEEDS. So you are telling me all the people on this petition are not 18 years old?

Mr. DALRYMPLE. Some of them may not be.

Mr. MEEDS. What do you mean? Were instructions given by you when you had the petition filed that only 18-year-olds—

Mr. DALRYMPLE. No, we didn't limit it to that. We felt all these people were concerned.

Mr. MEEDS. So there may be only maybe a quarter of these people who are 18 years old, or who are entitled to vote in their own behalf; is that correct?

Mr. DALRYMPLE. I would guess there is only about a quarter that are not, sir, and that is just, you know, my assumption based upon the number of signatures I personally sought and obtained.

Mr. MEEDS. Did you get any that weren't 18 years of age?

Mr. DALRYMPLE. I beg your pardon, sir.

Mr. MEEDS. Did you get persons who weren't 18 years of age?

Mr. DALRYMPLE. I had a parent sign for their dependent children, but I only know of Mrs. Eide, who is here. She signed for her dependent son, and we have the Nassinea family. Mrs. Nassinea asked her son to sign her name, because she is hospitalized. She just had a stroke. Those signatures are the same. He signed for her.

Mr. MEEDS. Under the bill which the committee is presently considering, you are aware that you and people similarly situated would not have an opportunity to revote?

Mr. DALRYMPLE. As I understand, yes, sir.

Mr. MEEDS. Under a bill which I will propose, you would not have an opportunity to revote either?

Mr. DALRYMPLE. I am sorry, Mr. Meeds.

Mr. MEEDS. I will just tell you that that is a fact.

Mr. DALRYMPLE. This is what we were hoping could be amended, to let the people make a choice.

Mr. MEEDS. Very well.

The gentleman from Alaska.

Mr. YOUNG. I apologize for not being here on time. We had a bill on the floor concerning shipbuilding, which I was actively involved in.

I have no questions at this time. I would like to, if possible, later on, if we could, to call Mr. Dalrymple back to the witness stand.

Mr. MEEDS. I assume you will be here, Mr. Dalrymple?

Mr. DALRYMPLE. Yes, sir.

Mr. MEEDS. Thank you very much.

Mr. DALRYMPLE. Thank you.

Mr. MEEDS. We have 1 hour to complete the rest of the testimony. As I understand it, we have Nancy Eide, Jack Wick, Ray Christensen and Billy Johnson, and also Eric Treisman. Therefore, we will limit each of you to 10 minutes, and if you don't want to take the full 10 minutes, you can yield the balance of your time to somebody else.

Nancy Eide, it is my understanding that you are a Chugach stockholder from Washington State, is that correct?

STATEMENT OF NANCY EIDE, SEATTLE, WASH.

Miss EIDE. Yes.

Mr. MEEDS. Welcome to the committee. Do you have a prepared statement?

Miss EIDE. No, I don't.

Mr. MEEDS. Will you be able to complete your testimony in the 10-minute time limit, and save a couple of minutes for us to question you?

Miss EIDE. Yes.

Mr. MEEDS. Fine. Please proceed.

Miss EIDE. I have just a short statement.

Much of what I want to say has already been said. I would like to urge you to amend H.R. 6644 to give all nonresident Alaskan Natives an opportunity to amend their enrollment.

My name is Nancy Eide. I am president of Chugach Stockholders Association and a treasurer of the Alaska Federation of Natives of Washington.

I first enrolled in the 13th region. My appeal was after the appeal deadline and was turned down. I was not aware of the deadline date, because at the time there were such a confusing number of deadline dates. I decided to change my enrollment because I preferred to be enrolled in an Alaskan corporation.

My original decision to enroll in the 13th was that I was told non-residents would not be included under the act. The act was amended. Many nonresidents were under the impression that the Alaskan corporations did not want nonresidents in their corporations.

This lack of correct information is indicated from such statements that people believe they will get up to \$1 million if they enroll in the 13th, or if they enroll in Alaska they will have to move there and live on the land distributed to the regions, or if they enrolled in the 13th region, that they would be able to share in the revenue-sharing of the 49 acres.

The enrollment decision is of vital importance to the Alaskan Natives and will affect them for a long time in the future. The legislature must provide accurate information so that nonresident natives can make an intelligent decision. They must then be given an opportunity to enroll in the region of their choice. It is imperative that House bill 6644 be amended to allow all nonresident natives to change their enrollment.

Mr. MEEDS. Thank you very much.

Do you personally feel that you were misled by any of the statements about getting \$1 million?

Miss EIDE. No; but I was misled by the fact that I didn't know how much I was going to get.

Mr. MEEDS. What year of school did you attain? Are you a college graduate?

Miss EIDE. Yes. I have a bachelor's.

Mr. MEEDS. You really want us to believe that you were misled by that?

Miss EIDE. Yes. If you are not given any information—the Claim Settlement Act is a very complicated piece of legislation and it is hard for anybody to interpret, and if you are not given any information, you are led by the ideas.

Mr. MEEDS. I was misled by the form sent out by the Department of the Interior. I am no Philadelphia lawyer, but a Washington State lawyer, and I can see people being misled by that. But I really can't understand a college graduate being misled by being told that they were going to get \$1 million if they joined one corporation and weren't going to get it if they joined another.

Miss EIDE. I didn't believe they would get \$1 million. I just didn't know how much, and that is what other people feel. I don't think very many believed—

Mr. MEEDS. Do you know anybody personally—is it Miss or Mrs.

Miss EIDE. Miss.

Mr. MEEDS. Miss Eide, do you know anyone personally who believed there would be \$1 million if they joined a corporation?

Miss EIDE. My sister.

Mr. MEEDS. What is her name?

Miss EIDE. Rose Carter.

Mr. MEEDS. How old is Rose Carter?

Miss EIDE. 30, or 35.

Mr. MEEDS. What is her educational attainment?

Miss EIDE. High school.

Mr. MEEDS. A graduate of what high school?

Miss EIDE. North Kitsap, which is a Washington high school, Washington State.

Mr. MEEDS. That is all. The gentleman from Alaska.

Mr. YOUNG. Rose Carter is not related to any Carter in Alaska, is she?

Miss EIDE. No.

Mr. YOUNG. She had better be related to some of the Carters in Alaska. We have quite a few of them that are active, and they are a large family in the State.

For the record, the questions about your education and that of the previous witnesses were in a way to try to show that possibly you were misled, and I think that I know many people who are Alaskan descendants who want to enroll in the 13th. And I think enrollment has been surrounded by confusion, and the fact that they might have been enrolled in previous actions after the enrollment, the deadlines, the series of deadlines, have confused many people.

I don't have any questions, Mr. Chairman. The young lady has presented her point of view in the short time we allotted her. I would like to compliment her.

Miss EIDE. Thank you.

Mr. MEEDS. Thank you very much, Miss Eide.

The next witness is Eric Treisman, of Bristol Bay.

Mr. Treisman, are you an attorney representing Bristol Bay?

**STATEMENT OF ERIC TREISMAN, ATTORNEY, ON BEHALF OF
BRISTOL BAY NATIVE CORP.**

Mr. TREISMAN. Yes, I am.

Mr. MEEDS. Do you have a prepared statement?

Mr. TREISMAN. A very brief one. My testimony will be very brief also.

Mr. MEEDS. Please proceed.

Mr. TREISMAN. I am Eric Treisman, an Alaska lawyer representing Bristol Bay Native Corp. We favor the amendment, amendatory legislation in H.R. 664. We have a couple of problems.

Section 102(a), referring to escrow accounts for proceeds of certain lands, we feel quite sure this is meant to refer to the proceeds of contracts, leases, permits, easements and so forth as described in section 16(g) of the Act, but that is not clear from section 102(a).

We feel the way section 102(a) is presently written, that it could be easily interpreted by the Department of the Interior to refer to all sorts of contracts that our corporation has made, entrepreneurial activities and that all kinds of sums could be grabbed and placed in escrow accounts.

Mr. MEEDS. Please proceed, sir.

Mr. TREISMAN. And we feel that it is not the intention of this committee or that of the drafters of the legislation to have this put in escrow accounts. This could be handled very simply by making reference to 14(g) in section 102(a).

The other problem we have is in creation of the 13th region. Due to the form letters that were sent out by AFNI, many people presently enrolled in villages could end up enrolled in the 13th region. Form letters—I don't have one before me, but they went something like, "My name is so and so. I am presently enrolled at ——. I would like to change my enrollment to 'at large'."

The terms of Judge Gasch's ruling, as the Department has interpreted it, the people enrolled out of the villages, to "at large," and in the 13th region all at one time. People who are presently listed as members of villages are going to be lost from the village rolls.

Some villages in our regions are close to the entitlement cutoff. I am sure in other regions there is the same situation, and entire townships of land could be lost by villages. And they probably will pick them up again in second-round selections, but then they won't be village lands, and we don't feel that that process would be complete by December 18, 1975.

We feel that a great deal of uncertainty would arise. So what we would like to see done is, we would like to see the village entitlement on a basis of the roll frozen at some point prior to creation of the 13th. This will just make for a great deal more certainty in the land selection.

This is what we would like to see in any amendments to the act. We would like to see the principle of certainty at the earliest possible time maximized, because we think that the largest problems have arisen in the land claims, that they are problems of uncertainty.

Thank you.

Mr. MEEDS. Thank you, sir.

I assume you would not be in favor of opening all the rolls for revoting about what corporation you want to belong?

Mr. TREISMAN. I just can't say. That is a tough question, and I am glad it is up to you and not up to me.

Mr. MEEDS. If the proposal before us were amended to assure that any changes from a village roll to the Thirteenth Corp. roll would not affect village eligibility or land selection rights would you favor that kind of amendment?

Mr. TREISMAN. We would very strongly favor that kind of an amendment.

Mr. MEEDS. If that were done, would you have an objection to the passage of the legislation creating the 13th?

Mr. TREISMAN. I feel constrained not to speak for the corporation. I as an attorney representing the corporation can't see any objection we would have to it. I think that the creation of the 13th strengthens the other 12 corporations.

Mr. MEEDS. Thank you.

The next witness is Jack Wick, of Koniag, accompanied by Ed Weinberg.

STATEMENT OF JACOB WICK, PRESIDENT, KONIAG, INC., ACCOMPANIED BY ED WEINBERG OF DUNCAN, BROWN, WEINBERG & PALMER

Mr. WICK. Mr. Chairman and members of the subcommittee, I am the president of Koniag.

Mr. MEEDS. You have a rather long prepared statement.

Mr. WICK. I am going to summarize.

Mr. MEEDS. Without objection your statement will be made part of the record.

[The statement follows:]

STATEMENT OF JACOB WICK, PRESIDENT, KONIAG, INC., BEFORE THE INDIAN AFFAIRS SUBCOMMITTEE OF THE HOUSE INTERIOR AND INSULAR AFFAIRS COMMITTEE ON H.R. 6644—MAY 12, 1975

Mr. Chairman and Members of the Subcommittee:

My name is Jack Wick. I reside in Kodiak, Alaska. I am President of Koniag, Inc., the Regional Native Corporation whose territory covers Kodiak Island, Afognak Island, Shuyak Island and a portion of the mainland of Alaska westerly of Kodiak Island, across the thirty-five mile wide Shelikof Straits. I am also Chairman of the Board of Directors of the Alaska Federation of Natives. President Lang of AFN has already testified regarding the position of AFN on the legislation before you. I fully concur with Mr. Lang's statement and I will, therefore, not take the Subcommittee's time by further comment on the subjects he has covered.

I want to bring to the Subcommittee's attention the need for an addition to H.R. 6644 to correct a situation involving inconsistent holdings by the Department of the Interior as to residence on April 1, 1970. The problem has arisen principally in the Koniag region and involves native people enrolled by the Department of the Interior as residents on April 1, 1970, of nine places, all of which were later determined by the Department to be ineligible for determination as villages because they did not have at least twenty-five residents on April 1, 1970. These places are: Uyak, which is listed in Section 11(b) of the Settlement Act as a village, and Uganik, Bells Flats, Anton Larsen Bay, Port William, Litnik, Ayakulik, Aiaktalik and Kitoi.

In the case of each of these places, the Secretary enrolled at least 25 Alaska Natives as "residents" on April 1, 1970, in the enrollment process required by

Section 5(b) of the Settlement Act. As you know, one of the requirements of Section 5(b) is that the roll prepared by the Secretary shall show for each Native, among other things, "the region and the village or other place" in which he resided on April 1, 1970. Section 5(b) requires that each Native be enrolled "according to such residence."

This Committee has already been informed regarding the enrollment procedures of the Bureau of Indian Affairs and I will not dwell upon them. Natives were, in some cases, interviewed by BIA people who filled out the enrollment forms. In others, Natives filled out the forms themselves. In others, the regional corporation acted as sponsors under BIA invitation. There was great confusion on all sides as to what constituted residency.

After the enrollment came the review of village eligibility, made by the Department as required by Section 11 of the Settlement Act. Most of Kodiak Island is included within the boundaries of the Kodiak National Wildlife Refuge. Afognak Island, immediately north of Kodiak Island, is almost entirely included within the boundaries of the Chugach National Forest. That part of Kodiak Island which is not in the Wildlife Refuge is covered by State selections either pending or tentatively approved. There is a small island north of Afognak Island known as Shuyak Island, the site of the village of Port William, which is entirely covered by tentatively approved State selections. A part of the withdrawal for Port Williams is in the Chugach National Forest.

The Committee will understand, therefore, that Koniag villages are in competition for their lands with powerful federal agencies, either the Forest Service or Fish and Wildlife Service, and in some cases, both. The eligibility as villages of each of the nine places that I have named was challenged. The Fish and Wildlife Service challenged the eligibility of Uyak, Uganik, Bells Flats, Anton Larsen Bay, Aiaktalik and Ayakulik. The Forest Service challenged the eligibility of Litnik, Kitoi, Anton Larsen Bay and Port William.

Village eligibility determinations are made initially by BIA. An "interested party aggrieved" may appeal a BIA determination to the Interior Department's Alaska Native Claims Appeal Board. BIA determined that all the places I have named, except for Aiktalik and Kitoi, were "villages". BIA, however, determined that neither Kitoi nor Aiaktalik qualified as "villages" for, among other reasons, lack of twenty-five residents. After our attorneys advised us that we had no real grounds for appeal in these two cases, we dropped our appeals.

In the eligibility proceedings as to the other seven places, the Alaska Native Claims Appeal Board held, and the Secretary of the Interior affirmed those holdings, that those places were ineligible because, among other reasons, each lacked the minimum required twenty-five residents on April 1, 1970.

In other words, when preparing its roll, the Department of the Interior determined that each of nine places had twenty-five residents and then in the village eligibility proceedings, the Department of the Interior concluded that they did not have twenty-five residents.

Koniag and the Corporations representing these villages have appealed each of the seven cases decided by the Appeals Board to the Federal District Court for the District of Columbia. I am not here to ask this Committee to referee this dispute. However, I am here to ask that Congress instruct the Secretary of the Interior, if the decisions as to village eligibility are right on the number of residents, to correct his first decisions on residence in the enrollment process, because those decisions have been necessarily wrong as to some of the Natives involved. Of course, as to Aiaktalik and Kitoi, we agree that his second decisions were correct and that the enrollments to these places were in error.

As to any lawsuits we win, there will be no problem, because the eligibility of the particular place as a village will then be established and the Secretary's second round decisions on residency in those cases will be voided. As to any that we lose in court, however, unless the Secretary redetermines residence on the official roll, we will have Natives carried by the Secretary on his roll as residents of places that he has said at least some of them are not residents of. And, as I have said, that is now the case as to those of our people who were enrolled to Aiaktalik and Kitoi.

It is important that the roll be corrected in such cases because membership in Native Corporations is determined solely and exclusively by the place of residence as shown on the roll. If some Natives should not have been enrolled as residents of a particular place, it follows that their proper residence on April 1, 1970, was at some other place. And, if that other place is an eligible village or an eligible group or one of the four urban villages specified in Section 14(h)(3) of the Act, those

Natives will be deprived of their rightful entitlement to membership in corporations receiving benefits under the Act. To put it simply, those Natives will be deprived of benefits that Congress, through the Settlement Act, intended they receive.

Now in a situation like this, one would have thought that as soon as the Interior Department became aware of the problem, the Department would have given assurance that it would redetermine residence in the cases of those places found ineligible as villages because they lacked the necessary 25 residents even though 25 or more Natives had been enrolled by the Department as residents of that very place. However, to my surprise, even though we raised this matter with the Department months and months ago, the Department so far has failed to give any assurance that it will redetermine residence in these cases for purposes of the roll, and, despite our request, it has failed so far even to advise us whether it considers that it has legal authority to redetermine residence in such cases. The only alternative we have left, if injustice is to be avoided, is to request that Congress include in this legislation a provision directing that such a redetermination of residence be made in the event of a final determination of the ineligibility as a village or a group on grounds which include residency.

In order that there be no complications as to land entitlements or past distributions of monies from the Alaska Native Fund, we agree, as is the case with the "late filers", that no land entitlements are to be affected by any such redetermination and that no past revenue distributions are to be affected. We agree further, in order to avoid complications, that no place not now a "village" or "group" shall gain eligibility by such a redetermination. All we want, and I think simple justice entitles us to this, is that the Secretary of the Interior enroll the people involved in this situation to the places he determines their residences to be so that from this time forward they receive the benefits to which ANCSA entitles them.

Mr. Chairman, that concludes my statement and I thank the Subcommittee for the opportunity to present it. The amendment to H.R. 6644, which we propose to accomplish this purpose, is attached hereto, as is a letter from our Attorney to Congressman Young regarding this matter. I ask that both be included in the record at this point.

Thank you.

Attachments.

LAW OFFICES,
DUNCAN, BROWN, WEINBERG & PALMER,
Washington, D.C., May 7, 1975.

Hon. DON E. YOUNG,
U.S. Congressman, Longworth House Office Building,
Washington, D.C.

DEAR DON: In addition to the matters covered by H.R. 6644, there is a further matter arising out of the administration of the Alaska Native Claims Settlement Act which warrants legislative resolution.

In seven village eligibility proceedings in the Koniag region, the Secretary of the Interior, through his approval of decisions of the Alaska Native Claims Appeal Board, determined that the place in question lacked the twenty-five Native residents as of April 1, 1970, required for "village" status, notwithstanding that in preparing the official roll pursuant to Section 5 of ANCSA, the Department of the Interior had, in each instance, enrolled at least 25 Alaska Natives as residents of that place as of April 1, 1970.

Membership in Alaska Native Corporations is determined by the place of residence of a Native as shown on the official roll. As a result, unless their places of residence are changed on the roll, some Alaska Natives will be carried as residents of places of which they are not residents, and thus, they will be denied the right to membership in the Native Corporation to which their residence entitles them.

What is required in such cases is that the Secretary redetermine the places of residency, as of April 1, 1970 for enrollment purposes. In some cases, such redeterminations may well result in no change in the April 1, 1970 place of residence as now shown on the roll. But it is obvious that there will be some changes, because if the Department enrolled 25 or more Natives to a given place as residents thereof on April 1, 1970 and then concludes, in determining whether or not that place is a "village", that less than 25 Natives were residents of the place on April 1, 1970, one or the other of these conclusions as to residency must be in error.

If residency for enrollment purposes is not redetermined, genuine injustice will be done in those cases where the Natives in question are thereby denied their rights to membership in Native corporations which themselves qualify for benefits under ANCSA.

Koniag has requested the Department of the Interior to indicate its willingness to undertake redeterminations of residency in the event the Department's village eligibility determinations are upheld on judicial review (such proceedings are now pending). However, the Department has neither agreed to such a course of action nor has it been willing even to advise whether it considers that it has legal authority to undertake such redeterminations. As a result, if the Department's village eligibility determinations are upheld, there will then exist the anomalous situation of Natives being treated by the Secretary as both residents and non-residents of the same place and at the same time. In view of the Department's reluctance to come to grips with the problem, the only solution practicable would seem to be by legislation.

The enclosed proposed amendment to H.R. 6644 would provide for the necessary residency redeterminations. Provision is made that no land entitlements are to be affected one way or the other by any residency determinations and that no new "village" or "group" eligibility shall result therefrom. The provisions of the proposal in this regard are modeled on the similar provisions of present Section 101 (which would be redesignated as Section 101[a]). Provision is also made, as with the case of present Section 101, that no previous revenue distributions by any Native corporation are to be disturbed.

Finally, provision is also made that distribution by the Secretary of funds from the Alaska Native Fund among the regional corporations shall not be affected. In this connection, I note omission of such a provision from present Section 101. To cure this seeming omission, the following proviso should be added at the end of present Section 101: And, *Provided further*, That any distribution of funds from the Alaska Native Fund pursuant to subsection (c) of Section 6 of the Settlement Act made by the Secretary or his delegate prior to the enactment of this Act shall not be affected by the provisions of this subsection.

It is respectfully requested that you propose the amendment enclosed herewith. I shall be glad to answer any questions you or your staff may have.

Sincerely yours,

EDWARD WEINBERG,
of Duncan, Brown, Weinberg & Palmer.

PROPOSED AMENDMENT TO H.R. 6644

Redesignate Section 101 of H.R. 6644 as Section 101(a), and add the following as subsection (b):

(b) In those instances where, on the roll prepared under Section 5 of the Settlement Act, there were enrolled as residents of a place on April 1, 1970 the minimum number of Natives required for a "Native village" or a "Native group", as the case may be, and it is subsequently and finally determined that such place is not eligible for land benefits under the Act on grounds which include a lack of sufficient number of residents, the Secretary shall, in accordance with the criteria for residence applied in the final determination of eligibility, redetermine the place of residence on April 1, 1970 of each Native enrolled to such place, and the place of residence as so redetermined shall be such Native's place of residence on April 1, 1970 for all purposes under the Settlement Act: *Provided*, That each Native whose place of residence on April 1, 1970 is changed by reason of this subsection shall be issued stock in the Native corporation or corporations in which such redetermination entitles him to membership and all stock issued to such Native by any Native corporation in which he is no longer eligible for membership shall be deemed cancelled: *Provided further*, That no distribution of funds made by any Native corporation on the basis of prior places of residence shall be affected: *Provided further*, That land entitlements of any Native village, Native group, Village Corporation, Regional Corporation or Corporations organized by Natives residing in Sitka, Kenai, Juneau or Kodiak, all as defined in said Act, shall not be affected by any redetermination of residence made pursuant to this subsection, and no tribe, band, clan, group, village, community, or association not otherwise eligible for land or other benefits as a "Native village" as defined in said Act, shall become eligible for land or other benefits as a Native village because of any redetermination of residence pursuant to this subsection: *Provided further*, That no tribe, band, clan, village, community, or village association not otherwise eligible

for land or other benefits as a "Native group" as defined in said Act, shall become eligible for land or other benefits as a Native group because of any redetermination of residence pursuant to this subsection: And, *Provided further*, That any distribution of funds from the Alaska Native Fund pursuant to subsection (c) of Section 6 of the Settlement Act made by the Secretary or his delegate prior to any redetermination of residency shall not be affected by the provisions of this subsection. Each Native whose place of residence is subject to redetermination as provided in this subsection shall be given notice and an opportunity for hearing in connection with such re-examination as shall any Native corporation which it appears may gain or lose stockholders by reason of such redetermination of residence.

Mr. WICK. Our area covers—

Mr. MEEDS. Pardon me, Mr. Wick. I am going to have to depart right now and vote, or I am going to miss it. If you will sit where you are, I will be back in 5 minutes.

[Brief recess.]

Mr. MEEDS. The hearing will resume.

Mr. Wick, please proceed.

Mr. WICK. As I was stating before, I am president of Koniag, and that our corporation covers these areas here. I am chairman of the board of Alaska Federation of Natives, and I concur with Roger Lang's statement to you earlier. He covered it fairly thoroughly, so I won't go into that again.

But I do want to bring to the subcommittee's attention the need for an addition to H.R. 6644 to correct the situation involving the inconsistent holdings of the Department of the Interior as to residents as of April 1, 1970.

We have in our region, and I know there are other villages in other regions, similar situations, but we have nine villages in the Koniag region, and one of them is listed, and the Secretary enrolled at least 25 Natives to each of these, and when the eligibility hearings for the villages came up, the Interior Department said they were not enrolled in those villages.

So if they in one hand say they are enrolled in the village and the people in good faith believe they are enrolled there, and then they turn around and say they are not enrolled there, exactly where are they enrolled?

Mr. MEEDS. May I interrupt you? How could Interior say they are not enrolled? I assume that they indicated on their forms that they want to be enrolled in these villages.

Mr. WICK. Yes.

Mr. MEEDS. And Interior accepted this and later said they weren't?

Mr. WEINBERG. It comes up this way, Mr. Chairman. The committee is thoroughly familiar with the enrollment process. The BIA sent out the enumerator in some cases and in other cases the Natives enrolled by signing the forms themselves.

There was great confusion as to what the criteria were for residence on April 1, 1970, and people were enrolled to places. What column 16 says is, "Your place of residence on April 1, 1970 is what?" and the people themselves put down something or the BIA enumerator did, and in each of the cases of these nine, and there are other villages in other regions where it also happened, the particular place that was designated had at least 25 people so enrolled.

That was on the roll when the Secretary certified it on December 18, 1973.

Then the act directs that each village be examined for eligibility. We all thought that the Secretary could not in village eligibility proceedings inquire into residency because that was taken care of under the enrollment process of section 5.

Well, the board ruled against us. The Department ruled against us, and the board heard evidence in these village eligibility cases which went to where the person resided on April 1, 1970, and in these nine cases, the Department, having enrolled 25 or more Natives to each of those places as of April 1, 1970 in the eligibility proceedings, the Department held they did not have 25 residents on April 1, 1970. In other words, the enrollment had been an error.

Well, so the Department, in effect, held that they were residents for enrollment purposes, but they were not residents of that same place on April 1, 1970.

We asked that the Department correct this situation, because if the Department was right the second time, then obviously the enrollments were wrong, and therefore the Secretary should now reexamine the enrollments of people in those villages so that their residency would be determined in accordance with these criteria, whatever they were, and they would be enrolled in the place where they actually resided on April 1, 1970, as determined by the Department.

In some cases that would not change their place of residence. In other cases it would. In those cases where if they were enrolled to their proper place of residence on April 1, 1970, they would be entitled to membership in a village corporation which is receiving benefits under the act. They are being denied those benefits because the Department refuses to correct what is obviously an error.

Now, we took that up with the Department, and the Department—we took it up months and months ago when the Secretary was in Alaska, and the Department indicated it would take it under advisement, but from that day to this we have not only not been advised that they will do this. We have not even been advised whether or not they consider that they have authority to do it. We just can't get anything out of the Department.

Mr. MEEDS. All right. Proceed, Mr. Wick.

Mr. WICK. One of the things we felt also was that in order there were no complications in reenrollment or correction of the roll, we felt that the land entitlements to the villages would not change. That is in the case of the late filers.

Basically Mr. Weinberg stated it very clearly, I believe, and you can understand the problem we have with those villages, and from here on I could go into it, but it is all written in the statement, and I believe you understand the problem.

Are there any questions?

Mr. MEEDS. Yes. You are chairman of the board of AFN. Would you favor opening the rolls entirely for all of the regions, and letting people opt to change their original or amended petitions?

Mr. WICK. I understand the question, and I agree with the principle of that concept, but I don't think that is the question before us right now. I think the question is the 13th, and the people—

Mr. MEEDS. The question, if you will pardon me, is what I asked you. You may answer something else if you wish, but answer my question first.

Mr. WICK. All right. I said I agree with the principle, but I cannot see opening the rolls and going through the whole land selection process again, if it were legal to do so. I can't see us going through all the hearings on land selection and all the protests. I can't see us going through all that mess again.

Mr. MEEDS. Well, even if we didn't have to do that.

Mr. WICK. Even if we didn't have to do that?

Mr. MEEDS. Yes.

Mr. WICKS. Then I don't see any problem.

Mr. MEEDS. Then you would be in favor of it?

Mr. WICK. Yes.

Mr. MEEDS. All right, what did you want to add? You said that wasn't the question.

Mr. WEINBERG. That was all he was going to say.

Mr. MEEDS. Answer your own question. You have answered mine.

Mr. WICK. I think so. I don't have anything else.

Mr. WEINBERG. Mr. Chairman, I neglected to add that the same problem that we have been testifying about arises, I know, in the Bering Straits region in a place called Solomon, where exactly the same thing has happened, and I am authorized by the Bering Straits to say specifically that they would like to have Congress direct the Secretary also to reexamine it, or redetermine the residency in that situation.

Mr. MEEDS. The gentleman from Alaska.

Mr. YOUNG. Thank you, Mr. Chairman.

On the enrollment I agree with you, Mr. Weinberg, that you can't be one place and not another, and I ask the question for clarification.

Mr. WEINBERG. Yes.

Mr. YOUNG. Have some of the villages involved appealed to the appeals board?

Mr. WEINBERG. Yes.

Mr. YOUNG. What you are asking us basically to do, then, is to have the Interior Department clarify where they are. They are either one place or the other?

Mr. WEINBERG. Yes.

Mr. YOUNG. That would affect the decision of the appeals board, wouldn't it?

Mr. WEINBERG. No; it would not, Mr. Young.

First of all, let me say we have appealed seven of these cases to court. If the court agrees with our legal position, which is that residency was not open, or otherwise agrees with the positions we are taking, this problem will have been wiped out. We are not asking this committee to referee that dispute.

We are not asking that a village which has been determined finally to be ineligible as a village be held by this committee to be a village nothing in the legislation that we have proposed would have that effect. It would say, for example, that if a man enrolled to, and I use this purely as a hypothetical case, although this is an actual case—

Mr. Young. Make it short will you?

Mr. WEINBERG. All right, yes. If there were 25 people involved to a place called Aiktalik, the BIA determined that Aiktalik did not have 25 residents. When I came into that case, when I began to represent Koniag region, I agreed with the BIA under the criteria of residency

which the Department was using. That case, therefore, was not appealed to the Board, and obviously it isn't appealed in court, but we are left in this situation.

The Department is carrying 25 people on that roll as residents of Aiktalik when they are not residents of Aiktalik. They are probably residents of a place called Ahkiok, and they probably should be eligible for membership in the Ahkiok village corporation.

Mr. MEEDS. Thank you very much.

Mr. WEINBERG. Thank you.

Mr. MEEDS. Our next witness is Ray Christiansen, chairman of the board, Calista Corp.

Welcome before the committee, Ray. Please proceed, sir.

STATEMENT OF RAY CHRISTIANSEN, CHAIRMAN OF THE BOARD, CALISTA CORP., ACCOMPANIED BY JAMES D. SOURANT, ATTORNEY

Mr. CHRISTIANSEN. Thank you.

Mr. Chairman, my name is Ray Christiansen from Calista. At this time I haven't got a written statement. We haven't had time to look at the bill and really think it over. However, I hope that you give us a chance to go home and take this to our board and go over it, and then get a written statement.

Mr. MEEDS. Without objection, if you will have your written statement in within 2 weeks, it will be made a part of the record.

[The statement plus letter with additional remarks follows:]

STATEMENT OF RAY CHRISTIANSEN, CHAIRMAN OF THE BOARD, CALISTA CORP.

My name is Ray Christiansen, Chairman of the Board of Calista Corporation. I have several points I wish to make.

1. First, I would recommend that if the chair desires the views of the parties represented here today as to certain issues, that the chair designate the issues and afford 10 days for written response. This is especially pertinent to Calista, where the board of directors has not had an opportunity to formulate a position.

2. Late filers:

We concur generally except that late filers should be able to join the 13th Regional Corporation as well as the first 12. As written, § 101 limits late filers to section 5(a) regional corporations.

3. Temporary exemption to Investment Act of 1940:

We concur.

4. Escrow accounts:

Should be redrafted to limit application to proceeds received by the BLM. As written, could be construed to mean that proceeds received by regional corporations would have to be put into escrow.

5. Merger clause:

We concur generally.

6. 13th Regional Corporation:

(a) Generally, we concur in the formation of a 13th Regional Corporation and always have.

(b) We strongly support the approach set forth in judge Gasch's opinion.
(c) Language should be included to the effect that village land selections would be unimpaired in the event a native presently enrolled in one of the 12 Alaskan regions open to enroll in the 13th region.

(d) We oppose allowing a person already enrolled in the 13th region to enroll in one of the 12 Alaskan regions. The reason is that the remaining 12 regions would be competing to lure people enrolled in the 13th region to their own in order to maximize the 12 regions' § 7(i) entitlements.

If such enrollment from the 13th region were allowed, we would strongly suggest that any changes in § 7(i) entitlements caused by such enrollments from the 13th region be given to the 13th regional corporation.

CALISTA CORP.,
Anchorage, Alaska, May 30, 1975.

Congressman LLOYD MEEDS,
House of Representatives,
Longworth Building,
Washington, D.C.

DEAR MR. CHAIRMAN: On May 12, 1975, the Calista Corporation, by and through Ray Christenson, Chairman of the Board, and James D. Sourant, Legal Counsel, testified before the Subcommittee on Indian Affairs of the Committee on Interior and Insular Affairs regarding H.R. 6644. At the conclusion of the testimony, an extension of time was granted to the Calista Corporation in which to send supplemental written testimony. The Calista Corporation hereby desires to supplement the original testimony with the following comments:

I. CREATION OF THE THIRTEENTH REGION

(a) In general the Calista Corporation supports the approach to the problem of new elections taken by Judge Gasch in the AFNI suit. (See Alaska Federation of Natives, *International vs. Morton*, No. 2133-73, memorandum dated December 23, 1974, pages 27 through 28, and the order dated December 30, 1974, at page 2). Permitting an entirely new election would be impeded by the factors referred to by Judge Gasch. Further, permitting a new election with provisions for opting out of the Thirteenth Region would tend to pit the remaining corporations against each other in competition for new shareholders in order to expand any possible benefits which might be derived under Section 7(i) and 14(h)(8). For those reasons, the Calista Corporation opposes the provisions of H.R. 6644 which permit entirely new elections.

(b) It has come to the attention of the Calista Corporation that another resolution has been introduced on the subject of the Thirteenth Region by Congressman Meeds. Diligent efforts to obtain a copy of that legislation have not been fruitful. It is the understanding of the Calista Corporation that the resolution provides for an election by persons enrolled in the Thirteenth Region wherein such persons would be able to opt out to one of the remaining regional corporations at the end of a three-year period. Assuming the premise is correct, the Calista Corporation would oppose the three-year period. Such a provision would give persons enrolled in the Thirteenth Region an undue advantage over persons enrolled in other regions in that the former would be able to pick and choose at the end of three years, the regional corporation having the best financial track record. In the event persons enrolled in the Thirteenth Region elected to join one of the other 12 regional corporations at the end of the three-year period, it is not likely they would be warmly received by the shareholders of the latter corporations. The result would create unnecessary disharmony. It is the position of the Calista Corporation that if nonresident Alaska natives are given an opportunity to elect to join the Thirteenth Region, that their election should be a binding one. Otherwise, the proposed legislature would give preferential treatment to non-resident Alaska natives, ultimately creating unnecessary dissension among the shareholders of the remaining regional corporations.

II. ESCROW ACCOUNTS

Although the Calista Corporation appreciates the proposed legislation as a mode of insuring that proceeds obtained from transactions involving native selected lands prior to conveyance would ultimately be preserved for the appropriate native corporation, the Calista Corporation disagrees with the concept that the proceeds should be administered by the Federal Government under the terms set forth in the resolution. It would be more desirable, and consonant with the spirit of the act, if the proceeds from such transactions were paid directly to the regional corporations to be deposited into special investment accounts.

III. RECENT PROPOSED AMENDMENTS

It has come to the attention of the Calista Corporation that other amendments to the Act have been included in a recent Omnibus Bill introduced by Senator Stevens, an official copy of which the Calista Corporation has been unable to obtain. Assuming the correctness of the informal documents obtained, the Calista Corporation would offer the following comments:

(a) Apparently it is proposed that Section 14(h)(8) of the Act be amended to permit Section 14(h)(8) Land Selections to be made out of public lands not previously selected within the lands withdrawn under Sections 11 and 16, with the proviso that if the public lands remaining are insufficient to satisfy the regional corporation entitlement, the regional corporation may select from any other public lands.

The language used would permit one regional corporation to select lands located within the boundaries of another regional corporation. The Calista Corporation opposes any such proposal. If one regional corporation were permitted to select lands within the boundaries of another regional corporation, there would be created a host of problems, not the least of which would be the orderly development of the resources within that region.

(b) Apparently it is further proposed that Section 19(b) of the Act be amended to give the Klukwan Village Corporation a period of 6 months in which to elect to take reservation lands, or to take the benefits otherwise provided by the Act, presumably a substantially larger acreage under Section (6)(b) of the Act.

The Calista Corporation is opposed to such an amendment. Permitting piecemeal amendments in the nature of special legislation for the benefit of special interest groups would be a bad precedent, and would tend to cause other native groups which originally were satisfied with their entitlements under the Act to seek increased benefits.

In the alternative, if such an amendment were permitted, then it should be made clear that the timber resources on these lands be made subject to Section 7(i) distributions. It is apparent that the timber resources on land selected by villages located within the Sealaska Region would not be subject to 7(i) distribution, based upon a construction of Sections 7(i), 16 and 14(f). All other regions must share both their surface and sub-surface resources with every other region pursuant to the terms of Section 7(i). By contrast, the Sealaska Corporation could probably successfully contend that only its sub-surface resources, and not its timber resources, must be shared under Section 7(i), relying on the wording of Sections 14(f) and Section 7(i) of the Act. At present Sealaska stands to enjoy all the benefits of Section 7(i) distributions of both surface and sub-surface resources vested in all other regional corporation, without having to share any of its timber resources with the remaining regional corporations. Section 7(i) should not be a one-way conduit.

The Calista Corporation takes the position that should Klukwan Village Corporation be entitled to select 23,040 acres pursuant to Section 16(b), and such is the will of Congress, then Congress should make clear its intention that the timber resources thereof are subject to Section 7(i) distributions.

Thank you for the opportunity of permitting us to submit this supplemental written testimony.

Very truly yours,

ROBERT H. SCHENKER,
President, Calista Corp.

Mr. CHRISTIANSEN. First of all, we thank you for inviting us over here to talk on the bill.

To my left is our attorney, Mr. Sourant. If I may, I would like to have him make a few statements.

Mr. SOURANT. Mr. Chairman, my name is James D. Sourant. Just on the line that Mr. Christiansen was mentioning, I have observed there are several issues that the Chair seems particularly interested in, and I think it may be of benefit if the chairman so desires that the Chair would designate these certain recurring issues, some of which are only implicitly raised by the bill and perhaps give all the participants at this hearing 10 days or 2 weeks, as I understood the Chair to say, to formulate a short written response. That is only a suggestion, of course.

The comments we have specifically, and very succinctly as to the filers, we concur generally in the concept of the late filers, except that as it appears right now in the wording of the bill, the late filers

are limited only to section 5(a) corporations, and I think the wording should be changed so that the Thirteenth Regional parties could also become late filers.

It is a minor point. The next point is the temporary exemption to the Investment Act of 1940. We generally concur with that. As to the escrow accounts, we feel that perhaps that provision should be redrafted to limit application of that provision to proceeds received by the BLM.

I think, as Mr. Treisman raised it, the way that provision is written, it could be construed by the Secretary of the Interior to include all proceeds which are generated by regional corporations. I think we should define to whom that provision applies.

As to the merger clause, we generally concur in that. As to the Thirteenth Regional Corp., the Calista Corp. has a long-standing policy of favoring the Thirteenth Regional Corp. and we would take the approach which appears in Judge Gasch's opinion.

There are two points about the Thirteenth Regional Corp. we would like to raise. One is a minor one, and which I think Mr. Treisman also raised, and that is that it should be clear that no village land selection should be impaired in the event a Native who is enrolled in a village corporation elects to enroll in the 13th region.

That is to say that there should be no diminution of the lands that were selected by the village corporation.

It is implicit, but we would like it expressed.

Lastly is a point that has not been raised by anyone here yet, to my knowledge, and it is kind of an underlying thread of what this Thirteenth Regional Corp. is all about, and that has to do—the Calista Corp. thinks it is better that we oppose the idea that persons already enrolled in the 13th region should be able to enroll in one of the 12 Alaskan regional corporations.

Now, the reason we oppose that is because what is implicit but what is on everybody's mind, is that there is going to be a huge rat race among the 12 regional Alaskan corporations trying to engage in body snatching to maximize their section 7 entitlement.

We think that isn't consonant with the spirit of the Act. However, we probably feel it is better that the people who are enrolled in the 13th region do have an opportunity, and do have the freedom to enroll wherever they want to.

Now, if a person enrolled in the 13th region should want to join any of the other 12 Native regional corporations, then I think there would have to be an amendment that any of the entitlements that would be caused by one of the 12 Alaskan regional corporations, section 7(i) entitlements, their increase in those entitlements should be conferred on the Thirteenth Regional Corp.

I think that has executing teeth, and it would tend to not have the 12 Alaskan regional corporations competing among themselves for anybody enrolled in the 13th region, and as well it would help the members who are enrolled in the 13th region to have a fully funded—

Mr. MEEDS. How would that be accomplished?

Mr. SOURANT. Mr. Chairman, this is something that has crossed our minds. I don't know how it works. I don't know how it would work. If you would like, sir, we would give you our comments and implementation ideas in our written response within 2 weeks.

Mr. MEEDS. Please do that. You see, in that instance the Thirteenth Regional Corp. has really nothing to share with the others. The purpose of that section is to divide the benefits from the natural resources of the 12 regions equally among the Natives. The Thirteenth Corp. wouldn't have anything to share.

Mr. SOURANT. That is a problem. We suggested this, sir, as a suggestion to avoid the conflict which appears imminent.

That concludes my comments, Mr. Chairman, if we may be excused.

Mr. MEEDS. I assume you are for the late filing—

Mr. SOURANT. I couldn't hear you. I am sorry.

Mr. MEEDS. You are for the late filing, and the escrow of the funds, and so on?

Mr. SOURANT. Yes, sir, we are.

Mr. MEEDS. For the exemption and exception in the SEC provisions?

Mr. SOURANT. Yes, we are, of 1940.

Mr. MEEDS. You are for the merger?

Mr. SOURANT. Yes, we are.

Mr. MEEDS. For the food stamps clarification?

Mr. SOURANT. Yes, sir, we are.

Mr. MEEDS. Very well.

The gentleman from Alaska.

Mr. YOUNG. One clarification. You were telling us that you think the amended enrollees should be or should not be allowed to reenroll?

Mr. SOURANT. We say ultimately that they should be able to, but if they are, which of the 12 regional corporations they enroll with would have to give that incremental share of 7(i) benefits to the Thirteenth Regional Corp.

Mr. YOUNG. Again, I agree with the chairman. I don't think that would work. What I am trying to get across is that if under the chairman's proposal, possibly there would be a chance after 3 years, and I agree with you that there would be a chance to gather more members into the regional corporations. I don't think if there is a delay, you will see this problem exist, and the 13th will have a chance to settle down.

I would not like to tinker with those lands.

Mr. Christiansen, greetings to you again.

Mr. CHRISTIANSEN. Thank you, Congressman.

Mr. MEEDS. Thank you.

Our next witness is Mr. Billy Johnson.

Come on up, Billy. Do you have a prepared statement?

STATEMENT OF BILLY B. JOHNSON, PRESIDENT, OUTSIDE REGION FOR ALASKA NATIVES

Mr. JOHNSON. I have a written statement that I would like to read.

Mr. MEEDS. All right.

Mr. JOHNSON. I would like to read this short statement into the record. I don't have a prepared statement.

Mr. MEEDS. All right. Please proceed, sir.

Mr. JOHNSON. Mr. Chairman, the opportunity to appear and testify on H.R. 6644, a bill to amend the Alaskan Native Claims Settlement Act concerning the 13th region, is a most welcome opportunity.

I appear as president of the Outside Region for Alaska Natives, incorporated in the State of Washington as a nonprofit organization. It is composed of Alaskan Natives enrolled in the 13th region.

I am past president of the AFNI Washington Chapter and past chairman of the Alaska World Equity Corp.

We interpret H.R. 6644 as a threat to the basic Constitution which can be interpreted as freedom of speech and, generally, the American way of life. This part beginning in H.R. 6644, page 8, column 8, this bill calls for a new enrollment, but restricts it to those who have filed an application to amend their enrollment application on or before December 1, 1973.

Page 8, line 24:

"Any Native who on or before December 1 had filed with the Secretary or his delegate any application to amend his enrollment application regarding his election whether or not to be enrolled in the 13th region shall, not less than 60 nor more than 90 days of the enactment of this section, inform the Secretary whether or not he wishes to be enrolled in the 13th region. Any native who so informs the Secretary shall be informed in accordance with his preference as indicated in the application so submitted to the Secretary.

This issue has been settled by the U.S. District Court of Washington, D.C. on December 30, 1974 that a valid election had been held. The submission to the court by the Department of the Interior was in favor of the 13th region 2,762; and against the 13th region, 2,637; abstaining, 330; total eligible voters, 3,929.

Let's go back to the Settlement Act, section 7(c). If a majority of all eligible Natives 18 years of age or older who are not permanent residents of Alaska elect, pursuant to subsection 5(c), to be enrolled in a 13th region for Natives who are nonresidents of Alaska, the Secretary shall establish such a region for the benefit of the Natives who elected to be enrolled therein, and they may establish a regional corporation pursuant to this act.

It states that if a majority is in favor, and we have had a majority. We oppose enactment of this amendment. We see no basis for the results of a valid Native election on this matter.

To establish a 13th region with new elections that could change the results for or against would thwart the democratic process built into the original act.

We believe every nonresident Native was given a fair chance to amend his application by the August 15 deadline, that the elections, however conducted, showed that a majority had clearly voted to create a 13th region as stipulated in the act.

Thus, we cannot support legislation that would overturn that election. Petitions are being circulated soliciting signatures, saying that they wish to be re-enrolled from the 13th to their home region. How many have signed, I do not know, but one of them that has signed said they had signed and did not know the true meaning of why they were signing, and, in turn, donated \$7 toward my expenses to appear before this committee fighting to keep the 13th region intact.

The people that oppose the creation of the 13th region are for a last-ditch effort to reduce it in size. They all seem to forget that individual rights are at stake.

We have chosen for the 13th—the people voted to create a 13th region. We won. Let's get on with it, Mr. Chairman.

Mr. MEEDS. Amen.

If I understand what you are saying, Billy, it is that you are in favor of approving the rolls of the votes that were certain, making those members of the 13th region, and not giving them an additional opportunity to vote. Is that correct?

Mr. JOHNSON. That is correct.

Mr. MEEDS. And the ones that were uncertain, the ones that amended and changed back and forth, and one way or the other changed to go into or out of the 13th region, what do we do about them?

Mr. JOHNSON. The people I am representing here today from the State of Alaska have said that they would support any legislation that would allow them to have another group at a later date once the 13th region is in existence and is operating.

So they could see the difference between the 13th region and the other 12 regions that are operating now in the State of Alaska.

Mr. MEEDS. You have some kind of a yardstick to judge by?

Mr. JOHNSON. That is correct.

Mr. MEEDS. The gentleman from Alaska.

Mr. YOUNG. No questions, Mr. Chairman.

Mr. MEEDS. Thank you very much.

That brings us within the time. As a matter of fact, we ended up with 2 minutes to spare.

Does anyone have anything to say for 2 minutes?

Go ahead please.

STATEMENT OF MS. LOLITA LINDSAY, ENROLLEE OF SEALASKA CORP.

Ms. LINDSAY. Mr. Chairman, my name is Lolita Lindsay, a non-resident Alaska Native enrolled in one of Alaska's corporations, Sealaska, headquartered in Juneau, Alaska. I am satisfied with my place of enrollment and have no intention of changing my interests elsewhere.

I am president of Alaska Federation of Natives, Washington Chapter, a nonprofit corporation. We have a constitution and bylaws and filed our Articles of Incorporation within the State of Washington in March 1970. Our membership comprises nonresident Alaska Natives who live throughout the Lower 48, who are either enrolled in one of Alaska's corporations or the Thirteenth Regional Corp.

AFN, Washington Chapter played a major role in seeking inclusion of "nonresident" Alaska Natives in the Alaska Land Claims Settlement Act and supported the creation of the Thirteenth Regional Corp. However, seeing that the final act adopted by Congress did not provide land and/or mineral benefits for the stockholders of the Thirteenth Regional Corp., the AFN, Washington Chapter, board and many of its members elected to be enrolled in one of Alaska's 12 regional corporations.

There remaining many members of our chapter who desired the creation of the Thirteenth Corp., and in recognizing their rights, AFN, Washington Chapter established a 13th committee, whose sole purpose was geared to the development of their "nonresident" corporation. AFN, Washington Chapter assisted its 13th committee in seeking and dissemination of information regarding the Thirteenth Corp.

We supported the 13th committee when the Alaska Native Association of Oregon sought names for incorporators of the Thirteenth Regional Corp. 2 years ago. AFN, Washington Chapter also shared Thirteenth Corp. information with other Alaska Native Associations throughout the United States, particularly with the Alaska Native Association of San Diego and the Confederation of Alaska Natives of Oakland, Calif.

We feel that we have been fair with our members who desire the formation of the Thirteenth Corp. and assure you that our position has not changed in this regard. Many of our 13th committee members desire an "open election" process for the Thirteenth Corp.'s interim and permanent board members. Our 13th committee members would like to see each Alaska Native Association submit one name for an incorporator of their region, namely, the Alaska Native Association of Oregon; the AFN, International; AFN, Washington Chapter; the Alaska Native Association of San Diego. Also, if the association for the people of the 13th region in San Francisco is not incorporated, our 13th committee people have no objection to the four incorporators electing the fifth person.

Should AFN, Washington Chapter, participate in the above process, I assure you that great care will be exercised in certifying that the name recommended as an incorporator by our 13th committee is valid.

In addition to our concern for our members who are 13th enrollees, we are drawn to the interests of our people who are late filers and for those wishing to change their place of enrollment either in or out of the Thirteenth Corp. Because of the mass confusion throughout the enrollment process, we feel it fair to provide for those late in enrolling to gain inclusion under the Alaska Land Claims Settlement Act. To deny this would be denying their birthright.

AFN, Washington Chapter, also believes that a provision should be afforded to our "nonresident" people who want to change their place of enrollment either in or out of the Thirteenth Corp.

Last, but not least, our 13th committee people have asked us, on their behalf, to recommend that provisions be made to allow the payment of the pre-incorporation debts of any nonresident organization, be approved by the majority of the 13th shareholders.

On behalf of the Alaska Federation of Natives, Washington Chapter, I thank you for this opportunity to express our concerns to you.

Mr. MEEDS That is pretty fast.

Now, as I understood it, you were suggesting that AFNI and AFNI Washington and the San Diego corporation select one incorporator each, and those four select the fifth; is that right?

Ms. LINDSAY. That is right.

Mr. MEEDS. In terms of geographic location, are you aware that that would allow States other than Washington State to select at least one-half of the board, and maybe more?

Ms. LINDSAY. Yes. I believe the organizations that we are talking about have a broad membership that covers Alaskan Natives living throughout the United States.

Mr. MEEDS. Are you aware that probably at least three-quarters of the nonresident Alaskan Natives reside in the State of Washington?

Ms. LINDSAY. Yes, I am.

Mr. MEEDS. I would think you would be. Are you aware that the proposal that you are making is at least on a proportional basis unfair to the Natives in the State of Washington?

Ms. LINDSAY. Our members of the 13th committee do not feel this is unfair. That is basically because AFNI and the Washington Chapter are headquartered in Washington State. Therefore, we would, by this process, have two incorporators.

Mr. MEEDS. Then you wouldn't propose an election?

Ms. LINDSAY. Yes.

Mr. MEEDS. You would not, as I understand it. The four organizations would each pick one, and those four would pick a fifth. That is a selection process, not an election process.

Ms. LINDSAY. That was on the provision if the association of the people for the 13th region was not incorporated, and as of today's date I am not sure if they are. But there is an association that grew out of the Federation of Alaska Natives, and their purpose is solely for the 13th region.

Mr. MEEDS. Would you be opposed to allowing those named organizations to select incorporators and then everyone to nominate incorporators through a petition process?

Ms. LINDSAY. If I understand this correctly, you are asking me if I would be opposed to the different organizations submitting a name?

Mr. MEEDS. Yes, a nominee, and then in addition to that, everyone having an opportunity to nominate people by a petition process. If 200 people wanted to nominate you, for instance, you could then run, even if you weren't selected by one of the organizations.

Ms. LINDSAY. I don't have any qualms about the petition process.

Mr. MEEDS. It is rather democratic, isn't it?

Mr. YOUNG. I am a Republican.

Mr. MEEDS. The gentleman from the Republic of Alaska.

[Laughter.]

Mr. YOUNG. Thank you. I have no questions. I hope I will be here tomorrow to hear further testimony.

Mr. MEEDS. Thank you very much. I am glad we had time to hear you.

Mr. YOUNG. I have a handwritten letter I would like to make a part of the record.

Mr. MEEDS. Without objection, so ordered.

[Letter follows:]

KODIAK, ALASKA, May 3, 1975.

Hon. DON YOUNG, M.C.,
U.S. House,
Washington, D.C.

DEAR CONGRESSMAN DON: In connection with any bill concerning establishment of a 13 Region, I strongly urge that it contain provisions assuring that those involved be given the opportunity to make a choice of whether they are enrolled to the 13th or another region. It would be a travesty of justice to force any Alaskan Native into an enrollment they do not desire. This is extremely important.

Respectfully,

KARL ARMSTRONG,
Secretary, Koniag, Inc.

Mr. MEEDS. That brings to a close the hearing today. We will be in session at 9:45 tomorrow.

[Whereupon, at 3:10 p.m. the subcommittee recessed, to reconvene at 9:45 a.m. of the following day, Tuesday, May 13, 1975.]

the subject I would think you should be the person to ask the question. I would think you should be the person to ask the question. I would think you should be the person to ask the question.

The first of these is the fact that the subject is not a simple one. It is a complex one. It is a complex one. It is a complex one. It is a complex one.

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The sixteenth of these is the fact that the subject is not a simple one. It is a complex one. It is a complex one. It is a complex one. It is a complex one.

H.R. 6644, TO AMEND THE ALASKA NATIVE CLAIMS SETTLEMENT ACT

TUESDAY, MAY 13, 1975

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON INDIAN AFFAIRS OF THE
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to notice, in room 1324, Longworth Office Building, Hon. Lloyd Meeds (chairman of the subcommittee) presiding.

Mr. MEEDS. The subcommittee will be in session for further taking of testimony on H.R. 6644 by Mr. Young of Alaska.

The gentleman from Kansas.

Mr. SKUBITZ. Mr. Chairman, there is a Republican conference on at the present moment that started at 9 o'clock. It hasn't adjourned. I have come simply because I thought somebody ought to be here from this side of the aisle. I left the conference to get here.

This is Mr. Young's bill. I wonder if we couldn't hold up for 5 or 10 minutes and give Mr. Young an opportunity to be here, since it is his legislation. I have asked the gentleman here to call and tell him you are about ready to start.

Mr. MEEDS. We will be delighted to do that. You may feel free to go back to the conference. We will not proceed.

Mr. SKUBITZ. Off the record.

[Discussion off the record.]

Mr. MEEDS. The subcommittee will be in session for taking of testimony on H.R. 6644.

Our first witness this morning is Royston Hughes, Assistant Secretary for Program Development and Budget, Department of the Interior.

Please come forward, Mr. Secretary.

STATEMENT OF ROYSTON HUGHES, ASSISTANT SECRETARY FOR PROGRAM DEVELOPMENT AND BUDGET, DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY KEN BROWN, LEGISLATIVE COUNSEL

Mr. HUGHES. Thank you, Mr. Chairman.

Mr. MEEDS. You may read the statement into the record or summarize it, as you wish, Mr. Secretary.

Mr. HUGHES. I prefer to read it into the record, Mr. Chairman.

Mr. MEEDS. Proceed.

Mr. HUGHES. Thank you.

Mr. Chairman, I appreciate the opportunity to appear before this subcommittee today to testify on H.R. 6644. This bill would amend the Alaska Native Claims Settlement Act in a number of ways. We support enactment of this legislation, and we have recommended several amendments to the bill which are contained in our report to the committee.

H.R. 6644 contains 10 sections which would amend ANCSA. I will discuss the provisions of each briefly.

Section 101 of the bill authorizes the Secretary of the Interior to reopen, for one year after enactment, the roll of Alaska Natives eligible for the benefit of the Alaska Native Claims Settlement Act to persons who would have been eligible for enrollment except for the fact that they missed the March 30, 1973 deadline. The deadline was established by regulations issued pursuant to ANCSA.

Section 101 also provides for the issuance of regional corporation stock to those Alaska Natives enrolled pursuant to this provision as well as the distribution of payments to those Natives enrolled pursuant to this section that are equal to payments made to those Natives originally enrolled. It further states that Natives enrolled pursuant to this provision shall not affect the eligibility status of land entitlement of eligible village corporations, regional corporations, the four named cities, or groups as defined by the Alaska Native Claims Settlement Act.

This Department has consistently and strongly supported the reopening of the rolls of Alaska Natives eligible to receive benefits under ANCSA, and to allow other eligible Alaska Natives who missed the enrollment deadline to enroll. Although we make no apology for the manner in which we handled in a very brief period of time one of the largest enrollment campaigns ever conducted, we recognize that not every eligible Alaska Native learned about the benefits of ANCSA in time to meet the filing deadline of March 30, 1973. Our estimate is that as many as 2,000 otherwise eligible persons had not applied for enrollment by that date. Some of these cases involve substantial equities. For example, some were minors whose guardians neglected to enroll them. Others did not receive the enrollment forms or were under misapprehensions concerning their ancestry.

We are also in agreement with the provisions of section 101 that would not allow the addition of these late enrollees to result in changing the status of those villages and groups whose eligibility status was determined pursuant to the figures that were established by the roll certified by the Secretary of the Interior on December 18, 1973. That roll would, under the provision of section 101, establish the proportionate shares of villages, groups and regional corporations as to their land entitlements and the new enrollment authorized by this amendment would not affect the proportionate share, nor would it be used to disqualify a group because it had more than 24 Natives enrolled as a result of the addition of late filers.

Section 102 of the bill provides the Secretary of the Interior with authority from and after the date of enactment, to deposit receipts derived from contracts, leases, permits, rights-of-way or easements pertaining to lands or resources of lands withdrawn for Native selection pursuant to ANCSA in an escrow account until such time as the land is conveyed, and then to transfer them to the person or entity receiving title to the land.

Upon the expiration of the selection rights of the Natives for whose benefit such lands were withdrawn or reserved, the proceeds from lands withdrawn but not selected shall be deposited in the U.S. Treasury or paid out as required under law.

It further provides the authority needed to pay interest on the funds held in the escrow account and to allow the Secretary of the Interior to reinvest them to obtain a higher return. However, the section specifically prohibits the creation of a trust relationship with regard to the funds authorized for investment and reinvestment by the section.

There presently exists no authority in the Secretary of the Interior to pay over to the Alaska Natives the proceeds derived from actions which he must take with regard to lands that are withdrawn for Native selection but which are not yet conveyed. The Alaska Natives had indicated to the Department the need for this authority, and we support the establishment of an escrow account.

While we support the creation of the escrow account, we cannot support the provisions of section 102(b), which would authorize interest payments on such account and give authority to the Secretary to reinvest the proceeds in the account. There are many other similar accounts administered by the Federal Government on which no interest is paid and in which there is no reinvestment authority. In our judgment section 102(b) would establish an unfavorable precedent.

We have recommended several amendments to section 102 in our report, primarily to clarify certain accounting procedures under the escrow account to accurately relate revenues to specific tracts producing the revenues and the tracts selected. Further, we have recommended an additional subsection which would parallel section 26 of ANCSA. This new subsection would provide that section 102 of this bill would govern in any conflicts between such section and any other Federal law applicable to Alaska.

Section 103 of the bill would add a new section 28 to ANCSA. Section 28 would exempt until December 31, 1976 any corporation organized pursuant to ANCSA from the provisions of the Investment Company Act of 1940 (54 Stat. 789, as amended). With regard to section 103 of this legislation, we have deferred to the views of the Securities and Exchange Commission. It is our understanding that the SEC will shortly submit a report to the Congress.

Section 104 of this bill would add a new section 29 to ANCSA. New subsection 29 would provide that payments and grants made under ANCSA are compensation for extinguishment of claims to land by Alaska Natives and are not to be deemed to substitute for any Government program that would otherwise be available to Alaska Natives as citizens of the United States and to the State of Alaska.

Further, the new subsection would specifically exempt any benefits an Alaska Native might receive pursuant to ANCSA from consideration in determining the eligibility of any Native household to participate in the food stamp program under the Food Stamp Act of 1964.

With regard to the provisions of section 104 of this legislation, we have not yet formulated a position and, therefore, we are not able to offer comments at this time. This provision is currently under examination within the administration.

Section 105 of the legislation provides that the funds deposited in the Alaska Native Fund under ANCSA are to be considered funds held in trust by the U.S. Government for Indian tribes.

We object to the classification of these funds as trust funds. Section 2(b) of ANCSA specifically declares that the settlement of aboriginal claims by Alaska Natives should be accomplished " * * * in conformity with the real economic and social needs of Natives * * * without creating a reservation system or lengthy wardship or trusteeship * * *"

Further, we cannot support the section 105 for the same reasons we could not support the provisions of section 102(b) of this legislation.

Under section 106, except as specifically provided in H.R. 6644, the provisions of ANCSA are fully applicable to this legislation and this bill shall not alter or amend any such provisions. We have no objection to this section.

Section 107 of the bill authorizes mergers or consolidations among regional and village corporations within the same region and would apply only to corporations authorized pursuant to sections 7 and 8 of the Alaska Native Claims Settlement Act. All mergers would be subject to the applicable provisions of the laws of the State of Alaska, as would any resulting corporations.

Section 107 would also allow the subsequent merger or consolidation of merged corporations with each other, provided they are in the same region. The mergers authorized by corporation shareholders either before or after passage of this bill would be covered and could take place under the provisions of the bill. This provision would allow a merger that was approved by corporation stockholders with the merger vote contingent upon enactment of the bill. This authority is necessary because of on-going efforts to merge village corporations, particularly in the NANA Region of Alaska.

This section gives to the merged corporation, upon the effectiveness of the merger, all rights and benefits that ANCSA confers upon the individual corporations and also makes them subject to all the individual corporations by the Alaska Native Claims Settlement Act. The section specifically states that transfers of rights and titles made pursuant to a merger would not affect the tax exemptions granted by the Alaska Native Claims Settlement Act.

Further, section 107 would allow the elimination of the right to dividends by nonvillage resident shareholders of a regional corporation if those nonvillage residents can, under the laws of the State of Alaska, vote as a class on the question of the merger or consolidation which contains the elimination provision. Section 107 also provides that notwithstanding the provisions of this bill or any other law, no merger or consolidation of corporations can take place without the approval of the shareholders of the corporation being merged or consolidated.

Since enactment of the Settlement Act, many of the village corporations have found that they are too small to effectively manage their resources and responsibilities under the provisions of ANCSA. In the remote areas of Alaska there is a shortage of trained managers who can run the many corporations, a demand that would be lessened by the bringing together of several of the smaller villages into one management unit. It would also be easier for the regional corporations to deal with 1 or 2 village corporations rather than 10 or 15.

The multiplicity of villages also dissipates the funds that are distributed to the villages, funds that can be used for improvements

for Native people rather than being paid out to large numbers of professional managers necessitated by the large number of villages.

This section is needed to allow mergers or consolidations to take place because of Alaska Native Claims Settlement Act prohibits for a period of 20 years from the date of its enactment the alienation of corporation shares issued pursuant to the act except under certain limited circumstances. There is no exception concerning alienation for the purposes of merger or consolidation. H.R. 6644 will modify this restriction on alienation sufficiently to authorize mergers and consolidations.

In our judgment this section contains sufficient safeguards and offers the Alaska Natives the opportunity to bring about mergers and consolidations that will better enable them to manage the benefits they are receiving under ANCSA. We recommend its enactment.

Section 108 extends the life of the Joint Federal-State Land Use Planning Commission, created by section 17(a)(10) of ANCSA, to June 30, 1979. We have no objection to the provisions of this section.

Section 109 amends section 7(c) of the Settlement Act. The new amendment directs the Secretary of the Interior to create a 13th region for those Alaska Natives who are nonresidents of Alaska and gives them authority to establish a regional corporation.

Section 110 of the bill creates a new section 30 of ANCSA which sets out the procedures to be followed by the Secretary of the Interior in carrying out his responsibilities in creating the 13th region. These responsibilities include:

1. Enrolling therein those Alaska Natives who wish to participate;
2. How the corporation for the 13th Region shall be created and how its interim Board of Directors is to be selected;
3. The instructions for submission of the articles of incorporation for the Thirteenth Regional Corp.;
4. Provisions covering the distributions made from the Alaska Native Fund and the impact of the 13th region on that fund;
5. Authority to make adjustment in the distributions from the Alaska Native Fund when the 13th region enrollment is completed; and
6. The authority of regional corporations to cancel, without any liability, the stock of those of their members who shift their enrollment to the 13th region.

We support the enactment of sections 109 and 110. However, based upon our experience in carrying out the provisions of ANCSA, we have recommended several amendments to section 110 which, we believe, will enable us to administrate the requirements of that section more effectively.

This concludes my prepared statement. I will be happy to answer any questions that you might have.

Mr. MEEDS. Thank you very much, Mr. Secretary.

Mr. Secretary, on the question of escrow, on page 4 of your statement you indicate that while you favor the creation of the escrow account, you do not support the provision which would authorize interest payments and reinvestment of those funds. You indicate that there are many other similar accounts of the Federal Government on which no interest is paid and for which there is no reinvestment authority.

Could you name some of those for me, please?
[Information supplied for the record]

Accounts administered by the Federal Government on which no interest is paid and in which there is no reinvestment authority:

The Mineral Leasing Act of 1920, as amended, provides in pertinent part (30 U.S.C. 191): "All money received from sales, bonuses, royalties, and rentals of public lands under the provisions of this chapter shall be paid into the Treasury of the United States; 37½ per centum thereof shall be paid by the Secretary of the Treasury as soon as practicable after December 31 and June 30 of each year to the State within the boundaries of which the leased lands or deposits are or were located . . . and, excepting those from Alaska, 52½ per centum thereof shall be paid into, reserved and appropriated, as a part of the reclamation fund created by the Act of Congress known as the Reclamation Act, approved June 17, 1902, and of those from Alaska 52½ per centum thereof shall be paid to the State of Alaska. . . ."

It is our understanding that no interest is paid on these accounts under this Act and there is no reinvestment authority therein.

Mr. HUGHES. In our discussion with the Office of Management and Budget this is a factor that arose, sir. We can supply the names for the record.

Mr. MEEDS. What kinds of accounts would they be? I am at kind of a loss to understand, where you have funds which you hold for any length of time for an Indian tribe, or under the Alaska Land Claims Act, why you could not pay interest on those.

Mr. HUGHES. It is technically possible, Mr. Chairman. It is just our position that this would not be a good precedent to set.

Mr. MEEDS. Why is that, sir? Why wouldn't it be a good precedent?

Mr. HUGHES. Because in our discussions with the Office of Management and Budget there are by their account several other accounts where the Government does, in fact, hold funds on which no interest is paid.

Mr. MEEDS. So what you are telling me is that this is the Office of Management and Budget's position, and not necessarily yours, or a position that you took solely as a result of what they told you. Is that correct?

Mr. HUGHES. Our position was arrived at in discussion with them, Mr. Chairman.

Mr. MEEDS. It is my understanding that you are deferring to the views of the SEC on the question of exemption.

Can we expect that within the next two weeks at the most?

Mr. HUGHES. It is our understanding that it ought to be here within this week, sir.

Mr. MEEDS. All right.

Now, on food stamps, on page 5, you state that, with regard to section 104 of this legislation, you have not yet formulated a position, and you are unable to offer comments at this time. Would you give me some idea why you haven't formulated a decision?

Mr. HUGHES. Basically we have not been able to arrive at an agreed-upon position with the Department of Agriculture, which administers the food stamp program.

Mr. MEEDS. Have you personally been involved in those negotiations?

Mr. HUGHES. No, Mr. Brown, legislative counsel, has been involved at the Office of Management and Budget level.

Mr. MEEDS. Could you tell us about those negotiations, Mr. Brown?

What is the issue, and what is the problem, and why haven't you been able to arrive at a conclusion?

Mr. BROWN. Mr. Chairman, I think there are probably a couple of reasons.

One, the Department of Agriculture has, as you are probably aware, maintained a negative position on this for some time. The Department of the Interior has over the past several months engaged in some correspondence with Agriculture in an attempt to arrive at an administrative resolution of this issue, unsuccessfully, and because of the relatively short time frame involved in this particular bill, our discussions with them and the Office of Management and Budget have not enabled us to arrive at a resolution.

We hope to do so within a matter of a few days.

Mr. MEEDS. Would you be reluctant to arrive at a conclusion which was different than that which the Agriculture Department had reached?

Mr. BROWN. I think the position of the Department of Interior is fairly clear as a result of our earlier correspondence, but speaking on behalf of the administration, it may take a few more days.

Mr. MEEDS. Is it necessary for you to clear with the Department of Agriculture your position on this issue?

Mr. BROWN. In order to arrive at a position that is accepted by the administration that is in conformity with the program of the President, we have to arrive at an accommodation with the Department of Agriculture.

Mr. MEEDS. Do you think it would be precedent-setting for you to arrive at some kind of a decision that was affirmative on this question?

Mr. BROWN. As I said, Mr. Chairman, I think the position of the Department of the Interior has been fairly clear on this as a result of outstanding correspondence.

Mr. MEEDS. That was my understanding, and I therefore am at a loss to understand why in this instance the Department of the Interior has to defer to the Department of Agriculture.

Mr. BROWN. Mr. Chairman, that is perhaps because this particular testimony and this report have been cleared by the Office of Management and Budget as in conformity with the President's program.

Mr. MEEDS. Aren't all the reports of the Department of the Interior, with regard to legislation, cleared by OMB?

Mr. BROWN. Generally they are, but on occasion we have been permitted by the Office of Management and Budget to come before the committee and give a report that does not contain the signoff of the Office of Management and Budget.

Mr. MEEDS. Let me read to you from a report of April 16, 1975 on the Cowlitz judgment issue. On page 5 of that report, and I am quoting:

We recommend deletion of section 4 of the bill on page 3, lines 13 through 15, and insert in lieu thereof a new subsection 4 as follows:

"Sec. 4. None of the funds distributed for capital or held in trust under the terms of this Act shall be subject to Federal or state income taxes, nor shall such funds or their availability be considered as income or resources or otherwise utilized as a basis for denying or reducing the financial assistance or other benefits which such household would otherwise be entitled to under the Social Security Act or any other Federal or federally assisted program."

This new section will not only provide these recipients the same benefits that are provided to tribes receiving judgment awards, but will also make certain

that food stamp program recipients will not lose their benefits because of their receipt of per-capita payments.

Are you telling me that report was not cleared by the Office of Management and Budget?

Mr. BROWN. I believe that is correct.

Mr. MEEDS. Do you know that to be the fact?

Mr. BROWN. It is my understanding that that report was not cleared by the Office of Management and Budget. We were permitted to submit it to you, but you will find in the last line of the last paragraph it does not contain the Office of Management and Budget sentence.

Mr. MEEDS. You must have a different report than I do. I see no prohibition or no limitation that the Office of Management and Budget hasn't signed off on this.

Now, I did not look at it that closely, but the last page in the last paragraph doesn't say anything about that.

Mr. BROWN. Mr. Chairman, it wouldn't say that. It would represent that it was the views of the Department, but if it has the signoff of the Office of Management and Budget, it would contain a line saying that the submission of this program was in accord with the program of the President.

I believe the April 16 report does not contain that language.

Mr. MEEDS. I see. With respect to your recommendation on mergers, Mr. Secretary, do you see any problems with the rights of minority stockholders? As I recall, the provision is that two-thirds of the stockholders would have to vote for merger.

Mr. HUGHES. There may be some problems created. We would not see any major problems with minority rights.

Mr. MEEDS. What kind of problems do you see?

Mr. HUGHES. I assume there might be a case where people in the one-third, or less than one-third, would not wish to have the merger take place.

Mr. MEEDS. Are you aware of any prohibition of this under an Alaska State law?

Mr. HUGHES. I am personally not aware of any.

Mr. MEEDS. Who prepared this report? Did you, Mr. Brown?

Mr. BROWN. This report was prepared as an effort on the part of a number of people within the Department, and the Bureau of Indian Affairs and the Solicitor's Office.

Mr. MEEDS. Mr. Brown, are you aware of any prohibition under Alaska State law which might provide problems insofar as the rights of minority stockholders might not be protected by this provision?

Mr. BROWN. No, but I would prefer to have Mr. Soller of the Solicitor's Office discuss that in detail.

Mr. MEEDS. Mr. Soller, come forward then. Are you aware of any prohibition under Alaska State law, Mr. Soller, that might provide problems with respect to these mergers?

Mr. SOLLER. No, I am not, Mr. Chairman. I believe minority rights are adequately protected under Alaskan law.

Mr. MEEDS. Thank you very much.

The gentleman from Alaska?

Mr. YOUNG. Thank you, Mr. Chairman.

Mr. Secretary, I am interested in two things, and I think the chairman hit upon it. One is the amount of your objection to reinvestment

and interest paid on the funds. You objected, I believe, on the ground that it would take into account a reservation-type trust fund.

Can you suggest any language for the bill that would allow the Secretary to reinvest money and would allow the interest to be paid into the fund to offset the inflation rate that is galloping through this Nation, thus, giving them their just heritage that has been due to them.

If my calculations are correct, we have lost over \$1.2 million since the enactment of the claim, and this would be an attempt to try to slow the process down.

Mr. HUGHES. I think our basic problem, Mr. Young, was with the categorizing of these funds as trust funds, and I am sure the lawyers can come up with other language which would provide the same benefit that you seek without having them established as trust funds.

Mr. YOUNG. What you are saying is that we can come up with the nomenclature that deletes the term "trust fund" and allow them to receive some of the interest due to them. You would have no objection?

Mr. HUGHES. No, I can't say that, sir. We don't have clearance to support the concept of paying interest on these funds.

Mr. YOUNG. We are talking about two different things in a way, because there will be another bill in here on the 13th region, but you did have suggestions on the time periods in H.R. 6644.

I think your timing is a little bit short. Do you have any other time periods that could be recommended other than what we have here?

Mr. HUGHES. We would basically support a year rather than 120 days.

Mr. YOUNG. Would you have any objection to 3 years?

Mr. HUGHES. We do have a concern that it not stretch out unnecessarily, and would be glad to respond to you, but 1 year, we think, is a good period.

Mr. YOUNG. You suggest a 1-year period?

Mr. HUGHES. One year. We think 120 days is not long enough to do what has to be done.

Mr. YOUNG. Outside of your report, do you have any idea that you could submit to me or to the committee on the amount of hours spent by your counsel and you and all those concerned with the Alaskan claims with regard to the settlement?

Mr. HUGHES. It would be an enormous amount of time, Mr. Young.

Mr. YOUNG. I have a reason for asking this, because your time has to be reciprocal, and that means a good bit of money on both sides. I think it would be beneficial to all of us if you would sit down and ponder this on where we have gone and where we are going to go. I think it has gone into thousands of man-hours enacting an act that Congress passed.

It is like food stamps. I think the intent of Congress meant this to be considered not as income. It is specifically in the report. You have one department saying it is considered as income, and I think it is an injustice.

You go all the way through land selection, eligibility, and for every reaction you have there has to be an action on the other side. When you talk about expediting something, this is a most cumbersome process. I know you have been directly involved in some of the solutions that have been overturned in the Department.

I would just like to have those hours so I can equate those to the amount of dollars we have wasted in trying to put into effect the congressional account.

Mr. HUGHES. We will try to supply that.

Mr. YOUNG. I can get it from the region quickly.

Mr. Chairman, I have no further questions at this time.

[The information follows:]

Man years spent by the Bureau of Indian Affairs on the Alaska Native Claims Settlement Act:

1972—114 man-years.

1973—136 man-years.

1974—130 man-years.

1975—122 man-years.

Mr. MEEDS. The chairman observes that this is one of the situations where you call on the attorney for arguing your bill, and you find out you get charged for arguing. [Laughter.]

Mr. Secretary, while it is not presently a part of this legislation before us, the Chair, and certainly the gentleman from Alaska, are aware of negotiations going on in the Cook Inlet region with regard to land selection.

Now, I don't want to in any way prejudice those negotiations and it is not my intent to do so, but we probably will not be legislating very often on—hopefully not very often—changes in the Alaska Land Claims Settlement Act.

I would like for you and the people from Cook Inlet, to know, that the Chair expects those negotiations to be concluded before this bill is marked up, or the Chair is going to insist that both sides come back in and testify about it and that it be included in this bill.

We are going to legislate it. It has been pending for far too long now, and both the Natives and the boroughs need to have a settlement of that question.

So without getting to the merits of it on either side, I advise you that that is the Chair's position.

Mr. HUGHES. Mr. Chairman, the Department had had informal discussions with the corporate officers from Cook Inlet in the last week or so, and the Department is also interested in a solution that is acceptable to all three parties, the Federal Government and the State government and Cook Inlet, and we hope we can arrive at that solution.

Mr. MEEDS. Very well.

Counsel reminds me of a problem that may be coming up in relation to the Settlement Act. My recollection, as a conferee on the bill which became the Settlement Act, was that, in the selection of the (d)(2) lands and the (d)(2) withdrawals, subsistence hunting and fishing rights would be in some way preserved for the Natives.

I know you are now in the process of consideration of those withdrawals. Has any consideration been given to Native subsistence rights? Has any rule or regulation been promulgated with regard to subsistence hunting and fishing rights in those (d)(2) lands?

Mr. HUGHES. Mr. Chairman, I know the Park Service has had a study team at work trying to deal with the issue of what subsistence hunting rights should mean under the act and how they should be applied equitably.

Mr. MEEDS. Do you think the Park Service is the appropriate part of the Department to make that decision?

Mr. HUGHES. Mr. Brown reminds me that the Bureau of Sport Fisheries and Wildlife had been part of the team assembled by the Park Service, and I would offer the Chair at least an opportunity to listen to some of the briefings that the Park Service has done on the issue.

While I recognize that some might think the Park Service might be prejudiced on the issue, I think they have assembled a professional team to look into this.

Mr. MEEDS. I don't think the Park Service would like it if the Bureau of Mines decided where the parks would be either. What I am saying is that there is a predisposition in the Park Service against hunting of any kind, and I would suggest that that is not the best area in the Department to make that decision.

Mr. YOUNG. Would the chairman yield?

Mr. MEEDS. Yes.

Mr. YOUNG. You are absolutely right. Letting the Park Service decide on hunting is like having two foxes in one chicken coop.

Mr. Chairman, we are going to be working on a bill that may not necessarily be the Interior's bill, as you are well aware of. I would like to see it reported, of course. I am aware of the report and they have gone in to the village people and have informed them of their proposal, that they would let them hunt.

You can be sure, Mr. Chairman, that when we write this bill up, hunting and subsistence hunting and management of game will lie within the State, and the land would have more than one use. If it goes into the park, there won't be any of that.

Mr. MEEDS. One other very good question, and I don't know that you have an answer for it right now. But yesterday one of the witnesses from the Koniag region raised a question about determinations by the Department as to village residents. My recollection is that after a person was enrolled in a village, which enrollment was accepted and listed, a determination was later made that that person was not a resident of the village for purposes of village eligibility under the requirements of the act.

Yet that person is still enrolled in that village, and that enrollment has never been changed to another village.

Now, there may not be an immediate solution. I don't expect you to have one on the tip of your tongue, but again that is a matter that should be settled relatively expeditiously.

Mr. HUGHES. Mr. Chairman, the Department is aware of the problem created by the adjudication process which determines some villages to be ineligible. We have thought about the range of solutions, and I will defer to Mr. Brown if we have arrived at any immediate decisions.

The most immediate result is that the person would be enrolled at large in that region, but we would like to have a better solution.

Mr. MEEDS. Maybe the Chair would suggest a better solution.

Have you attempted to contact those people and inform them that the enrollment for the purpose of making that a village is not acceptable, and therefore you have other alternatives? "Here, looking at your application, are your alternatives. Please select one."

Mr. HUGHES. We have not reached that point yet, Mr. Chairman.

Mr. MEEDS. I suggest that may be a procedure.

Thank you very much, Mr. Secretary.

Mr. HUGHES. Thank you very much.

Mr. MEEDS. Is John Borbridge here?

Please come forward.

STATEMENT OF JOHN BORBRIDGE, JR., PRESIDENT, SEALASKA CORP., ACCOMPANIED BY RICHARD F. ALLEN

Mr. MEEDS. John, you have a rather long statement, and I know you have a fine mind. I am well acquainted with the material, and I suggest that, if you can, you summarize.

Mr. BORBRIDGE. In the interests of time, perhaps, I will highlight and summarize the portions of the testimony for purposes of oral presentation.

Mr. MEEDS. Your prepared statement will be made a part of the record in its entirety.

[The statement follows:]

STATEMENT OF JOHN BORBRIDGE, JR., PRESIDENT, SEALASKA CORPORATION

My name is John Borbridge, Jr. I am the president of Sealaska Corporation, the regional corporation organized under the Alaska Native Claim Settlement Act for the Natives of Southeast Alaska.

On behalf of the approximately 16,500 stockholders of Sealaska Corporation, I want to express appreciation to Chairman Meeds and the members of the Indian Affairs Subcommittee for affording us the opportunity to comment on H.R. 6644, a bill to amend the Settlement Act in several particulars.

Chairman Meeds was one of the principal authors of the Settlement Act, a very complex piece of legislation. I think it is a credit to him and to the other Congressmen and Senators who were most responsible for its making that it has worked so well with so little tinkering. Most of the problems the Natives have experienced in connection with implementation of the Act do not trace to the provisions of the Act, but to administrative actions and constructions that sometimes have been patently incompatible with the plain language of the law.

Section 101 of H.R. 6644 provides for the enrollment as Alaska Natives of qualified persons who, for one reason or another, failed to submit applications before March 30, 1973, the deadline prescribed in the enrollment regulations issued by the Department of the Interior.

We support this provision and urge its enactment. There are a substantial number of Alaska Natives presently excluded from the benefits of the Act, who are the potential beneficiaries of this provision. Most of these people failed to file applications within the original time limit simply because they were not aware of the Act or of their eligibility.

We do not believe that adoption of this provision will create significant problems for anyone, either the Government or the Native corporations organized under the Act.

Indeed, we see no practical objection to keeping the roll open indefinitely for the addition of previously omitted persons subsequently establishing their qualifications as Alaska Natives under sections 3(b) and 5(a) of the Act, except that it would become progressively more difficult to accord them retroactive benefits. This problem could be solved by providing that any person applying after the one year period prescribed by the instant amendment, if found eligible, would be entitled to prospective benefits only.

Section 102 provides for the escrowing of proceeds realized from lands withdrawn in aid of Native selection and conveyance rights, pending the exercise and perfection of such rights, and, thereafter, for the payment of such proceeds, and the earnings thereon, to the Government and the grantees in proportion to their respective interests in the lands.

Subsection (b) provides for the deposit by the Secretary of the Interior of such proceeds in an escrow account in the Treasury. It further provides for the payment

semiannually of simple interest thereon "at a rate determined by the Secretary of the Treasury," and that the Secretary of the Interior in his discretion might withdraw such proceeds from the Treasury and invest them in the manner provided by 25 U.S.C. 162a. It concludes with the stipulation that "this section shall not be construed to create any trust relationship between the United States and any corporation or individual entitled to receive benefits under the Settlement Act."

While we fully support and urge the enactment of the basic provisions of section 102, we submit that the discretion granting and trust renouncing provisions of subsection (b) are clearly antithetical to the cardinal purpose of the section and should be eliminated.

These provisions would authorize the Secretary of the Treasury to set the rate of interest at one hundredth of one percent, and for the Secretary of the Interior to sit on his hands, without violating any obligation owed the Native grantees of the lands.

Achievement of the central intent of the section demands, and there is no reason not to require, that the proceeds be deposited in an account in the Treasury and credited with interest and administered as Indian trust funds, in accordance with 25 U.S.C. 161(a) and 25 U.S.C. 162(a), as the best interests of the native beneficiaries should dictate.

Lest you think our concern is overblown that, given unfettered discretion and immunity from liability, the Executive Branch will administer these proceeds for the Government's benefit and not for the Natives, I would remind you that a few years ago, when certain Federal agency obligations qualified for the investment of Indian trust funds were providing the best yields obtainable, the Office of Management and Budget directed the Bureau of Indian Affairs to stop investing Indian moneys in such obligations because of the adverse effects such investments had on the management of the Federal budget. This was recently held by the Court of Claims in *Cheyenne-Arapaho Tribes, et al. v. United States*, decided on March 19, 1975, to have constituted a breach of trust.

If it please the chairman and members of the committee, I will submit a copy of the slip opinion of the court in this case for the record.

It shows in a number of circumstances, even where it unquestionably occupies the position of trustee to Native groups, that the Executive is not always studious in the observance of its obligations.

In a provision of law intended for the benefit of Natives, there is no need, we respectfully submit, for Congress to invite self-dealing by the Executive. This is precisely what the discretionary and trust renouncing provisions of subsection (b) would do.

Section 103 would add a new section 28 to the Settlement Act exempting Native corporations organized under it from the provisions of the Investment Company Act of 1940 through December 31, 1976.

This provision is intended to postpone assessing the assets and operations of a Native corporation to determine whether it falls within or without the definition of an investment company until it has received the lands to which it is entitled and developed operating experience.

We submit the period of the exemption is too short to serve its purposes. It is doubtful that many of the corporations will have received even interim conveyances to much of their lands, let alone have determined the value thereof, prior to December 31, 1976.

To be meaningful, we suggest the exemption should be extended at least to December 31, 1979.

The section concludes with the sentence: "Nothing in this section shall, however, be construed to mean that any such corporation shall or shall not, during two years after [December 31, 1976] be subject to the provisions of the Investment Company Act of 1940."

We do not understand the phrase "during the two years after [December 31, 1976]." So far as we have been able to determine, it ties in with nothing in the Investment Company Act or any regulation issued by the S.E.C.

It seems to us this sentence should be changed to read: "Nothing in this section shall be construed to mean that any such corporation shall or shall not after [whatever end date for the exemption is prescribed] be subject to the provisions of the Investment Company Act of 1940."

Section 104 would add a new section 29 to the Settlement Act making explicit that the benefits it provides are not to be deemed to substitute for government programs otherwise available to the Native people of Alaska as citizens of the United States and the State of Alaska. We support this provision wholeheartedly and suggest it could be improved by striking the period at the end and adding:

"or to alter the special relationships existing at the time of enactment of the Settlement Act between the Natives of Alaska and the United States." Some have suggested that the Settlement Act is a species of termination legislation. We believe it would be well to include a provision expressly repudiating such construction.

Subsection (b) of proposed section 29 provides that benefits derived by individual Natives from the Settlement Act are not to be counted in determining their eligibility for food stamps. We urge enactment of this provision.

However, we do not understand the phrase, "in connection with an aboriginal land claim of such member." It makes no sense. Individual Natives did not have and do not now have aboriginal land claims. The subsection is complete and clear without this confusing phrase and it should be stricken.

Section 105 provides: "For purposes of the first section of the Act of February 12, 1929 (15 U.S.C. 161a), the Alaska Native Fund shall be considered to consist of funds held in trust by the government of the United States for Indian tribes."

This is too narrow and would invite interpretation that balances in the Alaska Native Fund should not be considered as funds held in trust for purposes, for example, of 25 U.S.C. 162a.

Section 161a of title 25 provides that: "All funds with account balances exceeding \$500 held in trust by the United States and carried in principal accounts on the books of the Treasury Department to the credit of Indian tribes, upon which interest is not otherwise authorized by law, shall bear simple interest at the rate of 4 per centum per annum."

Section 162a of title 25 authorizes the Secretary of the Interior, when it is in the best interest of the beneficiaries, to invest Indian trust funds in a variety of Treasury, Federal agency and private securities, all of which have produced yields in recent years substantially in excess of four percent and have every prospect of continuing to do so in the future. In the recent past, certain obligations qualified for the investment of Indian trust funds have produced yields as high as 12 percent, and, to my knowledge, the current average yield of the trust portfolio of the Tlingit & Haida Tribes is about eight percent.

The Bureau of Indian Affairs now conducts a sophisticated, computerized investment operation for Indian trust funds and is capable of investing virtually any amount of such funds for any length of time, from one day to several years.

There is absolutely no reason why balances in the Alaska Native Fund should not be subject to the same laws and required to be administered in the same manner as balances in other Indian trust funds.

Section 105 should be changed to provide: "The Alaska Native Fund shall be a trust fund and moneys therein shall earn interest and be invested and administered by the Secretary in the same manner as other moneys held in trust by the United States for Indian tribes."

There is no need to temporize about or confuse the status of money on deposit in the Alaska Native Fund. Section 105 as written would do just that.

Section 106 is a savings provision. We suggest that it be moved to the end of the bill.

Section 107 would enable the merger or consolidation of regional and village corporations located in the same region. We endorse the section in principle but urge that it be amended to include Native group and community corporations organized under 14(h)(2) and (3) of the Settlement Act, and to make clear that stockholders dissenting from a merger or consolidation will not have the right to be bought out. Stock ownership in the Native corporations provided for by the Settlement Act was not violational in the first place, and to give stockholders of such corporations who dissent from a merger or consolidation the right to be bought out would undercut the policy of the Settlement Act that stock in Native corporations should not be alienable *inter vivos* for 20 years. Of course, no corporation can be affected by a proposed merger or consolidation unless shareholders representing two-thirds of its outstanding stock vote in favor of it.

We have reviewed amendments to this section prepared by NANA Corporation and believe they meet our concerns. We support enactment of the merger and consolidation provisions now proposed by NANA.

Section 108 would extend the life of the Joint Federal-State Land Use Planning Commission for Alaska for 2½ years beyond the present termination date of December 31, 1976.

Section 109 would establish a thirteenth region for Natives who are not residents of Alaska who elected to be enrolled therein and authorize them to organize a regional corporation pursuant to the Settlement Act.

Although we wish it could be otherwise, as realists we recognize the inevitability of the establishment of the thirteenth region one way or another, and are seeking the serenity to accept that which we cannot change. We will not further oppose the establishment of the thirteenth region by legislation.

Section 110 would add a new section 30 to the Settlement Act prescribing the persons who would be enrolled to the thirteenth region and providing for the organization of the thirteenth regional corporation.

Subsection (a) prescribes the enrollment to the thirteenth region of all Natives who elected to be enrolled thereto pursuant to section 5(c) of the Settlement Act, except that it would give any Native who, on or before December 1, 1973, filed an application to amend his enrollment application in regard to his election on the question of the thirteenth region, an opportunity within 90 days to make a final choice.

Chairman Meeds has proposed a bill that would enroll to the thirteenth region all who, in the absence of a new election, such as Judge Gasch invited the Secretary of the Interior to conduct, would be enrolled thereto pursuant to the decision of the U.S. District Court for the District of Columbia in *Alaska Native Association of Oregon et al. v. Morton*, and, after three years, would give those who were enrolled in the thirteenth region on the basis of applications, filed before August 15, 1973, to amend their original enrollment applications, a final opportunity to choose whether to remain enrolled in the thirteenth region or to be enrolled in the appropriate Alaska region.

Both the provisions of subsection (a) of the new section 30 proposed by H.R. 6644 and Chairman Meeds' proposal would grant the franchise to make a final election much too restrictively.

Fundamental fairness requires that all Natives who are not residents of Alaska be given a final opportunity to choose whether to be enrolled to the thirteenth region or to their ancestral region in Alaska. No one disputes that many Natives, who originally voted in favor of the thirteenth region and subsequently changed their minds, did not attempt to amend their enrollment applications to reflect such changes because they were advised, for various reasons, that such action was unnecessary, or was out of time and would be futile.

On the other hand, it cannot be doubted that some who voted against the thirteenth region initially, and subsequently changed their minds, took no further action for the same reasons.

Some of this advice was sound under the law and facts as they appeared at the time it was given. Some of it was completely erroneous.

One need look no further than Judge Gasch's opinion in *Alaska Native Association of Oregon v. Morton* to be convinced that the whole matter of the election on the question of the thirteenth region was much vexed and highly confused.

In any event, there is no rational basis for according the opportunity to express a final choice only to those who attempted to amend their enrollment applications before a particular date, and denying it to others who changed their minds on the question of the thirteenth region after they filed their enrollment applications but were advised that it was unnecessary or too late to do anything about it.

Fairness demands that all persons affected be given a final opportunity to make their choice.

This is what section 5 of the bill produced by the committee of conference on H.R. 620 in the 93d Congress provided for. We urge enactment of this provision as it appears in the conference report (House Report No. 93-1620) filed with the House on December 17, 1974. See 120 Cong. Rec. H12152-3 (daily ed., Dec. 17, 1974).

I know that some have suggested that affording a final opportunity to choose to all concerned would favor the Alaska regions and regional corporations because they now have what Judge Gasch referred to as "an incumbent's advantage," by reason of having made distributions of money to the people involved.

This advantage is more illusory than real because the only money the stockholders of the region corporations have received to date, or likely will receive in the near future, are redistributions of funds coming from the Alaska Native Fund mandated by section 7(j) of the Act. I think it is safe to say that practically everyone concerned understands that he would have received exactly the same distributions had he been a stockholder of a thirteenth regional corporation. Few, I believe, are going to choose an Alaska region over the thirteenth simply because they have received checks drawn on the account of an Alaska regional corporation.

Finally, we submit that the interests of the thirteenth region and its corporation would not be served by, on the one hand, arbitrarily forcing people into them

who do not want to be, and, on the other, arbitrarily keeping people out who want to be included. One thing a fledgling Native regional corporation does not need is a large group of dissatisfied stockholders.

Judge Gasch broadly invited the Secretary of the Interior to repoll all Natives who are not residents of Alaska on their present desires respecting enrollment to the thirteenth region in connection with implementing his decree that such region must be established. Adoption of the provisions of section 5 of the conference committee bill reported to the House on December 17, 1974 would simply require the doing of what Judge Gasch suggested the Secretary ought to do in the closing paragraphs of his opinion.

Finally, we would like to propose legislative solution of a local problem of great importance to the Natives enrolled to the Village of Klukwan in southeastern Alaska.

Klukwan is one of the ten Native villages listed in section 16 of the Alaska Native Claims Settlement Act as presumptively eligible to receive benefits thereunder. Because Klukwan was located on a reservation, initially created by Executive orders, later adjusted by an Act of September 2, 1957, 71 Stat. 596, to include about 900 acres of land, the Natives enrolled to Klukwan were required by section 19(b) of the Settlement Act to elect whether they would take the benefits provided by the Act or take fee simple title to the lands of the former reservation and forsake all other benefits under the Act. They elected by a 3 to 1 margin to take full title to the lands of the former reservation.

Years prior to the enactment of the Settlement Act, the Natives of Klukwan had organized as a corporation under the name Chilkat Indian Village pursuant to the Indian Reorganization Act and had executed a still outstanding lease of certain minerals underlying the reservation lands pursuant to the Act of September 2, 1957. A substantial number of Natives who are enrolled to Klukwan under the Settlement Act and are stockholders of the Klukwan Village Corporation organized under that Act, are not members of, and are not eligible to become members of, the Chilkat Indian Village Corporation, which executed the mineral lease. It is estimated that of the about 250 Natives enrolled to the Village of Klukwan under the Settlement Act, only about 100 are members of the Chilkat Indian Village corporation.

The mining lease is essentially the only asset of any value appertaining to the lands of the former reservation.

We are advised that the Department of the Interior is on the threshold of holding that the lessor's interest in the lease remains in the Chilkat Indian Village corporation and did not pass to the Klukwan Village Corporation organized under the Settlement Act. At the time the election required under section 19(b) of the Settlement Act was held, it was assumed by everyone that the lessor's interest in the lease would be the property of the Village Corporation organized under the Settlement Act, if the stockholders of that corporation elected, as they did, to take fee simple title to the lands of the former reservation. The possibility that the lessor's interest in the existing lease might remain in the Chilkat Indian Village corporation, whose members do not include the majority of the stockholders of the Klukwan Village Corporation organized under the Settlement Act, did not occur to anyone.

We believe that everyone now agrees that the section 19(b) election was conducted under a profound misunderstanding. Accordingly, fairness and justice demand that the Natives enrolled to Klukwan under the Settlement Act be given another opportunity to elect whether to take the benefits of that Act or to take fee simple title to the lands of the former reservation.

We are informally advised by officers of the Department of the Interior that they agree that fairness dictates the holding of a new election, but that they are uncertain of their authority under existing law to provide for such an election.

Accordingly we propose the following amendment:

Strike the period at the end of Section 19(b) as it now appears and add the following: ", except that the Natives who are stockholders of the Village Corporation organized for Klukwan may reelect within six months from the date of enactment of this provision whether to acquire title, subject to valid existing rights, to the surface and subsurface estates in the lands of the former reserve defined by the Act of September 2, 1957, 71 Stat. 596, or to take the benefits otherwise provided by this Act, and the lands that were withdrawn around the Village of Klukwan pursuant to section 16 of this Act are rewithdrawn, subject to valid existing rights, for a period of one year from the date of enactment of this provision, dur-

ing which the Village Corporation organized for Klukwan, if the stockholders so elect, shall select an area equal to 23,040 acres in accordance with section 16(b) of this Act."

We would emphasize that this amendment is not intended to alter in any way the rights of the Chilkat Indian Village in the existing mining lease as construed in the opinion to be issued by the Department of the Interior, but only to give the Natives enrolled to the Village of Klukwan under the Settlement Act another opportunity to make the election provided for by section 19(b) in light of such rights, which no one understood at the time of the former election, and to restore the *status quo ante* in aid of according them such opportunity.

Mr. BORBRIDGE. Thank you. I am accompanied by Washington counsel to the Sealaska Corp., Mr. Richmond Allan.

My name is John Borbridge, Jr. I am the president of Sealaska Corp., the regional corporation organized under the Alaska Native Claim Settlement Act for the Natives of Southeast Alaska.

On behalf of the approximately 16,500 stockholders of Sealaska Corp., I want to express appreciation to Chairman Meeds and the members of the Indian Affairs Subcommittee for affording us the opportunity to comment on H.R. 6644, a bill to amend the Settlement Act in several particulars.

Section 101 of H.R. 6644 provides for the enrollment as Alaska Natives of qualified persons who, for one reason or another, failed to submit application before March 30, 1973, the deadline prescribed in the enrollment regulations issued by the Department of the Interior. We support this provision and urge its enactment. There are a substantial number of Alaska Natives presently excluded from the benefits of the act, who are the potential beneficiaries of this provision. Many of these people failed to file applications within the original time limit simply because they were not aware of the act or of their eligibility.

We do not believe that adoption of this provision will create significant problems for anyone, either the Government or the Native corporations organized under the act.

Indeed, we see no practical objection to keeping the roll open indefinitely for the addition of previously omitted persons subsequently establishing their qualifications as Alaska Natives under sections 3(b) and 5(a) of the act, except that it would become progressively more difficult to accord them retroactive benefits. This problem could be solved by providing that any person applying after the 1-year period prescribed by the instant amendment, if found eligible, would be entitled to prospective benefits only.

Section 102 provides for the escrowing of proceeds realized from lands withdrawn in aid of Native selection and conveyance rights, pending the exercise and perfection of such rights, and, thereafter, for the payment of such proceeds, and the earnings thereon, to the Government and the grantees in proportion to their respective interests in the lands.

Subsection (b) provides for the deposit by the Secretary of the Interior of such proceeds in an escrow account in the Treasury. It further provides for the payment semiannually of simple interest thereon "at a rate determined by the Secretary of the Treasury," and that the Secretary of the Interior in his discretion might withdraw such proceeds from the Treasury and invest them in the manner provided by 25 U.S.C. 162a.

While we fully support and urge the enactment of the basic provisions of section 102, we submit that the discretion granting and trust-renouncing provisions of subsection (b) are clearly antithetical to the cardinal purpose of the section and should be eliminated.

Achievement of the central intent of the section demands, and there is no reason not to require, that the proceeds be deposited in an account in the Treasury and credited with interest and administered as Indian trust funds, in accordance with 25 U.S.C. 161(a) and 25 U.S.C. 162(a), as the best interests of the Native beneficiaries should dictate.

I might add, Mr. Chairman, that a few years ago when certain Federal agency obligations qualified for the investment of Indian trust funds were providing the best yield obtainable, the OMB directed the Bureau of Indian Affairs to stop investing Indian moneys in such obligations because of the adverse effects such investments had on the management of the Federal budget. This was recently held by the Court of Claims in *Cheyenne-Arapaho Tribes, et al. v. United States*, decided on March 19, 1975, to have constituted a breach of trust.

If it please the chairman and members of the committee, I will submit a copy of the slip opinion of the court in this case for the record.

It shows in a number of circumstances, even where it unquestionably occupies the position of trustee to Native groups, that the executive is not always studious in the observance of its obligations.

In a provision of law intended for the benefit of Natives, there is no need, we respectfully submit, for Congress to invite self-dealing by the Executive. This is precisely what the discretionary and trust-renouncing provisions of subsection (b) would do.

We have a further recommended change in the testimony.

Section 104 would add a new section 29 to the Settlement Act making explicit that the benefits it provides are not to be deemed to substitute for government programs otherwise available to the Native people of Alaska as citizens of the United States and the State of Alaska. We support this provision wholeheartedly and suggest it could be improved by striking the period at the end and adding: "or to alter the special relationships existing at the time of enactment of the Settlement Act between the Natives of Alaska and the United States." Some have suggested that the Settlement Act is a species of termination legislation. We believe it would be well to include a provision expressly repudiating such construction.

Subsection (b) of proposed section 29 provides that benefits derived by individual Natives from the Settlement Act are not to be counted in determining their eligibility for food stamps. We urge enactment of this provision.

However, we do not understand the phrase, "in connection with an aboriginal land claim of such member." It makes no sense. Individual Natives did not have and do not now have aboriginal land claims. The subsection is complete and clear without this confusing phrase and it should be stricken.

Section 105 provides:

For purposes of the first section of the Act of February 12, 1929 (25 U.S.C. 161a), the Alaska Native Fund shall be considered to consist of funds held in trust by the government of the United States for Indian tribes.

The Bureau of Indian Affairs now conducts a sophisticated, computerized investment operation for Indian trust funds and is capable of investing virtually any amount of such funds for any length of time, from 1 day to several years.

There is absolutely no reason why balances in the Alaska Native Fund should not be subject to the same laws and required to be administered in the same manner as balances in other Indian trust funds.

Section 105 should be changed to provide:

The Alaska Native Fund shall be a trust fund and moneys therein shall earn interest and be invested and administered by the Secretary in the same manner as other moneys held in trust by the United States for Indian tribes.

Section 107 would enable the merger or consolidation of regional and village corporations located in the same region. We endorse the section in principle but would urge that it be amended to include Native group and community corporations organized under 14(h) (2) and (3) of the Settlement Act, and to make clear that stockholders dissenting from a merger or consolidation will not have the right to be bought out.

Stock ownership in the Native corporations provided for by the Settlement Act was not volitional in the first place, and to give stockholders of such corporations who dissent from a merger or consolidation the right to be bought out would undercut the policy of the Settlement Act that stock in Native corporations should not be alienable inter vivos for 20 years. Of course, no corporation can be affected by a proposed merger or consolidation unless shareholders representing two-thirds of its outstanding stock vote in favor of it.

We have reviewed amendments to this section prepared by NANA Corp. and believe they meet our concerns. We support enactment of the merger and consolidation provisions now proposed by NANA.

Section 108 would extend the life of the Joint Federal-State Land Use Planning Commission for Alaska for 2½ years beyond the present termination date of December 31, 1976.

While we have not always agreed with the conclusions and recommendations of the Commission, we recognize a need for a rational approach to planning, and support the provision.

Section 109 would establish a 13th region for Natives who are not residents of Alaska who elected to be enrolled therein and authorize them to organize a regional corporation pursuant to the Settlement Act.

Although we wish it could be otherwise, as realists we recognize the inevitability of the establishment of the thirteenth region one way or another, and are seeking the serenity to accept that which we cannot change. We will not further oppose the establishment of the thirteenth region by legislation.

Section 110 would add a new section 30 to the Settlement Act prescribing the persons who would be enrolled to the 13th region and providing for the organization of the Thirteenth Regional Corp.

Subsection (a) prescribes the enrollment to the 13th region of all Natives who elected to be enrolled thereto pursuant to section 5(c) of the Settlement Act, except that it would give any Native who, on or before December 1, 1973, filed an application to amend his enrollment application in regard to his election on the question of the 13th region, an opportunity within 90 days to make a final choice.

Both the provisions of subsection (a) of the new section 30 proposed by H.R. 6644 and Chairman Meeds' proposal would grant the franchise to make a final election much too restrictively.

Fundamental fairness requires that all Natives who are not residents of Alaska be given a final opportunity to choose whether to be enrolled to the 13th region or to their ancestral region in Alaska. No one disputes that many Natives, who originally voted in favor of the 13th region and subsequently changed their minds, did not attempt to amend their enrollment applications to reflect such changes because they were advised, for various reasons, that such action was unnecessary, or was out of time and would be futile.

On the other hand, it cannot be doubted that some who voted against the 13th region initially, and subsequently changed their minds, took no further action for the same reasons.

Some of this advice was sound under the law and facts as they appeared at the time it was given. Some of it was completely erroneous.

One need look no further than Judge Gasch's opinion in *Alaska Native Association of Oregon v. Morton* to be convinced that the whole matter of the election on the question of the 13th region was much vexed and highly confused.

In any event, there is no rational basis for according the opportunity to express a final choice only to those who attempted to amend their enrollment applications before a particular date, and denying it to others who changed their minds on the question of the 13th region after they filed their enrollment applications but were advised that it was unnecessary or too late to do anything about it.

Fairness demands that all persons affected be given a final opportunity to make their choice.

This is what section 5 of the bill produced by the committee of conference on H.R. 620 in the 93d Congress provided for. We urge enactment of this provision as it appears in the conference report (House Report No. 93-1620) filed with the House on December 17, 1974. See 120 Cong. Rec. H12152-3 (daily ed., Dec. 17, 1974).

I know that some have suggested that affording a final opportunity to choose to all concerned would favor the Alaska regions and regional corporations because they now have what Judge Gasch referred to as "an incumbent's advantage," by reason of having made distributions of money to the people involved.

This advantage is more illusory than real because the only money the stockholders of the regional corporations have received to date, or likely will receive in the near future, are redistributions of funds coming from the Alaska Native Fund mandated by section 7(j) of the act. I think it is safe to say that practically everyone concerned understands that he would have received exactly the same distributions had he been a stockholder of a Thirteenth Regional Corp. Few, I believe, are going to choose an Alaska region over the thirteenth simply because they have received checks drawn on the account of an Alaska regional corporation.

Finally, we submit that the interests of the 13th region and its corporation would not be served by, on the one hand, arbitrarily forcing people into them who do not want to be, and, on the other, arbitrarily keeping people out who want to be included. One thing a fledgling Native regional corporation does not need is a large group of dissatisfied stockholders.

Judge Gasch broadly invited the Secretary of the Interior to repoll all Natives who are not residents of Alaska on their present desires respecting enrollment to the 13th region in connection with implementing his decree that such region must be established. Adoption of the provisions of section 5 of the conference committee bill reported to the House on December 17, 1974 would simply require the doing of what Judge Gasch suggested the Secretary ought to do in the closing paragraphs of his opinion.

I will call upon Mr. Allan to compress some of these circumstances.

Mr. ALLAN. Klukwan is 1 of 10 Native villages listed in section 16 of the act that is presumptively entitled to receive benefits thereunder.

Because Klukwan was originally on a reservation created by an Executive order and defined later by an act of Congress in 1957 to include 900 acres, the Natives enrolled to Klukwan were required to make a selection of section 16(b) under the act.

Years prior to the enactment of the Alaska Native Claims Settlement Act, the Natives of Klukwan had organized under the Indian Reorganization Act, the Natives of the Village of Chilkat, I believe.

Pursuant to the act of 1957, prior to the enactment of the Settlement Act, they had executed a mineral lease for the minerals or certain of the minerals underlying the 900-acre reservation.

At the time the election required by section 16(b) of the Settlement Act was held, it was assumed that if the stockholders of the Klukwan Corp. authorized under the Settlement Act voted in favor of retaining the previously existing reservation, that the lessors' interest in that mineral lease would be at asset of the Village Corp.

We have been advised that the Department of the Interior is on the threshold of holding that the lessors' interest in that mineral lease remains in the IRA Corp., that it does not become an asset of the Village Corp. organized for Klukwan under the Settlement Act.

Therefore, the election was conducted under a misunderstanding of fact, or law and fact.

There are about 250 people enrolled to the village of Klukwan under the Settlement Act, but only about a hundred of those are members who are eligible to be members of the IRA Corp.

Therefore, unless something is done, we have in effect completely foreclosed 150 fully qualified Alaskan Natives from receiving any benefits under the Settlement Act at all.

Accordingly, we recommend an amendment to 19(b) as it now appears by striking the period at the end and adding the following:

* * * , except that the Natives who are stockholders of the Village Corp. organized for Klukwan may reelect within 6 months from the date of enactment of this provision whether to acquire title, subject to valid existing rights, to the surface and subsurface estates in the lands of the former reserve defined by the act of September 2, 1957, 71 Stat. 596, or to take the benefits otherwise provided by this act, and the lands that were withdrawn around the village of Klukwan pursuant to section 16 of this act are rewithdrawn, subject to valid existing rights, for a period of 1 year from the date of enactment of this provision, during which the Village Corp. organized the Klukwan, if the stockholders so elect, shall select an area equal to 23,040 acres in accordance with section 16(b) of this act.

We would emphasize that that amendment is not intended to alter in any way the rights of the Chilkat Indian Village in the existing mining lease which we are advised is about to be issued by the Department of the Interior, but only to give the Natives an opportunity to make the selection provided for in section 19(n) in light of the

rights of the Chilkat Indian Village which no one understood at the time of the former election, and to restore the status quo ante in aid of according them such opportunity.

Mr. BORBRIDGE. Mr. Chairman, that concludes our presentation.

Mr. MEEDS. Thank you very much, gentlemen.

I think the major problem we have with OMB is that they tend to construe the act so as to prevent any kind of trust fund involved. Do you think that is a warranted construction?

Mr. BORBRIDGE. Mr. Chairman, I consider the construction unduly narrow and restrictive. That is why we have recommended that the Department is fully capable of handling those funds on behalf of Alaska Natives in a way as to inure to the benefit of the Alaska Natives.

Mr. MEEDS. Now, you say with regard to the 13th region that you feel the last thing the 13th region needs is a lot of dissident and dissatisfied groups of stockholders. I tend to agree with you.

Could you have, after 3 years, an election by all nonresident Native Alaskans, those in the 13th region who have opted to be in it and those who have opted to out of it on whether they want to be in or out of the 13th region?

Mr. BORBRIDGE. Mr. Chairman, this would provide an opportunity for all.

Mr. MEEDS. All nonresident Native Alaskans.

Mr. BORBRIDGE. I could hardly oppose that, Mr. Chairman. I think it does provide for an opportunity for the exercise of an informed judgment, certainly as provided in the testimony. While I would urge this be done at the outset, it certainly would also provide an opportunity after 3 years, and this is what I am primarily concerned about with respect to the Alaska Natives.

Mr. MEEDS. Well, I have the same appreciation that you do. Starting a corporation with a large group of dissatisfied stockholders is not the best way to succeed.

By the same token, there may be people who wish they had been in it, who may wish an opportunity to get into it at that point. It is a two-way street. Would you agree with me on that?

Mr. BORBRIDGE. Yes, that is a very logical approach, and I would basically agree.

Mr. MEEDS. The gentleman from Alaska?

Mr. YOUNG. John, let's go back to your proposal as far as the amendment with respect to the Chilkat Village. If I understand you correctly, when the election was held, they elected to keep the reservation—would the Village Corp. encompass them all?

Mr. BORBRIDGE. That is right. The assumption that the people proceeded on during the election was that the subsurface estate to the 900 acres, approximately, would come under the jurisdiction and the benefits would be received by the Village Corp.

Prior to the election, in order to undertake the responsibility for fully informing those who had participated in the election, I had requested a copy of the lease from the BIA and other sources and was unable to obtain it.

I must say further in fairness that we had at that time no determination made as to who in effect would receive the benefits from the lease, and of course strictly formally speaking there has been no precise determination made yet until the Department signs off.

But the basis on which the election proceeded was that if the people opted not to come under the Claims Act, this corporation formed for the people enrolled in Klukwan would receive the subsurface estate to the 900 acres.

Mr. YOUNG. The lease that you are speaking of now, that is on the reservation itself?

Mr. BORBRIDGE. Yes.

Mr. YOUNG. To show my ignorance now, the BIA under the Indian Reorganization Act does not grant them subsurface rights until they file a lease?

Mr. ALLAN. No, Mr. Young. In 1957, Congress passed an act altering the boundaries of two Executive order reserves in the vicinity of Klukwan, and provided that the IRA Corp., the Native village of Chilkat, should have the prerogative under the Indian mining lease laws to lease the subsurfaces of that reservation for mining purposes. The IRA Corp. proceeded to do just that years ago.

Now, the Department of the Interior is on the threshold of holding, or so we were advised as of the end of last week, that the lessors' interest in that lease remains in that IRA Corp. It does not become an asset of the Village Corp. for Klukwan organized under the Settlement Act.

Mr. YOUNG. What is the termination of the lease?

Mr. ALLAN. How long will it run?

Mr. YOUNG. Right.

Mr. ALLAN. Basically as long as the lessee pays rent or there are returns from its operation.

Mr. YOUNG. I am just curious why the Interior Department is ruling that the lessor at the present time retains the subsurface rights and they are not conveyed to the Village Corp. There has to be a reason.

Mr. ALLAN. As I understand it, Mr. Young, that is an interpretation which the Department is inclined to believe is compelled by the 1957 act.

The 1957 act specifically provides that the IRA Corp. shall have the prerogative of leasing those lands pursuant to the Indian mining laws, and the Department as I understand it, although I guess we will ultimately have to see what it turns out, holds that under that law the lessors' interest in that lease remains with the corporation, the IRA Corp., which was specifically given the prerogative in the first instance by Congress of making the lease.

Mr. YOUNG. Your amendment would allow those 150 people that chose the IRA Corp. instead of the Land Claims Settlement Act to revoke their choice of going into the Native Land Claims Act?

Mr. ALLAN. Yes. There are actually about 250 people, as I understand it, enrolled to the village of Klukwan as organized under the Settlement Act, but only about 100 of those people are members of, or are eligible to be members of the IRA Corp. which has been held to retain the lessors' interest in the lease. This would give all 250 people enrolled to Klukwan under the Settlement Act another opportunity to make the election provided by section 19(b) in light of the understanding that they now have and did not have at the time they made the first election that the lessors' interest in that lease is going to remain with the IRA Corp.

Mr. YOUNG. Is this the same lease that has been gaining so much publicity so far as it relates to the Japanese?

Mr. ALLAN. The lease as I understand it is now held by the big Japanese trading company.

Mr. YOUNG. Mitsubishi?

Mr. ALLAN. Yes. They hold the lease by conveyance from United States Steel or someone who had it in the first instance, but assigned it to Mitsubishi.

Mr. YOUNG. You don't see that by leaving it with the IRA that there would be an attempt at a later date if there is no development, et cetera, of taking that lease from the IRA group, if your amendment is not adopted?

Mr. ALLAN. Well, at least so long as the lease is outstanding, assuming the soundness of the Department's decision, or prospective decision, the lessors' interest in that lease will remain with the IRA Corp. This legislation is not—I mean this proposed amendment—is not intended to, and I believe does not and could not be construed as affecting the IRA Corp.'s rights as lessors in that lease.

Mr. YOUNG. Thank you. I have no further questions.

Mr. MEEDS. Thank you very much, gentlemen.

Our next witnesses will be Burton W. Silcock, David S. Jackman, and John Katz, Federal-State Land Use Planning Commission for Alaska.

STATEMENT OF BURTON W. SILCOCK, FEDERAL COCHAIRMAN, AND DAVID S. JACKMAN, STATE COCHAIRMAN, JOINT FEDERAL-STATE LAND USE PLANNING COMMISSION FOR ALASKA

Mr. JACKMAN. Mr. Chairman and Members of the subcommittee I am David S. Jackman—

Mr. MEEDS. Do you have a prepared statement, sir?

Mr. JACKMAN. Yes, we do.

Mr. MEEDS. Is it very long?

Mr. JACKMAN. I would say it will take me approximately 15 minutes if I read the entire statement.

Mr. MEEDS. Would you mind summarizing your statement?

Mr. JACKMAN. I will summarize portions of the statement, Mr. Chairman.

Mr. MEEDS. The Chair is going to observe for the benefit of all of the people who will be testifying here, that the Chair would appreciate your submitting your statements and summarizing them. The Chair is most impressed with those people who know their statements well enough to do that.

Please proceed, sir.

Mr. YOUNG. With that, go ahead.

Mr. MEEDS. Go ahead and read it, if you want to.

Mr. JACKMAN. All right.

I am David Jackman, State cochairman of the Joint Federal-State Land Use Planning Commission for Alaska. With me today is Burton W. Silcock, the commission's Federal cochairman. We appreciate this opportunity to appear before you to discuss proposed amendments to the Alaska Native Claims Settlement Act. Our testimony will be confined to those amendments which by virtue of its statutory

mandate, previous experience, and expertise, the Commission believes itself qualified to discuss.

The Land Use Planning Commission was created by the Settlement Act and by an enactment of the Alaska State Legislature. The Commission is a joint instrumentality of government. As such, it is composed of five Federal and five State members, and it is financed on a 50/50 matching fund basis. Both the Federal and State enabling statutes charge the Commission with broad responsibilities in matters pertaining to the ownership, management, and use of lands located in Alaska. This mandate encompasses various matters which are germane to today's hearing, including the charge given the Commission to make recommendations concerning possible changes in the laws, policies, and programs which apply to lands in Alaska, to make recommendations to insure that economic development is orderly and compatible with the social and economic well-being of Alaska Natives and other citizens, and to make recommendations relative to the reservation of public easements. With one exception provided in State law, the Commission's responsibilities are advisory in nature.

The Commission considered the proposed amendments to the Settlement Act at a meeting held during the week of April 30 to May 2, 1975. As a consequence of this consideration, we have been authorized to express the views discussed below. We are very pleased to see the process of resolution moving forward, and we are hoping it will result in some final solution to the problems that have plagued the Cook Inlet Regional Corp.

If it would be helpful to the committee, we would be glad to share with you the background data which was compiled to facilitate the Commission's efforts at an earlier time. This would include the relevant portions of our resource inventory. We would be willing to take a new look at Cook Inlet problems, or to help build a public record on specific proposals which may be placed before you.

The Commission supports the enactment of the proposed escrow amendment. This amendment has been suggested to resolve the problems resulting from the long delay between the selection of land by a Native corporation and the transfer of title to that corporation. Certain reasons for such delays, such as the lack of an easement policy, probably will be eliminated in the near future. Others are likely to continue for the duration of the Native land selection process, for the Bureau of Land Management simply does not have the manpower and money necessary to process expeditiously the hundreds of selection applications which it has or will soon receive from the 12 regional corporations and the approximately 220 village corporations which have qualified for benefits under the Settlement Act.

Under existing law, there is no authority for the Secretary of the Interior to establish escrow accounts in the situation previously described. Any funds derived from lands owned by the Federal Government must be deposited in the Treasury or other appropriate depository until title passes, despite the fact that such lands may have been selected by a Native corporation. Therefore, in the absence of remedial legislation, the corporations may be deprived of a significant asset which they would be entitled to receive but for the existence of problems beyond their control. In this regard, it should be noted that the Settlement Act vests the Secretary of the Interior with interim

authority to grant leases, contracts, permits, rights-of-way, and easements on Native lands. In a growing number of situations, Native corporations have wanted the Secretary to enter into one of these arrangements, but have been forced to abandon their plans due to the lack of escrow authority. The situation resulting in the loss or postponement of these opportunities would appear especially unfair in view of the structure provided in the Settlement Act that patent should be conveyed to a Native corporation "immediately after selection" and the fact that the delays referred to previously may amount to a year or more, depending upon the priority assigned to a particular village selection.

CORPORATE MERGERS

The Commission would like to express its strong support for the proposed amendment which would permit the merger on consolidation of Native corporations within any one region. Our reasons for this support can be summarized briefly as follows:

Many village corporations appear to lack the financial wherewithal and trained manpower which they must have to survive. In this regard, it should be noted that village corporation income will be derived primarily from two sources: distributions from the appropriate regional corporation and money derived from the development of the surface estate. Since many such corporations have relatively few shareholders, their monetary allocations from the region will be quite small. Moreover, villages which do not have lands with recreational, timber, or other surface potential will derive little income from this ownership. To complicate matters, many village corporations do not now possess a trained leadership group, and it is unlikely that they will be able to develop one or to hire needed personnel in the foreseeable future.

For the reasons just cited, it is likely that many village corporations will fail if merger authority is not provided. Such a result would frustrate the purposes of the Settlement Act, because Native shareholders would be denied the opportunity to participate in the benefits which this legislation was intended to provide. Thus, monetary income would be lost, and Native corporations could lose the use and control of their land. Moreover, the lack of sufficient cash flow to a failing corporation might require the hasty and undesired development of those natural resources which the corporation does possess. Such development could jeopardize Native culture, the preservation of which is a central objective of many Native groups. The failure of Native corporations would also have an adverse impact on the general economy of Alaska, for the State and its constituent regional and local areas have much to gain from the existence of financially viable Native entities. There are a number of reasons for this, including local employment opportunities, the training and educational opportunities created by the existence of viable corporations, and other benefits resulting from the circulation of cash in rural locales.

Another principal reason for the Commission's support of the merger proposal is that it would appear to be in consonance with the Native self-determination policy expressed in section 2(b) of the Settlement Act. This section provides that "the settlement should be accom-

plished* * * in conformity with the real economic and social needs of Natives * * * with maximum participation by Natives in decisions affecting their rights and property * * *” On the other hand, we do not believe that enactment of the merger amendment would thwart any of the original congressional objectives in creating the corporate structure mandated by the Settlement Act. Section 7(b) of the act and relevant portions of the legislative history indicate that Congress was concerned that the settlement not authorize the creation of a monolithic, all powerful statewide organization which would not be responsive to local needs and concerns. Since the merger amendment under consideration here would authorize only intraregional mergers, the objective just referred to would not be stifled.

Our one reservation about the proposed amendment is that the merger of a regional corporation with one or more village corporations might tend to submerge village interests within the regional framework. Thus, for example, the villages would lose the veto power over subsurface development within village boundaries which is presently provided for in section 14(f) of the act.

We believe that considerations of this type do not weaken the merger amendment, which we view as a true expression of the Native self-determination policy expressed in section 2(b) of the Settlement Act. However, such considerations do emphasize the intense need to insure that affected shareholders adequately understand their options and the consequences which flow therefrom prior to voting on a proposed merger. This is especially true in view of the recently enacted State legislation which would reduce the number of shareholders required to approve the merger of Native corporations from two-thirds to a simple majority. If the committee is concerned about the regional-village relationship just described—similar problems do not occur with respect to the merger of two or more village corporations—it could mandate as a matter of Settlement Act law that proposed mergers be approved by a two-thirds plurality. Another approach would be to vest the veto power provided in section 14(f) in the body of shareholders previously enrolled in the emerged village corporation.

EXTENSION OF THE COMMISSION

Under the Settlement Act, the Commission is due to terminate on December 31, 1976. Bills have been introduced in the House and Senate to extend the life of the Commission for 2 or 2½ years, depending upon which measure is involved, and to alter the reporting requirements mandated in existing law. We think that it would be inappropriate for us to recommend our own extension. Accordingly, our purpose here today is to provide the subcommittee with some of the information which it will need to make a decision respecting this amendment to the Settlement Act. Our testimony on the proposed extension will be divided into two parts. In the first, we will summarize the Commission's previous activities; in the second, we will outline some of the work which we would hope to accomplish in the period beyond December 1976.

Mr. MEEDS. Mr. Jackman, you are a member of the Commission, and I would like you to tell me in your own words why you think the life of the Commission should be extended. I have heard good things about it, and so I am favorably disposed.

Mr. JACKMAN. Mr. Chairman, we feel one of the most important policy issues that the Commission was asked to address in the Settlement Act is the decisions that the Congress must face on the so-called (d)(2) lands. Congress has until the end of 1978 to take action upon these lands. We feel in large part the Commission was created to provide a somewhat independent source of reference and source of advice on the rather complex policy issues that Congress will have to address when acting on these national-interest lands in Alaska.

For this reason, this is one of the major reasons that we would think it logical for a short-term extension of the Commission during this period of time when the Congress will be debating the (d)(2) issues.

Mr. MEEDS. Do you think that issue will be settled in 2½ years?

Mr. JACKMAN. This is impossible for us to say. The pace of congressional action seems to be getting under way. The time table in the Settlement Act is the end of 1978 for congressional action. I suppose Congress can always extend that. We are looking at that as the logical rationale for what the life of this Commission should be.

Some of the problems for implementing the Settlement Act, the easement problems, the planning for the village corporations, we are just not to the end of those processes yet. There are delays that could not have been anticipated in 1971. I think the Commission has a short-term contribution to make as the Settlement Act is instituted over the next 2½ years.

Certainly some joint State body, Federal and State, whether it is constituted as the Commission or some other way, seems important to coordinate the land resource issues that are in the forefront of Alaska today.

Mr. MEEDS. Thank you very much. Do you have anything to add?

Mr. JACKMAN. I have asked Cochairman Silcock to bring a series of exhibits which we could leave to be included in the record.

Mr. MEEDS. Without objection, the full prepared joint statement of Mr. Jackman, Mr. Silcock, and Mr. Katz will be made part of the record.

[The statement follows:]

STATEMENT OF BURTON W. SILCOCK, FEDERAL CO-CHAIRMAN, AND DAVID S. JACKMAN, STATE CO-CHAIRMAN JOINT FEDERAL-STATE LAND USE PLANNING COMMISSION FOR ALASKA

Mr. Chairman and members of the Subcommittee: I am David S. Jackman, State Co-Chairman of the Joint Federal-State Land Use Planning Commission for Alaska. With me today is Burton W. Silcock, the Commission's Federal Co-Chairman. We appreciate this opportunity to appear before you to discuss proposed amendments to the Alaska Native Claims Settlement Act. Our testimony will be confined to those amendments which by virtue of its statutory mandate, previous experience, and expertise, the Commission believes itself qualified to discuss.

The Land Use Planning Commission was created by the Settlement Act and by an enactment of the Alaska State Legislature. The Commission is a joint instrumentality of government. As such, it is composed of five Federal and five State members, and it is financed on a 50/50 matching fund basis. Both the Federal and State enabling statutes charge the Commission with broad responsibilities in matters pertaining to the ownership, management, and use of lands located in Alaska. This mandate encompasses various matters which are germane to today's hearing, including the charge given the Commission to make recommendations concerning possible changes in the laws, policies, and programs which apply to lands in Alaska, to make recommendations to insure that economic

development is orderly and compatible with the social and economic well being of Alaska Natives and other citizens, and to make recommendations relative to the reservation of public easements. With one exception provided in State law, the Commission's responsibilities are advisory in nature.

The Commission considered the proposed amendments to the Settlement Act at a meeting held during the week of April 30-May 2, 1975. As a consequence of this consideration, we have been authorized to express the views discussed below.

THE COOK INLET SETTLEMENT

Section 17(a)(7)(B) of the Settlement Act directs the Commission to make recommendations concerning proposed land selections by Native village and regional corporations organized under the Act. Pursuant to this and other authority provided in Section 17(a), the Commission has been involved since 1972 in seeking a satisfactory solution to the land selection problems which have confronted Cook Inlet Region, Inc. and its constituent villages. These efforts have included two sets of formal recommendations to the Secretary of the Interior. Concerning the deficiency withdrawals made for Cook Inlet and its villages pursuant to Section 11(a)(3) of the Settlement Act. In addition, individual Commissioners and staff have participated in formal and informal negotiations between Cook Inlet, the Department of the Interior, and other parties. Most recently, we have provided technical advice and other assistance to Cook Inlet and the State of Alaska as these entities have sought to formulate a satisfactory solution to the land selection problems still confronting the regional corporation. This involvement was authorized and directed by the Commission at a meeting held in early May.

As yet, the negotiations just described have not resulted in the formulation of a specific piece of legislation. Accordingly, it has not been possible for us to draft testimony addressed to particular components of a settlement. In recognition, however, of our statutory mandate, our previous efforts to achieve a satisfactory administrative solution, and the Commission's recent directive, we would like to offer the committee whatever technical and other assistance we can in your analysis of possible remedial legislation. If it would be helpful, we would be glad to share with you the background data which was compiled to facilitate the Commission efforts described previously, including relevant portions of our resource inventory of Alaska and two staff studies of the Kenai National Moose Range, and to undertake a new analysis of Cook Inlet's selection problems in relationship to possible alternative solutions.

PUBLIC EASEMENTS

Section 17(b)(1) of the Settlement Act directs the Commission to identify those public easements across lands selected by village and regional corporations and at periodic points along the courses of major waterways which are reasonably necessary to guarantee international treaty obligations and a full right of public use and access for recreation, hunting, transportation, utilities, docks, and such other public purposes as the Commission determines to be important. To accomplish this responsibility, the Commission is required to consult with appropriate government agencies, to review proposed transportation plans, and to receive and review the statements and recommendations of interested organizations and individuals concerning the need for, and the proposed location of, needed easements. Final responsibility for the reservation of such easements is vested in the Secretary of the Interior, who is required by the Act to consult with the State of Alaska and the Commission prior to his reservation of particular easements.

Pursuant to this authority, the Commission has developed a policy paper concerning the identification of local public easements pursuant to Section 17(b). The policies contained therein are a product of our previous experience in identifying public easements on certain village selections; meetings and discussions with representatives from various Native organizations, government agencies, and user groups; extensive legal research and analysis; written and oral testimonies submitted to the Commission; and our deliberations during a series of public meetings and work sessions. This policy paper was submitted to the Secretary of the Interior in late November 1974 and was later used as the basis for the Commission's critique of draft policies promulgated by the Department. Recently, the Commission submitted an analysis of a Bureau of Land Management report entitled, "Multimodal Transportation and Utility Corridor Systems In Alaska." This analysis included a discussion of the advisability of using Sec

tion 17(b) to reserve easements for the transportation and utility corridors recommended in the BLM report.

With this background in mind, and not knowing what form any proposed amendments to Section 17(b) might take, we would again like to offer whatever assistance we can in the Committee's consideration of questions arising under this provision. Among other things, such assistance might include an analysis of the consequences resulting from the adoption of new legislative policies and a discussion of alternative courses of action available to the Committee.

THE ESCROW AMENDMENT

The Commission supports the enactment of the proposed escrow amendment. This amendment has been suggested to resolve the problems resulting from the long delay between the selection of land by a Native corporation and the transfer of title to that corporation. Certain reasons for such delays, such as the lack of an easement policy, probably will be eliminated in the near future. Others are likely to continue for the duration of the Native land selection process, for the Bureau of Land Management simply does not have the manpower and money necessary to process expeditiously the hundreds of selection applications which it has or will soon receive from the twelve regional corporations and the approximately 220 village corporations which have qualified for benefits under the Settlement Act.

Under existing law, there is no authority for the Secretary of the Interior to establish escrow accounts in the situation previously described. Any funds derived from lands owned by the Federal government must be deposited in the treasury or other appropriate depository until title passes, despite the fact that such lands may have been selected by a Native corporation. Therefore, in the absence of remedial legislation, the corporations may be deprived of a significant asset which they would be entitled to receive but for the existence of problems beyond their control. In this regard, it should be noted that the Settlement Act vests the Secretary of the Interior with interim authority to grant leases, contracts, permits, rights-of-way, and easements on Native lands. In a growing number of situations, Native corporations have wanted the Secretary to enter into one of these arrangements, but have been forced to abandon their plans due to the lack of escrow authority. The situation resulting in the loss or postponement of these opportunities would appear especially unfair in view of the stricture provided in the Settlement Act that patent should be conveyed to a Native corporation "immediately after selection" and the fact that the delays referred to previously may amount to a year or more, depending upon the priority assigned to a particular village selection.

CORPORATE MERGERS

The Commission would like to express its strong support for the proposed amendment which would permit the merger on consolidation of Native corporations within any one region. Our reasons for this support can be summarized briefly as follows.

Many village corporations appear to lack the financial wherewithal and trained manpower which they must have to survive. In this regard, it should be noted that village corporation income will be derived primarily from two sources: distributions from the appropriate regional corporation and money derived from the development of the surface estate. Since many such corporations have relatively few shareholders, their monetary allocations from the region will be quite small. Moreover, villages which do not have lands with recreational, timber, or other surface potential will derive little income from this ownership. To complicate matters, many village corporations do not now possess a trained leadership group, and it is unlikely that they will be able to develop one or to hire needed personnel in the foreseeable future.

For the reasons just cited, it is likely that many village corporations will fail if merger authority is not provided. Such a result would frustrate the purposes of the Settlement Act, because Native shareholders would be denied the opportunity to participate in the benefits which this legislation was intended to provide. Thus, monetary income would be lost, and Native corporations could lose the use and control of their land. Moreover, the lack of sufficient cash flow to a failing corporation might require the hasty and undesirable development of those natural resources which the corporation does possess. Such development could jeopardize Native culture, the preservation of which is a central objective of many Native

groups. The failure of Native corporations would also have an adverse impact on the general economy of Alaska, for the State and its constituent regional and local areas have much to gain from the existence of financially viable Native entities. There are a number of reasons for this, including local employment opportunities, the training and educational opportunities created by the existence of viable corporations, and other benefits resulting from the circulation of cash in rural locales.

Another principal reason for the Commission's support of the merger proposal is that it would appear to be in consonance with the Native self-determination policy expressed in Section 2(b) of the Settlement Act. This section provides that "the settlement should be accomplished . . . in conformity with the real economic and social needs of Natives . . . with maximum participation by Natives in decisions affecting their rights and property . . ." On the other hand, we do not believe that enactment of the merger amendment would thwart any of the original Congressional objectives in creating the corporate structure mandated by the Settlement Act. Section 7(b) of the Act and relevant portions of the legislative history indicate that Congress was concerned that the settlement not authorize the creation of a monolithic, all powerful statewide organization which would not be responsive to local needs and concerns. Since the merger amendment under consideration here would authorize only intra-regional mergers, the objective just referred to would not be stifled.

Our one reservation about the proposed amendment is that the merger of a regional corporation with one or more village corporations might tend to submerge village interests within the regional framework. Thus, for example, the villages would lose the veto power over subsurface development within village boundaries which is presently provided for in Section 14(f) of the Act. We believe that considerations of this type do not weaken the merger amendment, which we view as a true expression of the Native self-determination policy expressed in Section 2(b) of the Settlement Act. However, such considerations to emphasize the intense need to insure that affected shareholders adequately understand their options and the consequences which flow therefrom prior to voting on a proposed merger. This is especially true in view of the recently enacted State legislation which would reduce the number of shareholders required to approve the merger of Native corporations from two-thirds to a simple majority. If the Committee is concerned about the regional-village relationship just described—similar problems do not occur with respect to the merger of two or more village corporations—it could mandate as a matter of Settlement Act law that proposed mergers be approved by a two-thirds plurality. Another approach would be to avest the veto power provided in Section 14(f) in the body of shareholders previously enrolled in the emerged village corporation.

EXTENSION OF THE COMMISSION

Under the Settlement Act, the Commission is due to terminate on December 31, 1976. Bills have been introduced in the House and Senate to extend the life of the Commission for 2 or 2½ years, depending upon which measure is involved, and to alter the reporting requirements mandated in existing law. We think that it would be inappropriate for us to recommend our own extension. Accordingly, our purpose here today is to provide the Subcommittee with some of the information which it will need to make a decision respecting this amendment to the Settlement Act. Our testimony on the proposed extension will be divided into two parts. In the first, we will summarize the Commission's previous activities; in the second, we will outline some of the work which we would hope to accomplish in the period beyond December 1976.

The Commission's previous activities can be broken down into several principal areas of endeavor.

Since its inception, the Commission has been involved in the land withdrawal and study process mandated by Section 17(b)(2) of the Settlement Act. In September of 1972, the Commission made a series of recommendations to the Secretary of the Interior respecting interim management of the d-2 lands, the relationship of these lands to areas available for possible Native selection, and the settlement of certain land use and jurisdictional questions. In the spring and summer of 1973, we held a lengthy series of hearings in Alaska and "the lower 48" States to obtain public sentiment on the future disposition of the d-2 lands. On the basis of these hearings and information prepared by our Resource Planning Team, the Commission made a detailed series of recommendations to the Secretary of the Interior

respecting the uses which should be permitted and prohibited on such lands. These recommendations were subsequently printed in a document distributed by the Senate Interior Committee. At the present time we are examining the management and classification systems which should be utilized to regulate the use of (d)(2) lands. This study will form the basis of a second set of recommendations.

The Commission has been actively involved in the implementation of the Settlement Act. In the three years of its existence it has made a series of recommendations on land withdrawals made for Native corporations organized under the Act. In addition, we commented extensively on proposed regulations implementing various provisions of this legislation. In accordance with the requirements stipulated in Section 17(b) of the Act, the Commission has considered a number of questions involving the reservation of public easements for access across Native lands. In late 1974, this activity culminated in a series of recommendations to the Secretary of the Interior regarding policies and criteria for identifying local easements. More recently, the Commission has submitted commendations relative to the advisability of utilizing Section 17(b) to reserve easements for multimodal transportation and utility corridors. Recommendations have also been submitted on a number of other matters involving the implementation of the Act, including the processing of small Federal withdrawals located within selection areas and procedures for making easement determination.

The Commission has developed a natural resource inventory which includes most of the existing data respecting Alaska's land and waters. This data has been made available to government agencies, Native corporations, and user groups. At the present time, it is being condensed for display in a series of regional profiles, some of which have already been distributed. We are hopeful that the resource inventory and regional profiles will help promote prudent decisionmaking respecting land use and management in Alaska.

The Commission has participated in various projects designed to improve coordination and consultation between the Federal government and the State of Alaska. Included within these projects is the Commission's effort to develop a joint management plan for the lands around Mt. McKinley National Park. To facilitate the formulation of such a plan, the Commission has sponsored a task force composed of representatives from various levels of government, land user groups, and Native corporations. The Commission is also participating in other efforts to bring about intergovernmental coordination, including periodic meetings with government agencies and Native organizations to discuss problems arising out of the implementation of the Settlement Act, efforts to promulgate satisfactory procedures for considering the question of navigability for title, and participating in land study efforts which have been initiated by other Federal and State agencies.

From its inception, the Commission has rendered technical advice to government agencies, Native corporations, and user groups relative to number of land-related issues. Upon request, the Commission has assisted several Native regional and village corporations in analyzing lands available for their possible selection. This activity included the preparation of written and oral presentations. Now that many corporations have or will soon complete their selections, we are assisting in the land use planning activities now being implemented by these entities. The Commission has also sought to provide technical advice and policy analysis to State government. During the present session of the Alaska legislature, formal testimony was presented on State coastal zone management legislation, a bill providing access to public and navigable waters, legislation to implement the trust responsibilities assigned to the State in Section 14(c)(3) of the Settlement Act, and measures to create new State parks. In addition, informal technical advice is frequently given upon the request of State agencies and the Governor's office. The same sort of advice is also rendered to Federal agencies.

Pursuant to Section 17(a)(7)(H), the Commission has made a series of recommendations on possible changes in the laws, policies, and programs which apply to Alaska lands. These have included recommendations on proposed Forest Service regulations governing mining within units of the national forest system, the BLM's off-road vehicle regulations and other matters. In addition, the Commission has intervened in the Federal Power Commission's consideration of alternative routes for transporting natural gas produced at Prudhoe Bay to market. The purpose of our intervention is to provide resource information and objective advice on land use issues and environmental impacts.

The activities described above are discussed in greater detail in the Commission's annual reports, chronology of formal actions, and other source material. We have

brought this material with us today, and would be glad to present it for the record if you so desire.

While it is impossible to specify with certainty what activities the Commission might undertake in the period beyond 1976, the emerging pattern of land ownership in Alaska, certain continuing issues involving the implementation of the Settlement Act, and other factors indicate several areas of probable effort.

Under the Settlement Act, Congress has until December 18, 1978 to take final legislative action with respect to the lands currently withdrawn under Section 17(d)(2) of this legislation. The current pace of Congressional activity regarding the (d)(2) lands indicates that many issues will probably not have been resolved by December 31, 1976—the date when the Commission is due to terminate under present law. Since the Commission was originally created partly to provide independent information and advice to Congress on such lands, it would seem logical to make its expiration coincide with the deadline for Congressional action.

The emerging pattern of land ownership in Alaska demonstrates a continuing need for the type of intergovernmental coordination and land use planning which the Commission is directed to undertake in various portions of its statutory mandate. Thus, the emergence of extensive and intermingled land holdings resulting from further implementation of the Alaska Statehood and Settlement Acts will require the promulgation of joint management agreements, compatible land classification systems, possible land exchanges, and other actions which the Commission would appear capable of analyzing and facilitating.

Since approximately 30 million acres of lands remain for the State to select under the Alaska Statehood Act, it is likely that Section 17(a)(7)(B) of the Commission's statutory mandate, which requires the submission of recommendations on proposed selections, will not have been fulfilled by the end of 1976. In addition, the State has asked the Commission to make recommendations respecting the use and classification of the State public domain. While the Commission is currently gearing up to perform this function, the amount of land involved and the complexity of the issues indicate that all of our recommendations will not have been formulated by December 1976. Since the great bulk of Native selections must be filed by the end of 1975, it is also logical to assume that the Commission would be called upon to provide land use planning assistance—a mandate of the present legislation—after our present termination date.

As previously indicated, the Commission is directed by Section 17(b) of the Settlement Act to make recommendations to the Secretary of the Interior respecting the reservation of public easements across Native lands. The present pace of the easement reservation process indicates that this responsibility will not have been fulfilled by the end of 1976.

Major land use planning and coastal zone management bills have been introduced in the Alaska State Legislature. As of this date, it does not seem likely that either measure will pass during the present legislative session, and many people believe that the passage of a comprehensive land use planning bill is at least two or three years away. Since the Commission has or will soon consider a number of issues raised by the land use legislation, our ongoing advice could be used by the Legislature when a planning bill is actually considered.

Many of the considerations referred to previously demonstrate the continuing need for the type of socioeconomic, management, and land use studies now being conducted by the Commission. Extension of this agency would help to insure that objective, interdisciplinary analysis of land related issues will occur in the period beyond 1976.

While the Commission will do its best to complete all aspects of its present statutory mandate by the end of 1976, it is clear that parts of certain responsibilities could best be performed when the pattern of land ownership in Alaska has become more certain. For example, the Commission is directed to make recommendations concerning any necessary modifications in existing Federal withdrawals. Yet, we have found it difficult to make such recommendations without knowing more about the surrounding pattern of land ownership. Similar examples could be cited.

In concluding this portion of our testimony, we want to express our belief that if the lifespan of the Commission is not extended, a joint instrumentality with at least some of the basic responsibilities presently performed by this agency should be created. The increasing problems relating to Federal-State land management and resource allocation amply demonstrate that an intergovernmental consultative body like the Commission will be needed in Alaska in the period beyond 1976.

Thank you for the opportunity to express the Commission's views on the proposed amendments which we have discussed. If you have any questions regarding the subject matter of our testimony, we would be glad to answer them.

Mr. SILCOCK. We have a 1973 and 1974 report, and a summary of our activities since the beginning of the Commission, which is a highlight of the things the Commission has accomplished.

We have a Senate document here which was published by the Senate Interior and Insular Affairs Committee as to the recommendations made to the Secretary on the (d)(2) lands prior to the legislation coming to Congress.

We have also our resource inventory summary of the State of Alaska. We have one regional summary. We are in the process of printing some six regions. We have three of them in process now, and we would like to, with the concurrence of Congressman Young, since these are his copies and we are out of print, if we can make them available to you through his office.

We would leave the others with you.

Mr. MEEDS. Without objection, those will be made part of the files of the committee.

Mr. SILCOCK. Those were the exhibits we chose to leave with the committee.

Mr. MEEDS. Thank you very much.

The gentleman from Alaska.

Mr. YOUNG. Mr. Chairman, I think the Commission has done an excellent job. Those people who served on it served faithfully and well, although sometimes we may disagree on some points.

The extension of the life of the Commission is desirable, and I hope in the future that the Interior Department has the wisdom to listen to the intelligent decisions you have made and the recommendations you have made, which they have not done in the past.

I know you may be wearing two hats now, Mr. Silcock, it is very important to me that this happen. You are on the scene, and the rest of us are back in this town.

Mr. MEEDS. Thank you very much, gentlemen.

We now have the senior Senator from the State of Alaska, our colleague, a very strong and effective advocate for the State of Alaska, Ted Stevens.

We are glad to have you before the committee.

STATEMENT OF HON. TED STEVENS, SENATOR FOR THE STATE OF ALASKA

Senator STEVENS. Thank you, Mr. Chairman.

I hope you will let me file my complete statement, and brief it.

Mr. MEEDS. Without objection, your complete statement will be made part of the record.

[The statement follows:]

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

Mr. Chairman, I would like to thank you for allowing me to appear before this committee. The committee is facing a number of important issues relating to the Alaska Native Claims Settlement Act, and I commend you and the witnesses who have appeared before the committee for your careful consideration of the amendments.

I wish to focus my testimony on a problem central to the ultimate effectiveness of the Settlement Act, but one that is not yet the subject of a pending amendment. I am referring to the ruling of District Judge Oliver Gasch in the case of *Edwardsen v. Morton*, still pending in the United States District Court for the District of Columbia. Mr. Chairman, the *Edwardsen* suit was brought shortly before the Settlement Act was passed, and was an effort by a group of North Slope Native residents to obtain title to the Slope and to recover money damages for non-Native activities on the Slope. Among the damages sought are the bonus payments of more than \$900 million received by the State of Alaska on North Slope lease sales.

After passage of the Settlement Act in December 1971, the defendants in *Edwardsen*—the Secretary of the Interior and other Federal officials—sought summary judgement in their favor on the ground that the Settlement Act had resolved the Native land claims—both direct title questions and claims such as trespass to the extent they were based on title claims. The court in April 1973 ruled that the Settlement Act effectively removed the cloud on existing land rights that had been created by the Native claims. But the court went on to make a second ruling which poses a great danger to the State of Alaska and which is simply not sustainable under the Settlement Act. The court held that Congress did not intend the 1971 legislation to extinguish damage actions by the Natives for alleged trespasses occurring on lands claimed by them prior to the effective date of the Act—December 18, 1971—and suggested that Congress lacked the power to extinguish such actions. In other words, the court concluded that the Act resolved existing disputes about land title, but left to future litigation all pre-Act trespass and related claim that are based on the extinguished title.

As a result of the decision in the *Edwardsen* suit, the Department of the Interior has agreed to prepare suits on behalf of the North Slope Natives against persons who had entered the Slope prior to December 1971. The Interior Department, through their attorneys in the Justice Department, have agreed to a stipulation, approved by the court in *Edwardsen*, to prepare and recommend to the Attorney General the institution of litigation for damages for any third-party entries to Native claimed lands in that area prior to the Settlement Act. Mr. Chairman, I ask that this stipulation be made part of the Record in these hearings.

Those of us who were active in passage of the Settlement Act know that the court decision in *Edwardsen* completely misinterprets the intent of the 92d Congress. I believe that the statutory language itself is clear enough; we provided in section 4 of the Settlement Act that it should extinguish not only Native land claims, but also any claim "based" on such claims. In the Act's policy statement, we stated that there was "an immediate need for a fair and just settlement of all claims by Natives and Native groups of Alaska, based on aboriginal land claims," and that this settlement "should be accomplished rapidly, with certainty [and] without litigation. . . ." A claim that someone trespassed on lands held under the doctrine of aboriginal title is a claim "based" on aboriginal title, and thus falls squarely within the language of the Act. The awarded compensation to the Natives certainly covered and extinguished such claim.

The legislative history of the Act also makes clear that we intended to effect a comprehensive and final settlement, leaving no aboriginal claims to future litigation. You will recall, Mr. Chairman, that some of the early legislative proposals would have given jurisdiction to the Court of Claims to hear damage suits. This approach was rejected after the Federal Field Committee and others pointed out that "[t]he years required for litigation would impose an intolerable public burden." Hearings on S. 2609 and Related Bills before the Senate Committee on Interior and Insular Affairs, 90th Congress, 2d Session 511 (1968) (report of the Federal Field Committee). You echoed these words on the House floor three years later, Mr. Chairman, when you spoke of the need to avoid "years and years of uncertainty and litigation in the court." 117 Congressional Record 36,865 (1971).

We were, of course, all aware of the possibility of trespass suits based on the Natives' title claims to virtually all of Alaska. Indeed, during the hearings in the 91st Congress, numerous Natives testified about incursions on their lands over the years. I raised this point with Justice Goldberg, attorney for the AFN, asking him whether the Natives were willing to accept a total and comprehensive settlement. His response was affirmative:

The position that the Natives have taken is that they are prepared for an extinguishment of anything that is based upon aboriginal title. Hearings on S. 1830 before the Senate Committee on Interior and Insular Affairs, 91st Congress, 1st Session 301 (1969).

The same question was put to Mr. Goldberg on the House side by Congressman Pollock. After consultation with Native leaders and all regional counsel, Mr. Goldberg reported that the Natives recognized and accepted the fact that they would *not* be able to assert damage claims against private parties under the anticipated legislation. They would have the right to assert only claims "that have nothing to do with the aboriginal title." Hearings on H. R. 13142 and H. R. 10193 before the Subcommittee on Indian Affairs of the House Committee on Interior and Insular Affairs, 91st Congress, 1st Session 267-68 (1969).

Proceeding on this record, in 1970 the Senate passed S. 1830, which contained an extinguishment clause covering "any and all claims against the United States, the State and all other persons which are based upon aboriginal right. * * *." S. 1830, 91st Congress, 2d Session Section 4(a) (1970). That language was clear enough to cover any trespass claims based on aboriginal title. The provision also extinguished various "land claims" but contained a proviso preserving such claims that were "based on grounds other than loss of original Indian title land." That was meant to preserve claims for taking of reservation or fee lands, where title had been recognized. The committee report on the bill stated that all claims based on aboriginal title were extinguished, but not suits for tort or for violations of the fair and honorable dealings clause. S. Rep. No. 91-925, 91st Congress, 2d Session 114 (1970). Thus trespass claims based on aboriginal title would be extinguished, but we preserved personal tort and other claims which, in Justice Goldberg's words, had "nothing to do with the aboriginal title."

Since the House did not pass any settlement legislation in the 91st Congress, Senator Jackson reintroduced the Senate bill in 1971 with the extinguishment provision unchanged. In September 1971, however, this committee reported to the House a version of the settlement legislation which contained a somewhat broader extinguishment clause than ours; it was essentially the clause that was finally enacted. H.R. 10367, 92d Congress, 1st Session Section 4 (as reported, September 28, 1971). Then the *Edwardsen* suit was filed two weeks later, in early October.

These two developments caused us in the Senate to reconsider the language of our extinguishment provision, and we concluded that it should be broadened so as to leave no doubt that the settlement would be total. The bill as reported to the Senate on October 21 was modified to make clear that we were extinguishing *all* claims based on aboriginal title, and we struck the proviso for claims based on other than loss of Indian title.* To make doubly sure of our intent, the Senate report made specific reference to the *Edwardsen* suit as the sort of litigation that has to be avoided. S. Rep. No. 92-405, 92d Congress, 1st Session 98 (1971).

This change in the Senate bill and the reference to *Edwardsen* in our committee report would seemingly be conclusive on our intent in the Senate to join with the House in achieving a comprehensive settlement. But at this point, a minor error occurred. As the Chairman will recall, we were all under great time pressures, and the massive committee reports had to be prepared on a hurried basis. The Senate report, unfortunately, failed to reflect the change in the extinguishment provision. The 1970 language of the report on this point was carried forward unchanged, and thus it still referred to an exception to the provision which no longer existed. Of course, even that exception dealt with recognized title claims, if any, and personal torts, but not with trespass claims based on aboriginal title.

The other committee report, like the Act itself, contained not the slightest ambiguity. The report of this committee in 1971 described the extinguishment provision that was ultimately adopted as extinguishing "aboriginal title and claims based on aboriginal title" and is intended to be *applied broadly*, and to bar *any* further litigation based on such claims of title. The land and money grants contained in the bill are intended to be the total compensation for such extinguishment.

*The extinguishment provision as reported read as follows. The words in *italics* were added by the Committee, and the bracketed words were omitted: The provisions of this Act shall constitute a full and final settlement and extinguishment of any and all claims against the United States, the State and all other persons which are based upon aboriginal right, title, use, or occupancy of 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) by any Native, Native village, or Native group or claims arising under this Act of May 17, 1884 (23 Stat. 24), or the Act of June 6, 1906 (31 Stat. 321), or any other statute or treaty of the United States relating to Native use or occupancy of land, including all [land] claims [but not claims based on grounds other than loss of original Indian title land] *based upon aboriginal right, title, use or occupancy* pending before any court or the Indian Claims Commission on the effective date of this Act.

The reported version also added the following new sentence to the provision: All prior conveyances of public land and water areas in Alaska, or any interests therein, pursuant to Federal law, including tentative approvals pursuant to section 6(g) of the Alaska Statehood Act, shall be regarded as an extinguishment of any and all Native claims thereto.

H.R. Rep. No. 92-523, 92d Congress, 1st Session 9 (1971) (emphasis added). Our Conference Report was equally clear: It is the clear and direct intent of the conference committee to extinguish *all* aboriginal claims and *all* aboriginal land titles, if any, of the Native people in Alaska and the language of settlement is to be broadly construed to eliminate such claims and titles as any basis for any form of direct or indirect challenge to land in Alaska.

H.R. Rep. No. 92-746, 92d Congress, 1st Session 40 (1971). I would like to point out that the two "all's" in this last passage were underscored in the Conference Report itself, to emphasize the scope of the settlement.

Finally, there were numerous statements on the floor of the House and Senate indicating the desire of Congress to have a comprehensive and fully effective settlement. I have already quoted from your floor statement, Mr. Chairman. Then-Chairman Aspinall correctly described the bill as an endeavor to take care of the claims of the Natives for the lands from which they have been dispossessed, either outright *or in part*, and we endeavor to lay to rest for all time *any* further claims that the Natives may have. 117 Congress Record 46,781 (1971) (emphasis added). Senator Jackson also described the bill as providing for "a just and final legislative settlement" of the Native claims. 117 Congressional Record 38,422 (1971). These are just examples.

The court's decision in *Edwardsen* seriously misreads—or, more properly, fails to read—this legislative history. The court did not note the change in the Senate bill, misconstrued the Senate report, relied on a passage in that report that was a year outdated, and ignored the vast body of history directly on point. And the decision is, of course, also directly contrary to the statute's clear language. We had anticipated the trespass problem, and had dealt with it in the Act. It is significant that the Court of Claims and the Indian Claims Commission, two tribunals which are more experienced in Indian claims and legislation, have correctly construed the Settlement Act as extinguishing all claims, including trespass, based on aboriginal title.*

I want to say a few words on the *Edwardsen* court's expression of concern about the constitutionality of Congress' extinguishing trespass claims without compensation. The court did not make a holding on that point, because it was concerned mainly with the statute's intent. But I think the court's concern is entirely unfounded. Under the *Tee-Hit-Ton* case** and others, Congress has plenary power over aboriginal land claims, and other decisions make clear the power of Congress both to ratify retroactively actions which it could properly have authorized in the first instance, and to extinguish causes of action founded upon interests that are themselves extinguishable. The cases cited in *Edwardsen* have nothing to do with the issues here, because they involved interference with contractual-type obligations.

But we must remember a further point. We carefully considered this constitutional issue in 1971, and concluded that we could properly extinguish trespass claims. Part of the awarded compensation was for those claims, not because it was constitutionally required but because Congress chose to award compensation. There is nothing in the *Edwardsen* decision which requires us to rethink a decision we made four years ago.

Mr. Chairman, it is essential that we examine carefully what type of actions we attempted to extinguish with the Claims Act and the exact type of third party claims that could be disturbed if the *Edwardsen* decision was allowed to stand. The Federal Government can rely on the doctrine of sovereign immunity, but I am concerned about those people who made their entry pursuant to Federal law.

These entries were made pursuant to Federal laws regarding homesteading, Native allotments, lands under the Statehood Act, grants of University land, townsite grants, grants under the mining laws, and others who took title from the Federal Government. It is my contention that in these instances no property rights were cut off and consequently no Fifth Amendment issues would be raised by including language in this bill to do what we originally sought to do in the Claims Act. There would be no extinguishment of rights in those cases where there was a disturbance of physical possession or where Federal law was not complied with.

Mr. Chairman, if *Edwardsen* is allowed to stand I foresee a myriad litigation over these claims. Exactly what we tried to prevent with the passage of the

* *E.G., Aleut Community v. United States*, 202 Ct. Cl. 182, 480 F.2d 831 (1973); *Native VII v. United States*, 27 Ind. Cl. Comm. 140 (1972).

** *Tee-Hit-Ton Indians v. United States*, 348 U.S. 272 (1955).

Claims Act. Mr. Chairman, Mr. Guy Martin, the Commissioner of the Alaska Department of Natural Resources will outline the problems faced by the State of Alaska if this matter is left unresolved. I would only caution that the problems are extremely serious and could be more far reaching than just the State of Alaska.

Again, let me reiterate: all those who entered lands in Alaska pursuant to Federal law prior to the Land Claims Act are, if I interpret *Edwardsen* correctly, now subject to civil action based upon trespass. The sovereign itself, in all probability, could escape this litigation under the doctrine of sovereign immunity; but, third parties who have paid the Federal Government or through their toil have earned the right to title derived from the Federal Government would be subject to suit for damages. This decision places every inch of land in non-Federal ownership or occupied under Federal leave or permit in jeopardy despite the fact that these actions would be based upon *claims* of title derived from aboriginal use and occupancy—the very claims we thought were extinguished by the Land Claims Act.

What, then, should be done about the *Edwardsen* decision? One option, of course, is to await a ruling of a higher court which would presumably make a more adequate reading of the Act and its legislative history. But that course could take years, and thus I believe the more responsible course is for Congress to resolve the matter. The *Edwardsen* decision is already causing serious problems for the State and its citizens, and is spawning divisive litigation of the sort we had intended to settle in 1971.

We on the Senate side are now addressing this problem, and I am hopeful that the issue can be properly and decisively resolved as part of the present bill to amend the Settlement Act. As indicated, I have no doubt of Congress' constitutional power to address this problem. I do not carry with me today any particular amending language, but I stand ready to work with you, Mr. Chairman, and the House Committee to prepare a proper amendment. I urge that both the House and the Senate move on this matter promptly and simultaneously; the problem should not be deferred or delayed. Already massive lawsuits are in progress, and the resources of the State and its citizens are being diverted from more constructive activities. We have a responsibility to correct this erroneous decision.

I wish to make absolutely clear that neither the Settlement Act itself nor any amendment which I would support would affect in any way the rights of an Alaskan Native or any other citizen to recover for actual damages where he suffered a personal tort or his physical possession of a parcel of land was improperly disturbed. Our focus in 1971 was, very properly, on claims that were based on alleged aboriginal title; any claims based on that title or the like were extinguished. But one need not have a claim of title to recover damages for personal injuries or for interference with any actual, substantial, and continuous occupancy of land. If anyone destroyed a Native's dwelling or farm land, or was guilty of a personal tort, the claim of that Native is totally unaffected by the Settlement Act. No one would deny his right to recover his actual damages, regardless of whether he was Native or not.

But the Settlement Act was intended to resolve the massive group claims for damages based on aboriginal title, use, and occupancy, and the other interests described in section 4 of the Act. In 1971, we thought we had effectively resolved that problem, and had spared the State, its citizens, and the Federal court system from decades of frustrating, costly, and divisive litigation. I had thought our original Act had succeeded in that goal, and I continue to believe so. But in light of the *Edwardsen* decision, I urge that we clarify our prior intent and bring to a final resolution the Native land claims in Alaska.

Thank you, Mr. Chairman.

Senator STEVENS. Mr. Chairman, we are grateful to our colleagues here in the House, and my good friend and colleague, Congressman Young and his predecessors, for the action taken by this committee with regard to the settlement of the Alaskan land claims.

I went to a meeting of the Alaskan State Chamber of Commerce after we had taken a poll showing that 80 percent of the people of the State opposed the settlement.

I had to tell them at that time that this was a just cause and I was going to champion this settlement. Now I find that on the basis of a decision of the district court here by Judge Gasch in the case of

Edwardsen v. Morton that we have some uncertainty, rather extreme uncertainty, entering into this settlement. That is what my statement pertains to.

The *Edwardsen* case was filed before the Land Claims Settlement Act passed, and Judge Gasch held the Congress did not intend the act to preempt damage causes of action that accrued prior to the enactment of the act. The Judge suggested that the Congress has no such power.

The Interior Department has entered into a stipulation and an agreement through its attorneys to prepare suits on behalf of the North Slope Natives against persons who had entered into their area prior to December 1971.

I think it is important for us to look at the history, the legislative history of the Alaska Native Land Claims Settlement Act, and in our report on that bill, report 91-925, the Senate stated categorically, I think, what the intent was of Section 4, and it says on page 114 that section 4 declares:

The provisions of this act shall constitute a full and final settlement and extinguishment of any and all claims against the United States, the State and all other persons which are based upon aboriginal right, title, use, or occupancy of land in Alaska.

The language specifically includes submerged lands and any aboriginal hunting and fishing lands. The extinguishment is final and effective, not only for claims against the United States, but also for claims against the State of Alaska and all other persons.

Now, the Judge has incorrectly interpreted what the 92d Congress sought to do. That section extinguished not only the Native claims, but claims based upon land claims, and it was the intent of Congress to avoid the myriad of litigation that now will be coming forth if the Gasch decision is allowed to stand.

These are based on the doctrine of aboriginal title, and are specifically covered by the act that we passed.

When Justice Goldberg, who was acting as the attorney for the Alaskan Federation of Natives, appeared before the Senate, I specifically asked him that question, and he indicated that the AFN and, Mr. Chairman, this was not only once, but it was repeated after we went out to go to a vote. The APN and the Alaska Natives were prepared to accept extinguishment of any claim based upon the aboriginal title or the claim of aboriginal title.

In the 91st Congress when the Senate passed the Claims Act, as I stated, our report stated categorically that these claims were extinguished. The 91st Congress had been a little less emphatic, and the 92d one was even more specific.

The Judge has relied, I think, upon some language that was carried forward in the Senate report referring to an exception which was not in the final version of the bill. But the conference report is very clear.

As the chairman knows, it is stated that it is the clear and direct intent of the conference committee to extinguish all aboriginal claims and title, if any, of the Alaskan Native people, and the language is to be broadly construed to eliminate such claims and titles as the basis of challenges to land title in Alaska.

You made a statement on the floor, Mr. Chairman, as well as Congressman Aspinall and Members of the Senate, to that effect.

I think Judge Gasch has misinterpreted our intent. He specifically has misinterpreted the fifth amendment question. The *Tee-Hit-Ton* case confirmed Congress jurisdiction over aboriginal land claims, and the compensation was for the extinguishment of claims such as this, and we specifically so stated.

I am extremely worried about the impact of the Gasch decision, Mr. Chairman, and Congressman Young, because every action that is contemplated is made against someone who made an entry pursuant to Federal law on lands claimed by the Federal Government pursuant to several acts of Congress, the Homestead Act, the University Land Grant, the Native Allotment Act, the Township Grant Acts, the mining laws, and other public land laws that were applied to Alaska.

All of these entries were made prior to the passage of the Alaska Land Claims Settlement Act and were lawfully under the laws of the United States. We did not attempt to cutoff individual claims, not based on aboriginal title, for unlawful entry, because that would have been another matter. That would have been in my opinion a different subject.

We have not tried to cut off claims based on actual tort, that is, an injury to the person or an injury to property that was owned by or used by Native people without being based upon a claim of aboriginal title.

But these actions that are now being prepared by the Interior Department pursuant to the request of Judge Gasch. I am sure that Commissioner Martin of the Department of Natural Resources, who will appear here, will explain the tremendous impact on the State.

We have not prepared language for an amendment to clarify this section. I really am quite disturbed that the section discussed in Judge Gasch's opinion needs clarification at all. But I am here this morning to present the matter for the record in your committee, as I will to the Senate Interior Committee.

Those of us who participated in this settlement, I feel, must take action to make sure that the settlement is complete, and to make certain that we are not going to see a myriad of litigation now based upon actions that seemed to be lawful at the time pursuant to the law in Alaska, and I really am seriously disturbed over the impact of the portion of Judge Gasch's decision, Mr. Chairman.

You may want to put into the record, too, that which applies to the State's selection pursuant to our Statehood Act prior to the date of the passage of the Alaska Native Land Claims Settlement Act, because, Mr. Chairman, you recall that was the significant compromise of the conference.

We specifically excluded from public lands those 26-odd million acres that had already been filed upon by the State of Alaska pursuant to the Statehood Act, and as such those lands were not available to the Native people for selection, and that was in fact the basis for the State of Alaska's decision to pay over one-half of the cash contribution from the revenues that would otherwise have been paid to the State of Alaska in terms of the oil and gas development of the State.

Our State, I think, is the first State in history that has participated in the settlement of Indian or Native land claims, and this was a conscious decision to do so, and I think that also is in the record.

But it is my purpose again in appearing before you and presenting the statement I have to urge you to study the matter also, and to offer to you the assistance of my office and those of us who are working on the Senate side on this matter to try to work out language that will be conclusive as to our intent in the Alaska Native Land Claims Settlement Act.

I know that my friends from the Native community are not going to like this, because I think many see the *Edwardsen* case as a chance now to go back and obtain additional compensation for those actions which took place prior to the passage of the Land Claims Act.

Mr. Chairman, this is a very serious matter. We are talking about the gold rush: who is going to pay the compensation for the taking of the gold? Who is going to pay now the compensation for a homestead that now is part of Anchorage or Fairbanks?

Who is going to pay the compensation given for the land given to the University of Alaska for education of all Alaskans and who is going to pay the compensation for the technical violations claimed under the Gasch decision for the entries which were really nothing but paper transactions transferring title of vast acreages to our State?

I think we have the obligation to eliminate the controversy that would come from long litigation. I hope the committee would agree.

If you have questions, I would be pleased to attempt to answer them. I do not have language at the present time to clarify this. We are working on some, and we are working to study the impact, particularly of the fifth amendment aspects, of Judge Gasch's decision, which I think is in conflict with the *Tee-Hit-Ton* case.

I don't know whether the committee has seen this stipulation, but it directs the Attorney General to prepare actions against third-party entries, and they include damage to the taking, or from the taking, of the water supplies. They include the removal of sand and gravel. They include the taking of game animals. They include the extraction of oil and gas. They include the utilization of the surface for airfields, buildings, roads, living units, and other structures or drilling operations, for a substantial period of time.

Now, I think that if the committee examines this, it can only mean that if the judge is correct, we did not accomplish our objective, and I think it is incumbent upon us to close that door and make the settlement absolutely effective.

Again, I do not believe that the fifth amendment portion of his decision is valid. For example, the sovereign claimed those lands and the sovereign provided the transfer of either title or the right of use to third parties.

The sovereign, I think, would be an indispensable party in any action against the third parties who claim the right to conduct what they did on the lands pursuant to the Federal law.

Judge Gasch, as I understand it, has ruled that is immaterial, and that third parties must answer for these damages.

This has tremendous implications throughout the rest of the country. It is not just in Alaska that it is an issue. This, I think, challenges the impact of settlements made through the whole period of the history of the United States, and while I think some of those settlements were wrong, and I have done my best along with members of this

committee to right the wrongs that were done, I do not believe that we can afford to have prolonged and expensive and just absolute volumes of suits filed based upon these entries.

That is my statement, Mr. Chairman. It is a very tough issue, I think, and it is going to be one that I hope that my friends who are the leaders of the Alaska Native community will realize, as you mentioned to one of my Senate colleagues, the problem, and he said one simple phrase to me. He said, "A deal is a deal." And that Land Claims Act was supposed to be complete compensation for the extinguishment of all claims that had been presented, and this case represents one of the claims that specifically has been presented, and I believe was specifically included within the scope of section 4.

Mr. MEEDS. Thank you very much, Senator Stevens. I have not reread the Gasch decision in quite some time, and I will do so again.

My recollection is that it was a decision for the Natives against third parties, not against the Federal Government.

Now, let's assume that the Department does what Judge Gasch has ordered them to do: prepare a suit, take it all the way to the Supreme Court, and the holding is that Judge Gasch is correct, and in the meantime we in the Congress have enacted some legislation which extinguishes that Native right against third parties.

Have we not at this point given ourselves a fifth amendment problem insofar as we have taken a property right, or the property right which the Native had against the third party, and have taken it in violation of the fifth amendment?

Senator STEVENS. That is why we are taking the time to prepare an amendment that would specifically, Mr. Chairman, be specific. Mr. Chairman, again, I do not believe that we intended to cut off any action based upon actual trespass that was not based on aboriginal title. Many entries were made pursuant to an act of Congress, and where the acts of the third party were consistent with what then seemed to be the law, I do not believe that he can be, or should be, subjected to litigation now based upon a claim which must be, in its final analysis derived from the aboriginal claim of title.

So my direct answer to you is that should that take place, should the court hold that there was not an extinguishment of title, or claim to title, and that the right against third persons could be presented as Judge Gasch has indicated, this Congress will have to face another Land Claims Settlement Act because there would be no way that a State such as ours could proceed with a history of well over a hundred years with all persons abiding by the Federal law during the territorial days, and now both State and Federal law, deriving their title from the Federal Government both the State the non-Federal interests, and in fact some of the uses of the Federal Government itself are challenged.

I would point out to you that one of the things that is left for future determination is the use by the U.S. Government for the DEW Line, for military airfields, or other military installations, the extraction of sand and gravel—

Mr. MEEDS. Wait just a minute. I didn't know that the Gasch ruling, and you can correct me if you think I am wrong, ran to the Federal Government at all.

It is clear that the Federal Government can extinguish aboriginal title, like that [indicating], without giving anything. No one denies that.

The question is: Could the State of Alaska, or could some third party, extinguish aboriginal title?

So I don't think there is any question that the Federal Government, when it built the DEW line and utilized any property in Alaska for its own use subjected itself to liability for trespass. It had that right.

Senator STEVENS. What about the university lands? Those were a direct deed from the Federal Government to the University of Alaska. Those lands were in fact leased. Some of them have been sold.

Now, that gets into a fourth party. Those lands are within the area. Well, the question is, did the third person derive his claim directly from the Federal Government?

That was the intent that we had, to cut off all claims based upon aboriginal title.

I do not believe we had any intention to leave that door as wide open as Judge Gasch leaves it, and the impact of this, Mr. Chairman, the impact of this is that my State is prepared to move into a development period, I think, that the country has never seen. We have over one-third of the new oil to be developed. We have one-half of the new gas this country will see, and the Gasch decision places such a cloud over any right derived prior to the passage of the Alaska Native Land Claims Settlement Act, which includes the 26 million acres, Mr. Chairman, that there will be countless trespass actions to litigate. I perceive some real horrendous periods as far as the litigation is concerned.

Judge Gasch in my opinion does say that third persons, regardless of whether they derived their right to enter the lands from the State or the Federal Government, are subject to litigation for those resources that they removed from the lands prior to the passage of the Alaska Native Land Claims Settlement Act.

Mr. MEEDS. I don't understand the Judge to be saying that, where the third party derived his title directly from the Federal Government, there is any liability.

I don't understand him to be saying that. I may be incorrect.

Senator STEVENS. The State derives its title from the Federal Government.

Mr. MEEDS. Then there is another party which may present additional complications.

What you are saying, though, if I understand you, is that you have no problem if the person who claims title, and derives it through a legitimate title emanating from the Federal Government—

Senator STEVENS. That is correct. One of my tasks, when I was in private practice, was the writing of title opinions. I am sure the chairman has participated in that. You must look for the basic title.

These titles in Alaska were derived from action of the Federal Government. I know of few titles that were pre-U.S.A., and those were some of the Russian claims recognized at the Treaty of Purchase.

I do not believe you can find a tract of land in the State where the rights of a third person are derived from other than a chain that goes back to the Federal Government.

Mr. MEEDS. But legitimately.

Senator STEVENS. Legitimately. That is the problem, and Judge Gasch says it makes no difference because the State had no right that preceded the Native Land Claims Settlement Act.

In effect, Judge Gasch has ruled, or the impact of his decision is, that the Statehood Act has no validity until the date of the Settlement Act.

There, you take me around the circle. We excluded 26 million acres in the conference from the scope of the settlement because we found they were in fact valid, and should not be disturbed at all by the settlement.

So the judge has challenged the very compromise which led to the passage of the Land Claims Act. Without that compromise, I am sure the chairman would agree, and he was there, that we would not have had a bill.

Mr. MEEDS. I don't know about that, but it was clearly a compromise. There is no question in my mind and in my recollection that that was one of the major reasons that an accommodation was made for the State of Alaska on that issue.

Senator STEVENS. Well, I am grateful to the committee for its time, and again I know it is going to be a very controversial subject. You can't raise the subject of Alaska land these days without getting into controversy, but we had the obligation to make sure that settlement is complete.

If it is not complete, we are back in years of litigation.

Mr. MEEDS. The gentleman from Alaska.

Mr. YOUNG. Mr. Chairman, I know the Senator has to be on his way. I would like, however, to state for those now in the audience that this Senator here worked against adverse odds for the Native Claims Settlement, and my predecessor did, also. I am relatively new on the scene.

In Alaska, he led the battle for the Settlement Act, and again he is facing a possibility of something that is not likely, and his view of "A deal is a deal" can say no more than he said.

Thank you.

Mr. MEEDS. We appreciate your coming, Senator, and we recognize the difficulties and the tough issues you have raised.

Senator STEVENS. Thank you very much.

Mr. MEEDS. Thank you.

Mr. Martin, can you complete your testimony in 15 minutes, including questions? That is, if we promise to curtail our questions?

STATEMENT OF GUY R. MARTIN, COMMISSIONER OF NATURAL RESOURCES, STATE OF ALASKA, ACCOMPANIED BY MIKE SMITH, DIRECTOR OF PUBLIC LANDS

Mr. MARTIN. Yes.

Mr. MEEDS. Come forward, please.

I see you have a rather long prepared statement, Mr. Martin. Would you summarize it?

Mr. MARTIN. Would you prefer that, Mr. Chairman?

Mr. MEEDS. Yes. Without objection, the prepared statement will be made a part of the record at this point.

[The statement of Mr. Martin follows.]

STATEMENT ON BEHALF OF THE STATE OF ALASKA BY GUY R. MARTIN,
COMMISSIONER OF NATURAL RESOURCES, STATE OF ALASKA

Mr Chairman, thank you for affording the State of Alaska the opportunity to testify on the legislation proposed to amend the Alaska Native Claims Settlement Act. Now three and one-half years old, this law has become a vital component in the dynamic forces shaping Alaska's future, and it is the State's belief that the experience of the period since passage is adequate to ascertain necessary changes in the Settlement Act. To the credit of the 92nd Congress, the initial law, affecting so many aspects of the economic and social structure of Alaska, has held up remarkably well. The changes in that law which we are addressing today are nonetheless important, and represent the accrued judgments of the early practical experience of the State with this Act. The opportunity of the 94th Congress to make amendments, in our view, is as great as was the opportunity of the earlier Congress to cast the initial Act. The desire of the State to assist in fostering a fair and harmonious social, economic and legal structure is greater than ever.

High on the list of priorities for the State is the amendment to extend the life of the Federal-State Land-Use Planning Commission. In our view, the Commission has been among the most successful aspects of the original Act. Now that the relationship of the Commission to the Native land selection process has been virtually completed, the State believes it important that continuity of the Federal-State planning effort extend into the post land selection period.

The challenge for the next five years will be to work with the now-established three major landowners in Alaska and with a multitude of other interests to develop new cooperative management structures for Alaska's land. The Commission, and its excellent staff, are by now among the most knowledgeable sources in the State on most aspects of land use planning, and the preservation of that expertise in a unit is in keeping with the interest of the Act. Equally important is the preservation of a structure for State-Federal cooperation which has worked well enough to be a model for other states.

Later in these comments, I will be outlining a formative agreement involving the State and the Cook Inlet Regional Corporation which the State believes is indicative of the sort of answers to tough problems which Federal-State-Native cooperation can achieve. The guidance and counsel of the Commission and staff were a vital part of this effort. In sum, we strongly urge that the life of the Commission be extended.

On the matter of enrollment, Mr. Chairman, the State supports the purpose expressed in Section 101 of H.R. 6644. Extension of the deadline is a matter of fairness to the individuals concerned, and the State believes that proper limitations with regard to the meaning of such late enrollment are necessary as expressed in Sec. 101. The effort of any such amendment should be to include individuals but not to alter land entitlements or village qualifications. The State notes that it would oppose any amendment allowing previous enrollees to change villages without dramatically improved B.I.A. oversight.

On a further amendment, the State wishes to take a strong position of support for the provision placing in escrow of receipts from lands withdrawn for regional and village selection. This provision will provide a sound way of reducing existing difficulties in managing those lands pending interim conveyance. At a later time, the State will submit, with the permission of the Chairman, a supplemental statement which raises one technical issue with respect to the situation where the lands from which revenues will come, and be escrowed, are presently selected or T.A.ed to the State. We believe this statement may assist the Committee in resolving this issue in the public interest.

Similarly, the State favors the provision exempting individual benefits under the Act from being counted for determination of food stamp eligibility. This would well serve the policy of the Act, as we see it, and would be in conformity with the Act's treatment of these individual benefits for other purposes.

On the matter of the 13th Regional Corporation, Mr. Chairman, the State takes no position, except to note that it believes that this Committee, and Congress, are clearly the proper forums to resolve this issue. It is a complex problem requiring both sensitivity to the intent of the Settlement Act, and a representative awareness of social and economic matters that a court cannot resolve with maximum sensitivity. The State offers its assistance in seeking a just resolution of this matter.

Similarly, the State supports the provision allowing the Federal government to pay interest on the Alaska Native Fund while moneys are being held each quarter. The intent of Congress, it would seem, would be to maximize the benefit of these funds to the beneficiaries of the Settlement Act.

Finally, before raising two major points, the State wishes to comment on the provision regarding the merger of corporations founded pursuant to the Settlement Act. As a beginning point, the State takes the position that the Act is not written in stone, but rather was a reflection of the best judgments at the time, made with the impact of the then-existing knowledge and political forces affecting the outcome. Although we should proceed with caution, for it is a good Settlement, the State sees no reason to fail to make changes of recognized benefit based on what we have learned since passage. The more fundamental the change is proposed to be to the purpose of the Act, the higher should be the level of caution of Congress.

The State's factual experience with this issue is largely with regard to the N.A.N.A. region, and the State's affirmative posture regarding the merger provision relates most strongly to that experience. To extend the difficulties and the need for the amendment to cover the entire State may be appropriate, as well, but it is with greater caution that the State approaches the amendment on that basis, since such a sweeping change goes directly to one of the key elements of the Act—the protection of the village.

The following observations are offered as points of inquiry the State believes the committee will want to cover as the broad application of such a provision is considered.

The State is concerned that the village structure in the State be preserved. Perhaps the provision for mergers is the key measure to insure that objective, and maximum flexibility in the structure for mergers is the key. The State believes, however, that in establishing the ability to form mergers, the amendments should go no further in altering the integrity of the village in the Settlement Act than is necessary to accomplish the relief sought, such as the case in the N.A.N.A. region. If there are intermediate structures which will work, they should be considered, as should maximum safeguards for the villages.

The State believes the Committee should be aware that the State law with respect to Native Corporate merger was altered this year to require only a majority vote for action, as opposed to the two-thirds vote required for other corporations. Some suggestions have been raised that this distinction may create equal protection problems. We believe the Committee should consider the vote required both for this reason and for the burden it desires to create for merger decisions.

Next, the State notes that State law imposes the standard of "dissenter's rights" (payment of value of stock to dissenter) whereas the provision proposed does not. Under State law, stock purchased from dissenters becomes treasury shares, subject to resale. Since the Settlement Act intended for stock to be inalienable for twenty years, the State believes these State laws may well assist the Committee in its decision on this matter.

Mr. Chairman, the State hopes these comments will be of assistance. The problem raised by the N.A.N.A. Region exists and may be spreading. We do not believe the villages or regions should be caught in an economic straight jacket, and believe change is necessary to address this issue. The State nonetheless hopes the Committee will insure that substantial village input is sought as this provision is developed. Assured of this, and that the other matters the State has raised will be considered, it supports the provision.

In raising two final matters before this Committee, Mr. Chairman, the State believes that it is addressing two faces of the Settlement Act of great importance and opportunity. The first of these is the matter of Cook Inlet Region and village land selections.

The Settlement Act, as mentioned earlier, has held up remarkably well but it has always been recognized that it would do greater justice and work better in some areas than it would in others. In the case of the Cook Inlet Region, there have been problems bearing out this theory.

In one important respect, these are the problems of a Native regional corporation and its villages. They are problems associated with such a corporation forced to make its land selections in an area high in non-Native population covered with pre-existing Federal and State withdrawals and with large private holdings. These problems are ones of equity under the Act, inasmuch as the right the Region has to exercise appear to be equal, but are in reality not, for the opportunities for selection are so poor.

Further, these are the problems of a Native Region in that the alternative land available is not desirable to the Natives, and not the land to which they are related by tradition. It is foreign and strange land to them and not of great value. This is a problem of equity, as well, and sensitivity of the Act to those whose claims were settled.

In still another respect, the Cook Inlet situation is not a Native problem, but one which affects all the people of the region and the State. It is one which impacts the people of Anchorage, and other municipalities. It is one which complicates and frustrates State and Federal land-use planning and makes sensible management of critical areas very difficult. It is one which reveals the Settlement Act in its most inflexible posture, and has forced all of the potential affected parties to positions of extreme self-interest.

Cook Inlet Region has sought administrative and judicial relief, and none has been gained. Without action here, the Region will be forced to select in areas they do not want and to pick land which frustrates both State and Federal planning. They will select lands for private ownership in areas where development value is low, and detract from rather than add to, the ability of the Anchorage basin to grow and develop sensibly.

The State's observation is this: that although there are competing land interests and conflicting interests, there exists the opportunity for negotiation and compromise. To this end, I have offered the services of the Department of Natural Resources as an intermediary for the Cook Inlet Region, the Anchorage and other municipalities, and the Federal agencies toward the goal of an agreement which will do, with the help of Congress, what the courts have failed to achieve within the narrow strictures of the Settlement Act.

Taking the larger view, intensive discussions have been recently held among many of those just mentioned, and the first outlines of a workable solution have been established. The philosophy of the State in bringing this matter before you is as follows: that for any plan to work it must be generally subscribed to by the Region, the State, the Federal Government, and to the extent they are affected, the municipalities in the region. Such an agreement may well have rough edges and some minor dissent, but the basic package must be agreed. It is this agreement that the Member from Alaska and this Committee should scrutinize and deliberate upon.

At present, we do not have such an agreement to submit, but we do have the belief that one can be accomplished which serves broadly the public interest. Today, I can briefly outline the shape of that agreement and outline our desires and intentions for the future of it.

Under the agreement two major steps in consolidation of land ownership patterns would occur. First, the lands within Cook Inlet region in the Lake Clark area would remain in public ownership, controlled solely by the Federal government and the State. This will tremendously facilitate the final disposition of lands when Congress addresses itself to the d(2) lands in the Lake Clark area. Secondly, native corporate ownership would be directed to areas of Cook Inlet, specifically in the Beluga area west of Anchorage and on the Kenai Peninsula, where settlement already exists, basic State governmental services are available, and where an earlier economic return may be expected by Cook Inlet Region, Inc. and affected villages presently having lands selections in the Lake Clark area.

To accomplish this the State would relinquish to Cook Inlet Region and certain affected village corporations approximately 17-22 townships of State surface and subsurface estate in the lands mentioned above in the immediate area of Cook Inlet. Cook Inlet Region, Inc. and those villages presently having land selections in the Lake Clark area would relinquish their selections and future entitlements in that area, permitting the State to select those entitlements instead. For its part, the federal government would relinquish approximately five townships of surface estate and eighteen townships of subsurface estate to the Cook Inlet Region within the Kenai National Moose Range.

All during this week, the interested parties to such an agreement will be in Washington. We will be working intensively to construct a creative solution to this problem, and we are hopeful the Committee will encourage us in this endeavour. The final legal form for the agreement is not even established, but we believe it may well be an agreement among the parties, which is recognized by Congress by an amendment making possible the measures necessary to carry it out.

I know that the Cook Inlet Region will testify here as well, and I believe they will further amplify the nature of the agreement. I can only offer at this time the assertion that we are near an agreement, and that we will work through to either a resolution or the conclusion that we cannot consummate the agreement.

The final issue the State wishes to raise, Mr. Chairman, is one brought to the attention of the Committee earlier by the senior Senator from Alaska, Senator Ted Stevens. This issue is the impact of the decision in *Edwardsen v. Morton* upon the State of Alaska and its citizens.

Senator Stevens ably outlined the nature of the case, and made abundantly clear his feelings, supported by the record, that the decision in this case misconstrues the Settlement Act so extensively that one must wonder if a settlement has been accomplished at all. The State shares in full the concerns raised in the Senator's testimony and feels bound by its governmental duty to bring this problem to the attention of the Committee with the request that it be resolved.

Senator Stevens' testimony focused on the legislative history related to the estinguishment provision and purpose of the Settlement Act as only a Member who was here could tell it. In the State's testimony, I will not review that history, Mr. Chairman, for I believe that it has been covered fully, and that you share in the unique ability to understand the situation by virtue of your role in the settlement. The State's testimony will emphasize the potential impact of the *Edwardsen* case on the State and its citizens, and indicate the threat that this case represents to the post-settlement harmony we believe that Congress intended.

Briefly stated, the *Edwardsen* decision holds that, although the Settlement Act did resolve the matter of *title to lands* in Alaska, it did not resolve the issue of *damages for trespass, prior to settlement*, on any lands in *Alaska subject to aboriginal title*. To fully comprehend the implications of this finding, several points are crucial.

First, if damages for trespass apply to lands subject to aboriginal title, then you must understand that claims of such title extend to nearly 90% of the State of Alaska. In addition, the conflict and overlap between such claims is extensive, with millions of acres being claimed by from two to six Native groups. Thus, the mere determination of *who has the right to claim aboriginal title* will be difficult. (See map—prepared by State of Alaska, Dept. of Natural Resources, Division of Lands).

Once this is resolved, the issue will be whether or not 90% of Alaska is really subject to aboriginal title, and where the lines are to be drawn. Judicial resolution of these issues, although seeking damages for trespass rather than title, will require exactly the same litigation which would have been necessary had the land claims never been settled. What must be litigated, in hundreds or thousands of cases, is the matter of the validity and location of aboriginal titles, such determination to them lead to further litigation to prove trespasses, and ultimately, damages for those trespasses.

Also to be understood is the incredible number of potential defendants. They include every non-Native, whether a person, group, corporation or government entity, who entered the aboriginally claimed 90% of Alaska's land or water. They include all Natives who conflict with one another over the ability to make such claims. The conflicts take innumerable configurations ranging from those between the Natives and the State, or municipalities, or private owners, to those simply between Natives.

The October 17, 1975 Stipulation in the *Edwardsen* case is the best indication of the shape of things to come pursuant to this case. That stipulation makes clear that the scope of trespassory conduct, the source of liability for defendants, is virtually limitless. It includes "utilization of the surface for air fields, buildings, roads, or other structures . . ."; "taking of water . . ."; "extraction of oil and gas . . ."; "removal of sand and gravel . . ."; and a variety of other activities covering virtually every action which may have taken place on claimed land. There is no reason, in the State's view, that virtually every entry or use might ultimately be covered.

The federal government, one of the prime potential defendants, has made massive entries on claimed land for both military and non-military purposes. Included are the D.E.W. line, Pet. 4, the White Alice communications system, roads, airports and military bases across the State.

Several Alaskan cities, also future defendants, have developed on claimed lands. Many canneries, thousands of mineral entries, numerous mines, all oil and gas development, countless business and manufacturing sites—all have been located on claimed lands. Also on claimed lands, there have been placed state parks and federal parks, forests, and refuges. All those involved in these activities, and many more, are the defendants in the cases which will be brought under the *Edwardsen* ruling.

Under the questionable theory of the *Edwardsen* case, the State may well become the prime defendant. First, it would be liable for each action it took, even pursuant to law, on federal land subject to aboriginal claims. This would cover roads, airports, and any other entry, no matter what the legal authority at the time. Second, the decision found the Statehood Act to be virtually meaning-

less *vis-a-vis* the assertion of aboriginal land claims, and would treat even state selection under the Statehood Act as potential trespass subject to damages. Judge Gasch made clear his opinion when he said in his decision: "Indeed, it is fair to say that the views of Congress on how the authorization for State selection of more than 100 million acres of land could be reconciled with preservation of Native possessory rights based on aboriginal title were so obscure as scarcely to rise to the dignity of intent." 369 F. Supp. 1374.

The State must ask what Congress believed it accomplished in the Statehood Act, and assert that it did indeed believe and act on the reliance that Congress did express "intent" and did in fact desire to create a State having the right to select and take title to land.

In addition to the direct liabilities described thus far, there will be innumerable cases where defendants are derived indirectly. The work of major defendants, such as the oil industry, is often done by contractors, and the contract for such services typically includes a "hold harmless" clause. Suing the major defendant for trespass may result only in ultimate liability where the pocket is far from deep.

In the case of the State, there is at least the distressing possibility that, where an entry occurred on land patented or T.A.ed under the Statehood Act, and the State authorized the entry by a permit, license or lease, the State could conceivably be liable for indemnification or contribution on any trespass damages made good. The burden on taxpayers would be intolerable.

A third point to be understood is the matter of damages, about which there is little to say except that the Gasch decision provides a structure for almost unlimited liability. Putting aside litigation costs, which will be extraordinary, the damages could well go to the value of processing products on claimed land. For canneries, the value for the 1960-1970 period would be \$1.7 billion. Mining production from claimed lands from 1940 to 1969 is worth well over \$1 billion. By the end of 1971, nearly 400 million barrels of oil had been produced and sold in Alaska, all from lands subject to claims. Under the decision by Judge Gasch, these could well be measures of damages.

The actual damages cases themselves will be incredibly complex, ranging from questions of injury to a hunting ground, to the measurement of damages due to increased populations in an area, to the question of whether the entire proceeds of a State or Federal oil and gas lease sale should be the measure of damages.

From the perspective of the State of Alaska, the *Edwardsen* case simply undoes a substantial part of the Settlement Act. The Act was carefully designed to settle "... all claims by Natives and Native groups of Alaska, based on aboriginal land claims;" and to do so "without litigation." Settlement Act, Section 2(a) & 2(b).

Now, with the decision before us, and the logical extensions of the decision readily apparent, the State foresees a virtual avalanche of lawsuits running to thousands of potential defendants, stretching out over the next several decades of Alaskan history. Ironically, these lawsuits, with the exception that damages rather than title are the objectives, are virtually the same lawsuits that would have been filed had Congress failed to pass the Settlement Act.

For the State, the practical impacts of such litigation are ominous, should Congress not now act to reconfirm its original intention.

The most grievous wound, so far as the State is concerned, is that the period of stability for which it has long yearned, will have not yet arrived. After the Settlement Act, and because of the Settlement Act, the State felt that it was on the threshold of a period when land ownership would be defined, management could be established, and sound mutual planning for the future of Alaska could proceed. Two aspects of the State's testimony today have gone to this very opportunity, manifested by the work of the Land-Use Planning Commission, and the Cooperative State-Cook Inlet Region efforts to seek a fair and just solution to a complex, but real, problem.

In light of the *Edwardsen* decision, this opportunity may well be lost, and the processes of mutual planning will have to stop as the energies of the State, and all others involved, are diverted to the litigation of aboriginal title, matters of trespass and establishment of damages. There is little question that the staff and monetary resources of the State would be largely consumed by such a task, and we believe that similar pressures would impair the ability of the Interior Department, the Land-Use Planning Commission, and much of the private talent in the State to be brought to bear on the crucial issues in Alaska's future.

Land-use planning, joint management structures, the 17(d)(2) proposals, State land classification and selection, the search for new energy and mineral resources,

state-municipal planning and other items on the common agenda of Alaskans would all be victimized by the diversion of resources to the litigation that we believe Congress intended should never occur. It will be a bonanza for lawyers, costly for the people, and in virtual defiance of one of the principal objectives of the Settlement Act.

The costs of the litigation will be high in other ways as well. In addition to any ultimate damages and legal costs, some borne by individuals, some by businesses, and much by the taxpayers, there will be the much higher social costs of reopening the Act itself.

The citizens of Alaska will be placed squarely in the path of years of bitter and divisive litigation, pitting Natives against the remainder of the populace, and often against themselves. It will all occur during the period in which we all realize that acrimony must be minimized, and new levels of cooperation and harmony achieved.

The State believes that Congress did not fail to make itself clear in the Settlement Act. Nonetheless, the decision which now stands inspires claims which dramatically distort and ignore the clarity of the original intent. The State raises this matter here as an issue of serious concern and urges the Committee and Congress to make an unmistakable reiteration of its intent to settle *all* claims and to foreclose years of litigation on this issue. The Settlement Act should be the final foundation block for Alaska's future, rather than the springboard for years of stress and disharmony.

On behalf of Governor Hammond, I thank you for your consideration of this matter, and the other comments of the State on this important legislation.

Mr. MARTIN. If I could, what I would like to do is review the first part of it and then deal with the second and third parts of it, which are approximately half, in a little greater detail.

Mr. MEEDS. Please proceed.

Mr. MARTIN. I am accompanied here by Mike Smith, who is director of public lands in the State of Alaska. I am here representing the Governor, and I am gratified and honored to be here in my present capacity in a committee, and even a room where I feel a special kinship. It is a pleasure to be here and work with you again under these circumstances.

The first portion of my testimony—

Mr. MEEDS. Let the Chair state that in all probability, there is no more knowledgeable person, no one who knew more about the Alaska Native Land Claims Settlement Act than the witness who is now testifying.

He was a very, very knowledgeable person, who worked very closely with us in his capacity with then Congressman Begich, and the Chair worked very closely with him, and was strongly influenced by his testimony.

Mr. MARTIN. Thank you, Mr. Chairman. I appreciate those kind words. I will rebut them in private later.

Mr. Chairman, the first part of the testimony essentially goes to a number of elements that are contained in the bill which is presently before this committee.

The State has taken that bill, it has looked at it carefully, and the bill has evolved over a period of time and has changed rather rapidly, and we believe we are now commenting on the final version.

I would call to your attention that our written statement stands by itself in terms of the philosophy that we wish to see carried out on these various positions, and takes positions on most of them.

We do support in some detail the extension of the life of the Commission. We believe it has been a vital cog in the work that has gone on in the State since the passage of the Land Claims Act, and later

today I will be speaking regarding a proposed formative agreement that is being worked on with the Cook Inlet Regional Corp. to resolve their land selection difficulties, and we think that the Commission's role and assistance toward forming that agreement has been absolutely vital.

So we strongly endorse that provision.

Further, we support, Mr. Chairman, the extension of the enrollment along the lines that are proposed in the bill we are discussing.

We further support the provision which places in escrow receipts from the lands withdrawn for regional and village selections. We think this provides a sound way of resolving existing difficulties.

We will be submitting a short document at some later time, with your permission, which addresses one technical problem the State may have with regard to the situation with respect to the land from which those revenues are derived.

We are not certain of the impact of that, and we will offer assistance to you on that matter.

Mr. MEEDS. That will be made a part of the file, when supplied.

Mr. MARTIN. Similarly, Mr. Chairman, the State strongly favors the provision which exempts individual benefits under the act with respect to the food stamp eligibility. We strongly support it.

On the matter of the Thirteenth Regional Corp., Mr. Chairman, the State takes no position. We do wish to note for you that we sense the importance of this issue very keenly, and we believe that it is important that you know that we are fully willing to cooperate with you and with this committee in reaching a settlement.

We do believe it is the responsibility of the Congress and this committee, as those who know this problem best, to resolve it.

As is often the case, and is going to be the case in our ensuing discussions with regard to the *Edwardsen* case, we believe a final solution in court is not going to be as sensitive or as full as the one that this committee could implement. So we stand ready to give you whatever assistance we can to make certain that enrollment figures, population figures, or any other community development information is provided for you, and we are willing to be of any assistance possible on that.

In addition, Mr. Chairman, we support the provision which allows the Federal Government to pay interest on the Alaska Native claim funds while moneys are being held, each quarter. The intent of Congress, it seems to us, would be to maximize the funds to the beneficiaries of the act.

Finally, Mr. Chairman, the State wishes to add its support to the provision regarding the provision regarding the merger of the corporations pursuant to the act. We do take the position that this act was not carved in stone. We take the position that the action that we took, and that I participated in along with yourself, was action based on the best knowledge and the political forces that were in existence at the time of the act.

There is no reason that we cannot learn to do these things better and to provide for a more workable and sensitive system under this act.

The State raises in its testimony a number of informational points and concerns that we call to the attention of this committee, and we only ask that those be considered, and that the committee consider the

village corporations would be those impacted by this provision, and are fully involved in the formation of the final merger provision.

We do note that the merger position goes to the heart of one of the most important aspects of the act, and that is the integrity of the village—it is one we feel strongly about, and after considering the points we raise, and after being assured that the villages are involved in this, the State supports this provision. It thinks it is a needed change.

The State is most aware of the problem in terms of difficulties in the NANA area, and we think there is a possibility that the problems with regard to the need for merger are spreading.

The next problem I would like to raise, Mr. Chairman, moving away from a number of amendments in the act, relates to the Settlement Act and the way it applies to Cook Inlet. We note in our testimony that we believe the Settlement Act has held up remarkably well in the years since passage, and I think the 92d Congress should be proud of the structure it established in that act.

In the case of the Cook Inlet region, there have been problems, however, that bear out the fact that—one that we recognized at the time—and that is the Settlement Act with an inflexible structure would do greater justice and work better in some areas than in others.

In one respect, the Cook Inlet region is very important in pointing out the inflexibility of the act. The problems they are having are the problems of a Native regional corporation in one respect. Their problems are associated with a regional corporation forced to make its land selections in an area high in non-Native population, covered with preexisting State and Federal withdrawals, and substantial private holdings.

The right that regions have to exercise appear to be equal, but are in reality not, because their ability to select is diminished.

There are also the problems of a Native region, Mr. Chairman, in that the alternative land available is not desirable to the Natives of Cook Inlet. It is foreign land, it is strange land, and it has no great value. As Andy Johnson has said on many occasions, he can get to Los Angeles easier than he can get to the land they are forced to select.

This, also, to the State is a problem of equity, and it is a problem of the sensitivity of the act to reach the solution desired.

The problems, we would hasten to add, are far more than the problems of a Native region. They are the problems of the people of the State, the people of Anchorage, and of the other municipalities that are affected, and there are problems that go far beyond the problems that the Natives are experiencing.

This situation is one which complicates and frustrates State and Federal land use planning, and it is one that reveals the Settlement Act in its most inflexible posture. At times, it has forced every party involved toward positions of maximum self-interest.

Cook Inlet has exercised virtually all the alternatives they have. Without elaborating, let me say that they have gained no relief. Without action here, as the State sees it, the region will be forced to select in areas—the region will be forced to select in areas they don't want, and to pick land which frustrates State and local planning.

They will select lands in private ownership, and detract from rather than increase the ability of the Anchorage Basin to develop sensibly.

Although there are competing land interests, there exists the opportunity for negotiation and compromise. To this end, I have offered the services of the Department of Natural Resources as an intermediary for the Cook Inlet Region, Anchorage and other municipalities, and the Federal agencies toward the goal of an agreement which will do, with the help of Congress, what the courts have failed to achieve within the narrow strictures of the Settlement Act.

Taking the larger view, intensive discussions have been recently held among many of those just mentioned, and the first outlines of a workable solution have been established.

The philosophy of the State in bringing this matter before you is that for any plan to work, it must be generally subscribed to by the region, the State, the Federal Government, and to the extent they are affected, the municipalities of the region. Such an agreement may well have rough edges and some minor dissent, but the basic package must be agreed upon. It is this agreement that the member from Alaska and this committee should scrutinize and deliberate upon.

Then, of course, you will apply your own judgment to the agreement that has been reached. We are simply saying to you today that we do not have that agreement in final form. We are enthusiastic about the opportunities to reach an agreement, and with the permission of the Chair we would briefly outline that.

I would suggest that either Mr. Smith could indicate the nature of it at this time, using the map, that we could submit it to you in writing, or that we could conduct this briefing this afternoon, pursuant to your own wishes.

Mr. MEEDS. How long will it take?

Mr. MARTIN. Just a couple of minutes.

He is not describing anything at this point that anyone has said, "Yes, yes, yes" to, but he is describing the shape of the agreement as it is forming now.

Mr. SMITH. Rather than go into details, as Mr. Martin has mentioned, I would like to leave some appreciation of the tremendously complex situation.

The psychedelic colors indicate areas—they indicate the various withdrawals that have been made pursuant to the Claims Settlement Act, and also show existing land tenure and status in the Cook Inlet region, which is outlined by the outer green line on the map.

We have the large metropolitan area here, and the yellow areas are withdrawals, the Moose Ranges and so forth.

Mr. MEEDS. Existing withdrawals?

Mr. SMITH. No. These are Federal withdrawals, the Moose Ranges.

Mr. MEEDS. Let's be careful in designating it.

Mr. SMITH. The areas not colored in are basically State lands. These are State-patented lands, or State-selected, or State tentatively approved lands.

The red areas represent the locations of the villages. They are basically surrounded by State lands pursuant to the Statehood Act.

This unavailability of land in the Cook Inlet Basin for the villages and for the region under the terms of the act has forced their selections into an area basically across and to the west of Cook Inlet.

These lands have been put up to allow for selection. These lands are not of similar character and are not located close to the areas they have historically known.

In terms of the act, the Villages have been located where you see the orange areas, and where it goes into the purple.

This includes the selection by four villages around this lake area at this location. The reason that approximately 60 townships would be required to select in areas surrounding the blue area, and they also have the option of selecting land up here, is that their interests have basically been in this area.

As was mentioned earlier by Mr. Martin, the selection by the region in this area coupled with the already-existing selections frustrate what we consider to be good land management principles, in attempting to take an area and split it up with the private corporate selection which would occur.

The region includes areas scattered throughout, primarily the better lowland areas. The agreement has almost come to fruition between the State and the Cook Inlet Region, Inc. would move the Natives into the Cook Inlet Basin, an area which has an existing population, government services, and transportation. It would give lands in trade, which are more adaptable and more amenable to development, which is basically the purpose of the act, to give the corporation some type of standing.

The State would give some of the lands basically west of Cook Inlet and some other scattered lands throughout would be in return for the selection rights of the Cook Inlet Region in the area, and with these rights after discussions with the Department of the Interior, the State would hope to select lands here, which would give a land use pattern which, with the final blessings of Congress during the (d)(2) discussions would in fact ultimately determine the highest and best use for these lands over here.

The portion of the agreement where we feel that the Federal Government, and particularly the Department of the Interior, is a necessary participant concerns areas within the Moose Range, which are substantially less than discussed with Cook Inlet. The State is coming in to offer some of their lands to make the possibility of—it is less of an alienation of Federal lands, so as to get this situation taken care of, because the State feels it is in a very difficult position.

That is much of the discussions to date we have had. I will be glad to answer any questions.

Mr. MEEDS. Let me compliment you on attempting to state this. I see that you have been very seriously engaged in it, and I will say what I guess you both know: I have indicated to the Department that I didn't want to get at this point involved in the factual situation, but I consider this to be one of the areas of congressional concern about the failure of the Alaska Native Land Claims Act, and that the Chair expects agreement to be reached with Cook Inlet before this bill is passed, because if it is not reached, then it will be legislated.

Mr. MARTIN. Mr. Chairman, thank you. Our objective at this time is, you know, to move toward that with all haste or, in the alternative, to be able to reach a conclusion at some point that it is not workable and be able to state to this committee how far we went and, you know, what information is available to you for your own determination.

We hope to be able to come to you, and we are working to come to you with an agreement.

Mr. Chairman, do you desire that I proceed at this time?

Mr. MEEDS. Why don't you proceed until we get a bell?

Mr. MARTIN. Mr. Chairman, we feel very strongly about this issue, as you do, and we are just very pleased that it has worked as well as it has so far, and we are confident that we will be able to resolve it.

The final issue that the State wishes to raise is one brought to the attention of the committee earlier by Senator Stevens. It was the case of *Edwardsen v. Morton*. Senator Stevens outlined the case, and stated that the decision in the case misconstrued the Settlement Act so extensively that one wondered if the settlement had taken place at all.

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In the State's testimony, I will not review that history, Mr. Chairman, for I believe that it has been covered fully, and that you share in the unique ability to understand the situation by virtue of your role in the settlement.

The State's testimony will emphasize the potential impact of the *Edwardsen* case on the State and its citizens, and indicate the threat that this case represents to the postsettlement harmony we believe that Congress intended.

Briefly stated, the *Edwardsen* decision holds that although the Settlement Act did resolve the matter of title to lands in Alaska, it did not resolve the issue of damages for trespass, prior to settlement, on any lands in Alaska subject to aboriginal title. To fully comprehend the implications of this finding, several points are necessary.

The conflict and overlap between such claims is extensive. The mere determination of who has the right to claim aboriginal title will be difficult. There are six groups or more sometimes.

I will be submitting for the record a map prepared by the Division of Land which shows the questions of the claims that were made of aboriginal title. All of the areas—not looking at the dots, but just at the shaded areas—represent areas on which claims have been filed. The dark areas where there is overlap are areas I have referred to in terms of the conflict of claims of title.

Once the matter of who has the right to claim title is decided, the issue will be whether or not this area claim is really subject to aboriginal title, and where the lines are to be drawn.

Judicial resolution of these issues, although seeking damages for trespass rather than title, will require exactly the same litigation which would have been necessary had the land claims never been settled.

What must be litigated in hundreds, or thousands, of cases is the matter of the validity and location of aboriginal titles, and where the lines are to be drawn, and further litigation to prove trespasses, and ultimately damages for those trespasses.

Also to be understood is the incredible number of potential defendants. They include every non-Native, whether a person, group, corporation or government entity, who entered the aboriginally-claimed 90 percent of Alaska's land or waters.

They include all Natives who conflict with one another over the ability to make such claims. The conflicts take innumerable configurations ranging from those between the Natives and the State, or municipalities, or private owners, to those simply between Natives.

The October 17, 1975 Stipulation in the *Edwardsen* case is the best indication of the shape of things to come pursuant to this case. That stipulation makes clear that the scope of trespassory conduct, the source of liability for defendants, is virtually limitless.

It includes utilization of the surface for air fields, buildings, roads, or other structures, taking of water, extraction of oil and gas, removal of sand and gravel, and a variety of other activities covering virtually every action which may have taken place on claimed land. There is no reason, in the State's view, that virtually every entry or use might ultimately be covered.

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Judge Gasch made clear when he said that, "Indeed, it is fair to say that the views of Congress on how the authorization for State selection of more than 100 million acres of land could be reconciled with preservation of Native possessory rights based on aboriginal title were so obscure as scarcely to rise to the dignity of intent."

In addition to the direct liabilities described thus far, there will be innumerable cases where defendants are derived indirectly. The work of major defendants, such as the oil industry, is often done by contractors, and the contract for such services typically includes a "hold harmless" clause. Suing the major defendant for trespass may result only in ultimate liability where the pocket is far from deep.

In the case of the State, there is at least the distressing possibility that, where an entry occurred on land patented or T.A.'ed under the Statehood Act, and the State authorized the entry by a permit, license or lease, the State could conceivably be liable for indemnification or contribution on any trespass damages made good. The burden on taxpayers would be intolerable.

The third point to be understood is the matter of damages, about which there is little to say except that the Gasch decision provides a structure for almost unlimited liability. Putting aside litigation costs, will be extraordinary, the damages could well go the value of processing products on claimed land. For canneries, the value of the 1960-70 period \$1.7 billion.

Mining production from claimed lands from 1940 to 1969 is worth well over \$1 billion. By the end of 1971, nearly 400 million barrels of oil had been produced and sold in Alaska, all from lands subject to claims. Under the decision by Judge Gasch, these could well be measures of damages.

The actual damages cases themselves will be incredibly complex, ranging from questions of injury to a hunting ground, to the measurement of damages due to increased populations in an area, to the question of whether the entire proceeds of a State of Federal oil and gas lease sale should be the measure of damages.

Mr. MEEDS. Why don't we recess at this point and plan to be back here at 1:30.

We will be in recess until 1:30 p.m.

[Whereupon, at 12:15 p.m., the subcommittee recessed, to reconvene at 1:30 p.m. of the same day.]

AFTER RECESS

[The subcommittee reconvened at 2:05 p.m., Hon. Lloyd Meeds, chairman of the subcommittee, presiding.]

Mr. MEEDS. The subcommittee will be in further session for taking of testimony on H.R. 6644.

Mr. Martin was testifying when we recessed for lunch and for votes. Would you please continue now, sir?

Mr. MARTIN. Thank you, Mr. Chairman.

I was in midstream testifying on the impact that the State feels is possible and probable from the *Edwardsen v. Morton* decision, and if I can reiterate briefly, or backtrack briefly, I want to make one point that I think may have been lost at the end. In describing the liability, I first described the path we thought the litigation would take, and described the potential defendants, and now I am trying to describe the kind of liability that would be found in this situation ultimately.

I want to make the case again that we believe there would be innumerable cases where defendants would be derived indirectly as opposed to directly, making the point that major defendants, whether they may be large industrial corporations, such as those in the oil industry, or possibly even the Government, often do their work through contractors.

In fact, most of the work in Alaska in past years covered by this action would have been covered by contractors, and in a great number of these contracts there is a hold-harmless clause which would result in the fact that the suit against the major defendants may result in passing of liability to the subcontractors.

In the case of the State, there is a distressing possibility that the State could conceivably be liable under the legal principles of contribution or indemnification on any trespass damages made good.

I then went on briefly to deal with the matter of the damages themselves, and cited some statistics which could well be the measure of the damages, though it is unclear from the decision what would be the measure.

But it seems to us on the basis of present law that there is every reason to believe the cost of things removed from these lands, once the assumptions of the decision are accepted, is going to be possibly a legitimate source of damages.

There is nothing in the Gasch decision to indicate that is not the cause, or in the stipulations. The cases regarding damages will be incredibly complex, ranging from injury on hunting grounds, and damages resulting from increased population in areas, and with respect to oil and gas lease sales.

From the perspective of the State of Alaska, the *Edwardsen* case simply undoes a substantial part of the Settlement Act. The act was carefully designed to settle "all claims by Natives and Native groups of Alaska, based on aboriginal land claims" and to do so without litigation. That is the Settlement Act, sections 2(a) and 2(b).

Now, with the decision before us, the logical extensions of the decision readily being apparent, the State foresees a virtual avalanche of lawsuits running to thousands of potential defendants, stretching out over the next several decades of Alaskan history. Ironically, these lawsuits, with the exception that damages rather than title are the objective, are virtually the same lawsuits that would have been filed had Congress failed to pass the Settlement Act.

For the State, the practical impacts of such litigation are ominous, should Congress not now act to reconfirm its original intention.

I might call attention here, Mr. Chairman, to a report of which I am only aware, and cannot make available to you, which was filed, I think, only today, or yesterday, with the Department of the Interior pursuant to its investigation of such trespasses pursuant to the stipulations they did in the case.

That contract covered the Arctic Slope. It went to the various varieties of trespass which were going to be covered by actions which Interior will bring.

It was a 3-month investigation. It covered roads and trails, well sites, geophysical information, gravel removal, temporary and permanent plants, public land law entries of all kinds, and a wide variety of miscellaneous topics.

That report is presently on its way, or has been received by the Department. I would say the committee might be interested in getting it, and my own information is that it makes very clear the multitude of actions that are going to be mandatory to Interior under this decision.

The most grievous wound, so far as the State is concerned, is that the period of stability for which it has long yearned will have not yet arrived. After the Settlement Act, and because of the Settlement Act, the State felt that it was on the threshold of a period when landowner-ship would be defined, management could be established, and sound mutual planning for the future of Alaska could proceed.

Two aspects of the State's testimony today have gone to this very opportunity, manifested by the work of the Land-Use Planning Commission, the Cooperative State-Cook Inlet Region efforts to seek a fair and just solution to a complex, but real, problem.

In light of the *Edwardsen* decision, this opportunity may well be lost, and the processes of mutual planning will have to stop as the energies of the State, and all others involved, are diverted to the litigation of aboriginal title, matters of trespass, and establishment of damages.

There is little question that the staff and monetary resources of the State would be largely consumed by such a task, and we believe that

similar pressures would impair the ability of the Interior Department, the Land-Use Planning Commission, and much of the private talent in the State to be brought to bear on the crucial issues in Alaska's future.

Land-use planning, joint management structures, the 17(d)(2) proposals, State land classification and selection, the search for new energy and mineral resources, State-municipal planning, and other items on the common agenda of Alaskans would all be victimized by the diversion of resources to the litigation that we believe Congress intended should never occur. It will be a bonanza for lawyers, costly for the people, and in virtual defiance, in our opinion, of one of the principal objectives of the Settlement Act.

The costs of the litigation will be high in other ways as well. In addition to any ultimate damages and legal costs, some borne by individuals, some by businesses, and much by the taxpayers, there will be the much higher social costs of reopening the act itself.

The citizens of Alaska will be placed squarely in the path of years of bitter and divisive litigation, pitting Natives against the remainder of the populace, and often against themselves. It will all occur during the period in which we all realize the acrimony must be minimized, and new levels of cooperation and harmony achieved.

The State believes that Congress did not fail to make itself clear in the Settlement Act. Nonetheless, the decision which now stands inspires claims which dramatically distort and ignore the clarity of the original intent. The State raises this matter here as an issue of serious concern and urges the committee and Congress to make an unmistakable reiteration of its intent to settle all claims and to foreclose years of litigation on this issue. The Settlement Act should be the final foundation block for Alaska's future, rather than the springboard for years of stress and disharmony.

On behalf of Governor Hammond, I thank you for your consideration of this matter, and the other comments of the State on this important legislation.

Thank you, Mr. Chairman.

Mr. MEEDS. Thank you very much, Mr. Martin.

So that we don't lose perspective here, it is not true that the court required that the Indians, or Eskimos, or Aleuts be disturbed in their occupancy by some kind of trespass, by some kind of action that was unauthorized by the Congress, so that anything that came under the sweep of authorization of the Congress would not be a prohibited act, and therefore not a trespass?

So we are not talking about DEW line and a lot of roads and airports and things like that. I know it is a very serious question. I don't mean to minimize it, but it seems to me that in a legal sense you have a good enough case without painting a picture of absolute catastrophe, if you don't mind my saying so.

Mr. MARTIN. May I respond, Mr. Chairman?

Mr. MEEDS. Please do.

Mr. MARTIN. I do not agree with that analysis, and I believe that Judge Gasch does not, either.

Judge Gasch finds that claims for trespass on lands that were claimed for aboriginal title were not extinguished by the Settlement Act.

He further finds that with regard—or the implication of his finding, I should say, in this case—with regard to how aboriginal title was treated, and let's take the Federal Government for an example: It is clear that if Congress desires to extinguish aboriginal title, it clearly has the plenary power to do so.

Mr. MEEDS. No question.

Mr. MARTIN. Judge Gasch in my view leaves wide open the question of whether or not Congress has done so in the case of entry I indicated in my testimony; that is, Pet 4 and all the rest of the Federal entries.

Congress, having that power, must exercise it clearly.

Mr. MEEDS. Didn't Congress exercise that right in 1929 or 1928, with respect to Pet 4?

Mr. MARTIN. It must specifically extinguish the aboriginal claim, and I suggest that in almost every proceeding that the Federal Government carried on across these lands, there was not a Federal extinguishment, and I would like to go back and look at them individually, but to my knowledge in no case was the extinguishment made.

So you would have to fly in the face of years of Indian law, which indicates that that extinguishment must be specific.

As I say, I cannot make that statement with regard to every single Federal entry, but certainly with respect to most of them.

Mr. MEEDS. I am reading from the memorandum and report of Judge Gasch, page 57, where it says:

If plaintiffs were in fact disturbed in their use and occupancy by trespassers, that is, any parties coming onto the land except those entering under congressional authorization, then there would be a cause of action against trespassers, and Federal officers authorizing such trespassers.

Mr. MARTIN. I am suggesting that the key words there are "congressional authorization," and I think he is addressing those words to the line of cases that indicates that authorizations to extinguishment of aboriginal title, and would agree with your argument so long as the congressional authorization is specific in its extinguishment of title only.

That is—let me give you an indication of why I take that position, Mr. Chairman.

In the case of the Statehood Act, he finds that all of the conveyances to the State are void, but ratified by the Statehood Act.

Now, one would think that the Statehood Act is an authorization of Congress to select lands and give title. Judge Gasch does not find that to be a fact. He finds that those were void, and I would suggest that that is the same reasoning that he would use with regard to those Federal lands.

Mr. MEEDS. Does he find all of those were void, or just the specific ones that were before him for decision? Does he specifically find there was no authorization?

Mr. MARTIN. I don't think he reaches the second decision. He is only dealing with the lands before him in terms of the *Edwardsen* case, but he finds those are void as long as they are on lands on which aboriginal title can be asserted and the claim made good.

Mr. MEEDS. Well, it is a very interesting and also very important matter, and the committee does not intend to treat it lightly. We appreciate very much your testimony.

Mr. Oliver Leavitt, treasurer, Arctic Slope Native Corp., accompanied by Mr. Yale Lewis, attorney.

**STATEMENT OF OLIVER LEAVITT, TREASURER, ARCTIC SLOPE
NATIVE CORP., ACCOMPANIED BY O. YALE LEWIS, ATTORNEY**

Mr. MEEDS. Mr. Leavitt, do you have a prepared statement?

Mr. LEAVITT. Mr. Chairman, at this time we do not have a prepared written statement, except a few comments, and we would like to request that the record be kept open so that we may submit a written statement.

Mr. MEEDS. Without objection, the record will be kept open for 2 weeks, during which time we will expect to receive your statement, and it will be inserted at this point in the record when it is received.
[Statement follows:]

**STATEMENT ON BEHALF OF THE INUPIAT COMMUNITY OF THE ARCTIC SLOPE,
THE ARCTIC SLOPE REGIONAL CORPORATION, AND THE ARCTIC SLOPE NATIVE
ASSOCIATION BY O. YALE LEWIS, JR. OF DAVIS, WRIGHT, TODD, RIESE &
JONES**

Testimony before this Subcommittee on May 13, 1975,¹ proposed an amendment to the Alaska Native Claims Settlement Act of 1971 for the purposes of (1) extinguishing Native trespass claims which accrued prior to the Act, and (2) overruling a decision by the United States District Court for the District of Columbia which held that the Settlement Act did not, and constitutionally could not, extinguish trespass claims of Arctic Slope Eskimos which had accrued prior to the extinguishment of their aboriginal title on December 18, 1971. See *Edwardsen v. Morton*, 369 F. Supp. 1359, 1378-79 (D.D.C. 1973). This statement opposes the suggested amendment.

The principal beneficiaries of this trespass claims extinguishment amendment would be certain large companies who, in the late 1950's and throughout the 1960's, repeatedly entered the Arctic Slope of Alaska in search of oil and gas without the consent of the Arctic Slope Eskimos, who held aboriginal title to that land. By trespassing upon the Arctic Slope prior to extinguishment of the Eskimos' aboriginal title to that land, those companies knowingly incurred liability for trespass. Extinguishment of that liability would result in an unwarranted windfall to the trespassing companies. It would make a sham of belated efforts by the Departments of Interior and Justice to fulfill the United States' fiduciary duty to Native Americans. It would endanger the constitutionality of the Alaska Native Claims Settlement Act of 1971. And it would pose a severe and unwarranted challenge to the independence of the federal judiciary

SUMMARY

Congress, according to the Supreme Court, may, without judicial review, determine compensation for the *prospective* extinguishment of unrecognized Indian title to land. Prior to congressional extinguishment of Indian title, any unconsented third-party entry to aboriginal land gives rise to a trespass claim that is protected by the Fifth Amendment to the United States Constitution.

The right of Indians to be protected against third-party trespass to aboriginal lands is not dependent upon treaties, legislation or executive decrees. Violation of this right by third parties gives rise to a cause of action for trespass just as if the lands were held in fee simple.

Prior to passage of the Settlement Act on December 18, 1971, the exclusive use and occupancy of their aboriginal lands was guaranteed to Arctic Slope Eskimos by the United States. Until that date Arctic Slope Eskimos were constitutionally entitled to all of the rents, profit, and issue from those lands, which included all of the Arctic Slope of Alaska.

¹ Statements by the Honorable Ted Stevens, United States Senator for Alaska, and Mr. Guy Martin, Commissioner of Natural Resources, State of Alaska, before the Indian Affairs Subcommittee of the House Interior and Insular Affairs Committee (May 13, 1975).

In the late 1950s and throughout the 1960s, certain oil companies, in concert with each other and with certain geophysical and construction companies, repeatedly entered the Arctic Slope of Alaska in search of oil and gas without the consent of Arctic Slope Eskimos. By entering the aboriginal lands of Arctic Slope Eskimos without their consent prior to congressional extinguishment of aboriginal land title, those companies incurred liability for trespass. This liability was deliberately risked by certain companies to get a headstart in the development of Arctic Slope oil fields.

That gamble was wildly successful. Those companies now possess exclusive leases to one of the most valuable oil fields in the entire United States.

In October of 1971, the Arctic Slope Eskimos filed suit in the United States District Court for the District of Columbia alleging aboriginal title to the entire Arctic Slope and asking, *inter alia*, for injunctive relief against third-party invasions of their aboriginal lands.

In April of 1973, the Honorable Oliver Gasch, in a thoughtful analysis of the Alaska Native Claims Settlement Act, held, *inter alia*, that: (1) The Act settled Native land claims against the United States by according the Alaska Natives 40 million acres of land in fee simple and a cash award as compensation for extinguishment of their title and claims to lands used and occupied by them in the State of Alaska; (2) the Act removed all cloud on land title in Alaska that might arise from claims of Indian title or aboriginal use and occupancy; (3) the Act, with certain minor exceptions, transferred to the State of Alaska all land on the Arctic Slope that had been patented to the State of Alaska, tentatively approved for transfer to the State of Alaska, or selected for transfer to the State of Alaska under the Alaska Statehood Act; and (4) the Settlement Act did not, and could not constitutionally, extinguish trespass claims of Arctic Slope Eskimos against third parties who, prior to December 18, 1971, entered any part of the Arctic Slope to which the Eskimos could establish aboriginal title.

In August of 1974, the United States Government, in recognition of its trust responsibility to Arctic Slope Eskimos, legally bound itself in a stipulation, filed with the United States District Court for the District of Columbia, to institute trespass actions to recover damages for any identifiable trespass to lands on the Arctic Slope of Alaska to which the Arctic Slope Eskimos had aboriginal title prior to December 18, 1971.

Now in May of 1975, on the basis of unsupported allegations of dire consequences, the United States Congress is being urged to enlarge the scope of the Settlement Act to include extinguishment of Native trespass claims against private third parties which occurred prior to the passage of the Settlement Act. The principal, and thus far the only substantiated, beneficiaries of such an amendment would be those certain large companies who have already reaped enormous benefits from those very trespasses.

The trespassing companies have chosen not to participate directly in the judicial proceedings they now ask Congress to extinguish. They have never attempted to negotiate a settlement with the Arctic Slope people. Instead, under the rhetoric of "public interest" and concern for "Alaska Natives," "homesteaders" and "students," it is proposed that Congress insulate those companies from the foreseeable legal consequences of their illegal trespasses.

The constitutional, moral, and political implications of this proposal are momentous. The proposed legislation would: (1) Create serious constitutional infirmities in all or portions of the Settlement Act as originally enacted; (2) make a sham of belated efforts by the Departments of Interior and Justice to fulfill the United States' fiduciary duty to Native Americans; (3) intentionally relieve certain large oil companies from trespass liability they knowingly assumed to get a headstart in the development of Arctic Slope oil fields; and (4) threaten the independence of the federal judiciary and the separation of powers among the legislative, executive, and judicial branches of the United States Government.

After a short summary of relevant Indian title law (Part I) and a review of the Settlement Act's legislative history to show that Section 4 of that Act did not extinguish Native trespass claims that accrued prior to December 18, 1971 (Part II), each of these consequences will be analyzed in turn (Part III).

I. INDIAN CLAIMS FOR TRESPASS TO LANDS HELD UNDER ABORIGINAL TITLE ARE PROTECTED BY THE FIFTH AMENDMENT

The right to exclusive use and occupancy of aboriginal lands has been guaranteed to Native Americans throughout American history.

"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." *Cramer v. United States*, 261 US 219, 227, 67 L ed 622, 625, 43 S Ct 342. This policy was first recognized in *Johnson v. McIntosh*, 8 Wheat. (US) 543, 5 L ed 681, and has been repeatedly reaffirmed. *Worcester v. Georgia*, 6 Pet. (US) 515, 8 L ed 483; *Mitchel v. United States*, 9 Pet. (US) 711, 1 L ed 283; *Chouteau v. Malony*, 16 How. (US) 203, 14 L ed 905; *Holden v. Joy*, 17 Wall. (US) 211, 21 L ed 523; *Buttz v. Northern P. R. Co.* 119 US 55, 30 L ed 330, 7 S Ct 100 supra; *United States v. Shoshone Tribe*, 304 US 111, 82 L ed 1213, 58 S Ct 794. As stated in *Mitchel v. United States*, supra (9 Pet. (US) 746, 9 L ed 296), Indian "right of occupancy is considered as sacred as the fee simple of the whites."

United States v. Santa Fe Pacific R.R. Co., 314 U.S. 339, 345 (1941).

In *Santa Fe* a unanimous Supreme Court held that an 1866 land grant to a railroad did not extinguish possessory rights of the Walapai Tribe to their aboriginal lands because Congress had not expressly extinguished the Walapais' possessory rights in 1866. 314 U.S. at 347, 358. Because the railroad's use of the Walapais' lands was therefore illegal, the railroad was ordered in 1941 to account to the United States, as guardian for the Tribe, for all rents and profits derived from lands used and occupied by the Walapais before their aboriginal title was extinguished.

Santa Fe firmly established three important rules for the protection of Indian aboriginal lands against trespass: (1) the exclusive possessory rights of Indians against third parties are not dependent upon treaties, congressional legislation, or executive decrees, 314 U.S. at 347; (2) these rights are extinguishable only by clear and unambiguous congressional language and cannot be affected by administrative action alone, 314 U.S. at 355-356, 360; and (3) third parties who enter lands held by Native Americans under unextinguished aboriginal title do so at their economic peril and cannot rely upon any type of federal patent or administrative action to avoid the consequences thereof, 314 U.S. at 360.

In 1955 the Supreme Court decided that Congress, without judicial review, may determine compensation for the prospective extinguishment of unrecognized aboriginal land title. *Tee-Hit-Ton Indians v. United States*, 348 U.S. 272 (1955). That decision also reaffirmed the principle that until extinguished by Congress, Native Americans have a possessory right of occupancy to their aboriginal lands that the United States "grants and protects against intrusion by third parties." 348 U.S. at 279.

In *Oneida Indian Nation v. County of Oneida*, 414 U.S. 661 (1974), the Supreme Court, at page 667, held that aboriginal title is "good against all but the sovereign [and] could be terminated only by sovereign act." Subsequently, at pages 668 and 669, the Court quoted with approval the statements in *United States v. Santa Fe Pacific R.R. Co.*, supra, and *Mitchel v. United States*, supra, that the Indian right of use and occupancy "is considered as sacred as the fee simple of the whites."

In more traditional real property terms, the nature of the property rights of the Arctic Slope Eskimos prior to the Settlement Act can be analogized to a "defeasible fee simple." Until the defeasing contingency—congressional extinguishment of the Eskimos' aboriginal title—actually occurred, they were entitled to all of the rents, profits, and issue of their aboriginal lands. See, e.g., *United States v. Shoshone Tribe*, 304 U.S. 111, 116-118 (1938). Arctic Slope Eskimos were also entitled to recover a full measure of damages from any party who entered their lands without their permission. *United States v. Santa Fe Pacific R.R. Co.*, supra at 360.

Accrued causes of action, including trespass claims, are property rights fully protected by the Fifth Amendment to the United States Constitution. See, e.g., *Regional Rail Reorganization Act Cases*, — U.S. —, 42 L. Ed. 2d 320 (1974) (creditor claims against bankrupt railroads are protected by the Fifth Amendment against both "erosion" and "conveyance" "takings"); *Affiliated Ute Citizens v. United States*, 406 U.S. 128 (1972) ("unadjudicated and unliquidated claims" of Ute Indians are "assets"); *Lynch v. United States*, 292 U.S. 571 (1934) (statute that effected an unconstitutional taking could not constitutionally be construed to withdraw a cause of action created by an earlier statute); and *Eltor v. Tacoma*, 228 U.S. 148 (1913) (claims for compensation which accrued while a statute was in force must be subsequently paid even though such claims were unadjudicated at the time the act creating the right was repealed).

In summary, Congress, pursuant to *Tee-Hit-Ton*, *supra*, may, without judicial review, determine compensation for the prospective extinguishment of unrecognized aboriginal title. The United States *does not* guarantee *rights of perpetual ownership* to Natives occupying lands held under unrecognized aboriginal title. No cause of action arises when that *title* is extinguished because guaranteed property is not being taken.

Congress may not, however, extinguish accrued trespass claims against third parties for unconsented entry to aboriginal lands without payment of compensation by the United States. The United States *does* guarantee *rights of exclusive use and occupancy* to Natives occupying lands held under unrecognized aboriginal title. A cause of action in trespass arises when those rights are violated just as a cause of action in trespass arises when quiet enjoyment of a fee simple is violated. Both are causes of action based on a right guaranteed by the Sovereign. Both are protected by the Fifth Amendment.

II. THE SETTLEMENT ACT OF DECEMBER 18, 1971, DID NOT EXTINGUISH ACCRUED TRESPASS CLAIMS OF ARCTIC SLOPE ESKIMOS

Recent testimony before this Committee has asserted that the Alaska Native Claims Settlement Act itself, by the language of Section 4(c), extinguished the then accrued trespass claims of Alaska Natives. Although this view may derive some support from a casual reading of Section 4(c), it is not supported by the actual language of the Settlement Act; it is inconsistent with the legislative history of the Settlement Act; and, if true, it threatens the constitutionality of the Settlement Act as originally enacted, or portions thereof. Moreover, this interpretation of Section 4(c) has already been rejected, decisively, by the United States District Court for the District of Columbia in *Edwardsen v. Morton*, 369 F. Supp. 1359 (D.D.C. 1973).

In 1972 the United States moved for summary dismissal of *Edwardsen* on the ground, *inter alia*, that Section 4(c) of the Settlement Act had extinguished pre-Settlement Act trespass claims. On April 19, 1973, in an extensive and careful analysis of the Settlement Act, the Honorable Oliver Gasch, United States District Judge for the District of Columbia, held that:

Congress could constitutionally, and did in effect, give the State good title to land tentatively approved before the Settlement Act for patent to the State. It did this by removing the only impediment to the validity of the approvals rather than by making a new conveyance of title. In doing this, Congress fully intended that there should be no further "cloud" on land titles in Alaska stemming from aboriginal land claims, and that legal challenges to title based on such claims should be barred. For these reasons, and because no genuine issues of material fact exist in this matter, judgment should be entered in favor of defendants on all of plaintiffs' claims which, if successful, would result in the cancellation of patents or tentative approvals of State selections made under Section 6 of the Statehood Act or in the cancellation of leases and sales executed by the State pursuant to Section 6(g) of the Act. Because the Settlement Act extinguishes all aboriginal title in Alaskan lands, summary judgment in favor of defendants is appropriate also on those claims which, if successful, would result in an order enjoining the future issuance by the Secretary of Interior of patents, leases, permits, or licenses on Arctic Slope lands.

Plaintiffs' claims, however, for relief to compensate for alleged pre-Settlement Act trespasses stand on a different footing. As explained earlier, until their possessory rights based on use and occupancy were extinguished by Congress, plaintiffs had a right to be protected by the sovereign against third-party intrusions. *Tee-Hit-Ton Indians*, 348 U.S. at 279, 75 S.Ct. 313. If plaintiffs were in fact disturbed in their use and occupancy by trespassers, i.e., by any parties coming onto the land except for those entering under Congressional authorization, then there accrued a cause of action in tort against the trespassers and a cause of action for trespass and for breach of fiduciary duty against federal officers authorizing such trespasses.

It is not at all clear that the Settlement Act bars litigation of plaintiffs' claims relating to the alleged trespasses even though they are linked to claims of aboriginal title. Section 4(c) might at first blush appear to bar such litigation since it states that "All claims against the United States, the State, and all other persons that are based on claims of aboriginal right, title, use, or occupancy of land or water areas in Alaska . . . are hereby extinguished." However, Senate Report No. 92-405, explaining similar language in S. 35 states that "all claims which are

based Indian title land" remain in effect (emphasis added). Included in these unextinguished claims, the Report explains, are "suits for an accounting for funds belonging to Natives or Native groups in the custody of the United States, *for tort or breach of contract, and for violations of the fair and honorable dealings clause of the Indian Claims Commission Act*" (emphasis added).

In any event, a construction of Section 4 to bar claims relating to pre-Settlement Act trespasses would appear to create constitutional infirmities in the Act which are better avoided if a constitutionally sound construction does not violate clearly expressed legislative intent. [Citations omitted.] For the Supreme Court did not hold in *Tee-Hit-Ton* that claims to compensation for third-party trespasses, occurring as a result of the breach of a federal duty of protection owed the Natives, could be extinguished by the sovereign without satisfying Fifth Amendment requirements. Such claims would be grounded not on ownership of land, but on rights to be protected by the federal government against unauthorized intrusions and rights to due process. Plaintiffs are entirely correct in their contention that insofar as these claims represent *accrued* causes of action for trespass and breach of fiduciary duty, they are vested property rights protected by the Fifth Amendment.

369 F. Supp. at 1378-79 [citations omitted].

Judge Gasch's decision is supported by the legislative history of the Settlement Act. As he noted, Senate Report No. 92-405, explaining language in S. 35 similar to that ultimately incorporated in the Settlement Act, specifically excludes tort claims, such as those for trespass, from the extinguishment provision of Section 4:

Remaining in effect and *unextinguished* by this Act are *all claims* which are based upon grounds *other than the loss of original Indian title land*. Included in such *unextinguished claims* are suits for an accounting for funds belonging to Natives or Native groups in the custody of the United States, *for tort or breach of contract, and for violations of the fair and honorable dealings clause of the Indian Claims Commission Act*.

S. Rep. No. 92-405, 92d Cong., 1st Sess. 110-11 (1971) (emphasis added). Nowhere in the entire lengthy legislative history of the Settlement Act is there any statement contrary to the Senate Report. No committee report, senator or representative stated that it was Congress's intention to extinguish accrued tort or trespass claims of Alaska Natives.

Senator Stevens referred to two statements which, taken out of context, might appear to suggest that Mr. Justice Goldberg, attorney for one group of Alaska Natives, contemplated that the Settlement Act would extinguish more than aboriginal title. However, when those statements are viewed in the context of the hearings at which they arose, it is clear that Justice Goldberg was not referring to tort or trespass claims but only to aboriginal hunting and fishing rights, which are part and parcel of aboriginal title.

The first statement occurred during the Senate hearings on S. 1830 when Justice Goldberg stated that the Natives had agreed to the extinguishment of "anything that is based upon aboriginal title." *Hearings on S. 1830* at 301. This statement, however, was made in response to a specific question from Senator Stevens regarding fishing rights. Justice Goldberg simply stated his agreement with Senator Stevens that fishing rights based on aboriginal title would be prospectively extinguished by the Settlement Act. In fact, just prior to the colloquy with Senator Stevens, Justice Goldberg had agreed with Senator Metcalf that a tort claim would not be extinguished by the Act. See *Hearings* at 300.

The other statement by Justice Goldberg, susceptible to misinterpretation out of context, appears on page 267 of the *Hearings Before the Subcomm. on Indian Affairs of the Comm. on Interior and Insular Affairs, on H. R. No. 11213, H. R. No. 15049, and H. R. No. 17129*, 91st Cong., 1st Sess. (1969). Those remarks were made in the context of an answer to the following question: Would extinguishment of aboriginal title claims against the United States also extinguish potential claims of *ownership to lands* already transferred to the State of Alaska or to third parties? Justice Goldberg answered that it would. In other words, Justice Goldberg agreed that the extinguishment on December 18, 1971, of aboriginal claims against the United States would prevent any challenge to the *ownership* of lands possessed by the State of Alaska or private third parties which were acquired from the United States prior to December 18, 1971.

Nowhere did Justice Goldberg agree that the Settlement Act would extinguish tort or trespass claims.

The most accurate reflection in the legislative history of Justice Goldberg's views on this issue is his statement to Congressman Pollack, during a colloquy on

aboriginal title claims, that "I would not want to extinguish a claim that I do not know anything about that is of a different character." *House Hearings, supra* at 267. The trespass claims asserted in *Edwardsen*, which was filed more than two years after the testimony of Justice Goldberg, fall into this category.

When *Edwardsen v. Morton* was filed on October 11, 1971, Congress, as is evidenced by the following statement, viewed the case as a challenge to Alaska's title to lands on the Arctic Slope:

In addition, litigation has in recent weeks been initiated by the Arctic North Slope Native Association against the State of Alaska over the title to Prudhoe Bay.

S. Rep. 92-405, 92d Cong., 1st Sess. 98 (1971) (emphasis added). The resultant cloud on Alaska's title was what Congress wished to remove. Section 4 of the Settlement Act was designed to extinguish all land claims based on aboriginal title, including those then perceived by Congress as being asserted in *Edwardsen*. According to Judge Gasch, Section 4 of the Settlement Act *did* accomplish that purpose.

Edwardsen, however, was more than a challenge to the State of Alaska's title to certain lands; the suit also seeks relief for trespasses which occurred prior to the extinguishment of aboriginal title by the Settlement Act. This aspect of *Edwardsen* was never addressed by Congress, and no language appears in the Settlement Act or its legislative history which even discusses the trespass claims raised by *Edwardsen*.

Page 5 of the written statement of Senator Stevens before this Committee asserts that two courts have construed the Settlement Act "as extinguishing all claims, including trespass, based on aboriginal title." The first of these cases, *Aleut Community v. United States*, 202 Ct. Cl. 182, 480 F.2d 831 (1973), did not involve any claims of trespass, and the Court of Claims did not hold that trespass claims were extinguished by the Act. The court cited, without disapproval, the holding of Judge Gasch in *Edwardsen* that "the 1971 Act does not extinguish claims for trespass by third parties before 1971 upon land held by aboriginal title." 480 F.2d at 838.

The other case, *Native Village of Gambell v. United States*, 27 Ind. Cl. Comm. 140 (1972), did not involve trespass claims either. In the words of the Indian Claims Commission, it presented a "claim for land and water based on aboriginal use and occupancy."

Even if the scope of Section 4 of the Settlement Act were ambiguous, federal courts, as noted by Judge Gasch, would be required to hold that trespass claims were not extinguished by it. The destruction of vested rights by implication or ambiguity is not favored and will not be allowed by a court unless the implication is so clear as to be equivalent to an express declaration. *Osborne v. Nicholson*, 80 U.S. (13 Wall.) 654 (1872).

Similarly, a taking is unconstitutional if, at the time of taking, there is not a "reasonable, certain and adequate provision for obtaining compensation." *Cherokee Nation v. Southern Kansas R. Co.*, 135 U.S. 641, 659 (1890), *quoted with approval in Regional Rail Reorganization Act Cases*, ____ U.S. ____, 42 L. Ed. 2d 320, 343 (1974). In such a situation "[W]hen one admissible construction will preserve a statute from unconstitutionality and another will condemn it, the former is favored even if language, . . . and arguably the legislative history points somewhat more strongly in another way." [Citation omitted.] *Regional Rail Reorganization Act Cases, supra* at 348.

Thus, the argument that Section 4 extinguished accrued trespass claims is not supported by the official legislative history of the Settlement Act. It is precluded, moreover, by the constitutional requirements that property cannot be taken by implication and without a reasonable, certain and adequate provision for obtaining compensation.

III. CONSEQUENCES OF A TRESPASS CLAIM EXTINGUISHMENT AMENDMENT

A "trespass claims extinguishment" amendment to the Alaska Native Claims Settlement Act would have profound constitutional, moral, and political consequences for the American people.

A. Such an Amendment Might Create Constitutional Infirmities in All or Portions of the Settlement Act.

A key provision of the Settlement Act was Section 4, which, as originally enacted, extinguished all aboriginal title and claims of aboriginal title to lands in Alaska. Although that extinguishment involved the taking of land title from

Alaska Natives, no constitutional question has arisen because the taking of unrecognized aboriginal title has been held to be not protected by the Fifth Amendment. *Tee-Hit-Ton Indians v. United States*, 348 U.S. 272 (1955). Pursuant to that decision, Congress, without judicial review, could constitutionally determine the compensation to be awarded by the Settlement Act for the extinguishment of aboriginal title and claims. Similarly, because Section 4 of the Settlement Act as originally enacted did not affect accrued trespass claims, no judicial review was required to determine just compensation for their extinguishment. If the Act were now to be amended to extinguish accrued trespass claims, it would automatically become subject to full judicial review and the very real possibility of a ruling that the Act, or portions of it, are unconstitutional.

The legislature may determine what private property is needed for public purposes—that is a question of a political and legislative character; but when the taking has been ordered, then the question of compensation is judicial.

Monongahela Navigation Co. v. United States, 148 U.S. 312, 327 (1893).

As set forth in Part I of this Statement and as recognized by Judge Gasch in *Edwardsen v. Morton*, accrued claims for trespass to lands held under unextinguished aboriginal title are vested property rights within the meaning of the Fifth Amendment. As such, the Fifth Amendment provides that they may only be taken “for public use” and with “just compensation.”

The only apparent consequence of the proposed legislation would be to relieve certain private parties from liability for their willful trespasses on the Arctic Slope of Alaska. See Part II(C) *infra*. That would not be a taking for a “public use.” It would be a taking of property for the benefit of private tortfeasors. A taking for private use is constitutionally impermissible. *Swan Lake Hunting Club v. United States*, 381 F. 2d 238, 241 (5th Cir. 1967) *citing* *O'Neill v. Leamer*, 239 U.S. 244 (1915).

Even if a present taking of Native trespass claims were construed to be for a “public use,” the amended Act would still be unconstitutional if there were no “reasonable, certain and adequate provisions for obtaining compensation” for the taking. *Cherokee Nation v. Southern Kansas Railroad Co.*, 135 U.S. 641, 659 (1890). An unconstitutional amendment to Section 4 could invalidate the entire Settlement Act or just Section 4, leaving the extinguishment of aboriginal title to another Congress. The amended Section 4 might be unconstitutional only insofar as it purports to extinguish the aboriginal title of parties with accrued trespass claims. It is certain, however, that legislation by the 94th Congress extinguishing trespass claims in 1975 on the theory that compensation had been paid by the 92nd Congress in 1971 when it extinguished land claims would create a constitutional knot of Gordian complexity. A likely victim of the resulting constitutional unraveling could be the Settlement Act itself.

B. A Trespass Claims Extinguishment Amendment Would Make a Sham of Fledgling Efforts by the Departments of Interior and Justice to Fulfill the United States' Fiduciary Duty to Native Americans.

The United States stands in a fiduciary relationship to Native Americans.

Courts have repeatedly underscored the responsibilities that inhere in such a relationship. The Supreme Court has stated that the trust responsibility of the United States to Indians entails “moral obligations of the highest responsibility and trust.” *Seminole Nation v. United States*, 316 U.S. 286, 297 (1942). The United States is “bound by every moral and equitable consideration to discharge its trust with good faith and fairness.” *United States v. Payne*, 264 U.S. 446, 448 (1924). The Court of Claims has held that the government must adhere to “the most exacting fiduciary standards,” *Navajo Tribe v. United States*, 364 F.2d 320 (Ct. Cl. 1966), and that federal officials are obliged to observe the same principles of law “as would be applied to an ordinary fiduciary.” *Menominee Tribe v. United States*, 101 Ct. Cl. 10 (1944). *Accord*, *United States v. Masor*, 412 U.S. 391, 398, 37 L. Ed. 2d 22, 27 (1973).

Each branch of the United States Government is essential to the proper discharge of the fiduciary duty of the federal government to Native Americans. In recognition of its responsibilities, Congress, in 1972, extended for five years the period in which the United States could file tort claims against third parties who have interfered with the property rights of Native Americans. See 86 Stat. 803 (1972), amending 28 U.S.C. § 2415.

Throughout the 1970's, Congress has seriously considered legislation to create a special federal trust counsel to represent Native Americans in disputes with the federal government. See, e.g., *Hearings Before the Subcomm. on Indian Affairs of the Comm. on Interior and Insular Affairs*, on H.R. No. 6106, H.R. No. 6374, and

H.R. No. 6494, 93d Cong., 1st Sess. (1973). As eloquently stated by Congressman Meeds:

The political relationship which exists between the United States and Indian tribes is unique and is without exact parallel in the history of such relationships.

Whatever it is called, there is no real question that the United States has assumed a responsibility toward these people which imposes a high fiduciary obligation upon the Government in its treatment of the tribal entities and the assets and property of the tribes.

The relationship is firmly rooted in our Constitution and the moral obligations growing out of our treatment of the Indian people. The nature of that relationship and resulting responsibilities has evolved from a series of treaties, statutes, and judicial decisions.

But the administration and faithful performance of the obligations owing under the trusteeship have been beset with inherent conflicts of interests which have all too often resulted in the compromising of Indian interests and rights in favor of other governmental interests or the private interests regulated by Federal agencies.

The bills before us today are designed to lessen, if not eliminate, this debilitating conflict of interest and provide the greatest amount of independent, forceful representation of the trustees' responsibility toward the Indian tribes and their natural resources.

But I must say that this legislation does not create the trust responsibility nor does it greatly expand the authority and power of the Executive to render the necessary protection.

Hopefully we will pass legislation such as that before us, and that will resolve this problem. If the Congress fails to enact this legislation, the high fiduciary obligations of the Departments remain and they must, within their own present authority, improve their ability and efforts to protect Indian interests. It is not enough for the administration to point to the pendency of this legislation as an answer to the continuing default of the United States on its responsibility, nor is it enough for the Congress to say that we have dealt with the problem adequately if we don't come to grips with it.

Id. at 171-172.

Executive recognition of these "moral obligations of the highest responsibility and trust," *Seminole Nation*, *supra* at 297, is equally well established:

Down through the years, through written treaties and through formal and informal agreements, our government has made specific commitments to the Indian people. . . .

. . . [T]he special relationship between the Indian Tribes and the Federal government which arises from these arrangements continues to carry immense moral and legal force. To terminate this relationship would be no more appropriate than to terminate the citizenship rights of any other American.

The President's Message to Congress on Indian Affairs, July 8, 1970, 6 *Weekly Compilation of Presidential Documents*, pt. 3, 895 (1970).

The United States Government acts as a legal trustee for the land and water rights of American Indians. These rights are often of critical economic importance to the Indian people; frequently they are also the subject of extensive legal dispute. . . .

Every trustee has a legal obligation to advance the interests of beneficiaries of the trust without reservation and with the highest degree of diligence and skill.

Id. at 902; accord, S. Con. Res. No. 26, 92d Cong., 1st Sess., 117 *Cong. Rec.* 46383 (1971).

The strict fiduciary duty of the United States was recently enforced in *Joint Tribal Council of the Passamaquoddy Tribe v. Morton*, Civil No. 1960 (D. Me., June 23, 1972), where the court held that the United States must institute legal proceedings where necessary to protect Indians' property rights.

Similarly, in *Pyramid Lake Paiute Tribe of Indians v. Morton*, 354 F. Supp. 252 (D.D.C. 1973), the court found that the Secretary of the Interior had breached his fiduciary duty to the Tribe by failing to protect the Tribe's water rights.

The *Edwardsen* case is itself an example of the United States' renewed commitment to performance of its fiduciary duties to Native Americans. Under the stipulations filed in that case, the United States has agreed to undertake performance of its fiduciary duties to Arctic Slope Eskimos by instituting litigation as their trustee to recover for the trespasses to their lands.

For Congress now to extinguish the trespass claims of Arctic Slope Eskimos would be unconscionable. Such an amendment would undermine the effort of the United States, already in progress, to discharge its acknowledged trust obligations. The amendment would make a sham out of a national obligation expressly recognized by Congress, the courts, and the executive. America's renewed national commitment to the rights of Native Americans and other minorities should not be swept aside to relieve trespassers from the legal consequences of their illegal acts.

C. The Trespass Claims Extinguishment Amendment is A Private Relief Act.

Testimony and written statements presented to the Subcommittee have stated that extinguishment of accrued Native trespass claims is needed to stop massive lawsuits already in progress which claim trespass to 90% of Alaska. Those allegations conflict with reality. Only the *Edwardsen* case has been filed.

With the possible exception of very minor claims, it is very unlikely that large trespass actions, other than *Edwardsen*, will ever be filed. Recovery for trespass to aboriginal lands requires proof of aboriginal title. Except for Alaska's Arctic Slope, the Caucasian presence in Alaska for more than 100 years makes proof of the requisite "use and occupancy since time immemorial" almost impossible.

Testimony suggesting that the threat of trespass claims has deterred land planning and energy development in Alaska strains credulity to the breaking point. By extinguishing all aboriginal title in Alaska, Section 4 of the Settlement Act made it *impossible* for any Native to challenge the land titles of the United States, the State of Alaska, or any private person based on a claim of aboriginal use and occupancy. Similarly, that extinguishment on December 18, 1971, means that no Native claims for trespass to aboriginal lands anywhere in Alaska could arise after that date because the Natives have no aboriginal land on which trespass could be committed. Land planning and energy development in 1975 cannot possibly be affected by litigation to determine compensation for trespasses which occurred prior to December 18, 1971.

The only principal beneficiary of the proposed trespass claims extinguishment amendment is that segment of the oil industry which, tempted by the prospect of enormous oil fields to be divided up, elected to proceed with exploration and development on the Arctic Slope before settlement of Native land claims. This decision was made despite actual notice from Arctic Slope Eskimos to the oil companies that their actions were illegal. In 1967, an oil industry journal acknowledged that Native land claims covered approximately 70% of Alaska but stated that industry participation in competitive oil and gas leases had been unaffected by the possibility of clouded titles. *Alaska Construction and Oil Report* at 28 (Feb. 1967). In fact, the oil industry took the position that Native lands should be opened up for exploration and development, leaving the matter of compensation to be determined in the future.

The federal government's problem, as we see it, is to recognize that native rights in Alaska will not be determined for years—probably decades. *It must then decide how its lands can continue to be made available for development, subject to a possible financial adjustment in the future.* Will future payments to Alaska's natives be made from the federal general fund, or should escrows, trusts, etc., be established now?

Id. at 29, 37 (emphasis added).

Oil industry journals, and the very fact that exploration and drilling continued on the Arctic Slope in the face of clear evidence of Native rights to the lands, show that certain oil companies took a calculated business risk to get a headstart in Arctic Slope oil development. Prudence might have dictated efforts to secure permission from Arctic Slope Eskimos for entry on these lands or a delay in development until passage of the Settlement Act. But certain oil companies gambled that neither alternative was necessary, or if it was, that the benefits to be obtained by a headstart in exploration and development would offset any subsequent "financial adjustments."

The decision to attempt development by trespass has now been challenged. Arctic Slope Eskimos no longer own much of the land on which oil development is proceeding, but they do own accrued claims for trespass committed by certain oil companies prior to December 18, 1971. Those companies are now faced with the prospect of paying for their headstart on the Arctic Slope.

Rather than face a judicial determination of the legality of their activity on the Arctic Slope, those companies now seek public relief from the legal consequences of their illegal activities. The proposed amendment very simply asks

Congress to excuse certain oil companies from liability for their tortious trespasses. The trespass claims extinguishment amendment is nothing more than a private relief act for them. Neither Alaska Natives nor the American people will receive any benefit.

D. The Proposed Legislation Threatens Separation of Powers.

The Alaska Native Claims Settlement Act of 1971 did not attempt "settlement" of the accrued tort claims of Alaska Natives against third parties. As with every other dispute between private parties involving allegations of tortious conduct, those disputes were left for judicial resolution.

The *only* claims based on trespass to aboriginal lands in Alaska filed with the federal courts to date are those alleged in *Edwardsen v. Morton*, Civil No. 2014-71 (D.D.C. filed October 12, 1971). The United States District Court for the District of Columbia considered those claims for a year-and-a-half before rendering a decision upholding their legal validity.

A year after the *Edwardsen* decision, in recognition of its fiduciary duty to protect Native property rights, the United States, in a formal stipulation, agreed to institute trust litigation to vindicate the accrued trespass claims of Arctic Slope Eskimos. That stipulation is an acknowledgment by the executive branch that resolution of the trespass claims of Arctic Slope Eskimos falls within its constitutional and legal responsibilities.

The present proposal to extinguish accrued trespass claims of Arctic Slope Eskimos asks Congress to intervene directly in the resolution of those claims by the judiciary and by the executive. It is not an effort to provide guidelines or standards for decision, but, instead, unabashedly seeks to extinguish the entire proceeding.

The proposed legislation seeks to overrule a judicial decision before any higher court has a chance to review it. The proposal evidences no respect for the rule of law, but instead stands for the proposition that certain large economic entities have the power to place themselves above the law.

Proposals to legislatively overrule unpopular decisions by federal courts are not new. After *Brown v. Board of Education*, 347 U.S. 483 (1954), there was a movement to withdraw Supreme Court jurisdiction to hear school desegregation cases. See, e.g., H.R. 1228, 85th Cong. 1st Sess. (1957). During and after the McCarthy era, and perhaps in response to it, the Supreme Court conferred upon citizens what some felt to be unduly broad protection from legislative investigations. See, e.g., *Watkins v. United States*, 354 U.S. 178 (1957). This prompted a proposal to curtail Supreme Court jurisdiction to review cases involving contempt of Congress, as well as cases involving state and federal regulation of subversive activities. See, e.g., S. 2646, 85th Cong., 2d Sess. (1958). After *Reynolds v. Sims*, 377 U.S. 533 (1964), a bill which passed the House of Representatives would have withdrawn jurisdiction from the Supreme Court and the district courts to hear cases in which plaintiffs sought to enforce reapportionment of state legislatures. H.R. 11, 926, 88th Cong., 2d Sess. (1964).

None of these efforts were consummated. Congress ultimately chose to uphold the separation of powers and refused to intervene in the judicial process.

One reason for Congressional restraint regarding unpopular decisions has been respect for the independence of the judiciary and the doctrine of separation of powers.

[A]n independent judiciary is perhaps the most essential characteristic of a free society. From long experience as a practicing attorney, a trial judge, an appellate judge, and now legislator, I have had ample opportunity to observe and appreciate the safeguards embodied in the separation of powers doctrine so wisely formulated by our forefathers.

S. Ervin, Jr., "Separation of Powers: Judicial Independence," 35 *Law & Contemp. Prob.*, 108, 121 (1970).

A proposal to extinguish a single case already under consideration by the judicial branch strikes at the very heart of the judiciary's power to decide "cases or controversies." The solemn warning of Professor Philip B. Kurland, one of the country's noted constitutional authorities and chief consultant to the Senate Judiciary Subcommittee on the separation of powers (89th Cong., 2d Sess.), is most apposite:

[I]t should be kept in mind that tools created by the well-intentioned for beneficial uses may fall into less worthy hands to be used for less appropriate ends. * * * When dealing with so fundamental and so fragile a notion as the independence of the judiciary, one ought to tread warily lest the ultimate costs far outweigh the immediate gains.

P. Kurland, "The Constitution and the Tenure of Federal Judges: Some Notes from History," 36 *U. Chi. L. Rev.* 665, 666 (1969). This injunction has particular relevance when the principal beneficiaries of such drastic intervention in the judicial process would be certain large, economic entities who knowingly risked the consequences of their intentional torts.

The Alaska Native Claims Settlement Act of 1971 was a historic example of constructive congressional action to deal fairly with Native Americans and to settle a matter which had become too complex for resolution by the courts and the executive. The proposed amendment to the Settlement Act does exactly the opposite. It offers extinguishment not settlement. It strikes at the heart of good faith efforts by the executive, already in progress, to discharge its legal and constitutional duties to Arctic Slope Eskimos. It threatens judicial independence by substituting Congress for the courts of appeal and the Supreme Court. Far more than the integrity of the Settlement Act will be lost.

If further legislative consideration is to be given to these matters, Arctic Slope Eskimos request an opportunity to present further written and oral testimony.

Mr. MEEDS. You may proceed.

Mr. LEAVITT. Mr. Chairman, my name is Oliver Leavitt, and I am treasurer of the Arctic Slope Native Corp., and a member of the Inupiat Tribe on the North Slope.

With me to assist in answering any questions to the committee is Yale Lewis, one of the attorneys for the North Slope.

At this time, I would like to request that—I am sorry. We have already gone through that, to keep the record open.

It was not until Sunday afternoon that I learned of this newest attack on our property rights, so we got here as fast as we could. The Settlement Act was an extinguishment of land claims, and the North Slope lost approximately 56.5 million acres of land, and it probably has reserves of between 20 and 60 billion barrels of oil.

The Arctic Slope supports the Claims Act, and supports the State of Alaska with its massive land and its oil, oil and gas reserves. The Arctic Slope will receive approximately 5.5 million acres after the extinguishment as a settlement under the Claims Act, and under this, approximately \$13,000 per capita will be given to the Arctic Slope people individually per capita over the 20 years.

Mr. Chairman, I need not remind the committee that the Arctic Slope has a very high cost, and \$13,000 for 20 years is not very much. We also have very low standards of living.

The Arctic Slope Eskimos contested the Claims Act to the finish, and asked the President to veto the bill.

It was not fair to us, but we ultimately accepted the Claims Act as a compromise between the United States and the people there. It was forced upon us.

Mr. MEEDS. May I interrupt you? Did I hear you right when you said that the Arctic Slope contested passage of the act and even asked the President to veto the bill?

Mr. LEAVITT. Yes, sir.

Mr. MEEDS. Who from the Arctic Slope did that?

Mr. LEAVITT. Our President.

Mr. MEEDS. Do you have an official resolution?

Mr. LEAVITT. If I remember, Mr. Chairman, he sent a telegram at the time. Mr. Upicksoun called a quick meeting of the directors.

Mr. MEEDS. I may state to you, sir, that I worked with the attorneys and Mr. Upicksoun and others, and I don't recall them pro-

testing the passage of the act up to the end and contacting the President and asking him to veto the act.

You may be able to refresh my recollection, but that is not my recollection.

Mr. LEAVITT. I don't think, Mr. Chairman, that we protested the bill so much, although we felt that it was not a very good bill. We ultimately accepted it during the enactment of the bill.

Mr. MEEDS. That is a lot different from protesting the passage right up to the end.

Please proceed.

Mr. LEAVITT. This proposal of the State, Mr. Chairman, and Senator Stevens and presumably the oil industry notwithstanding, is not a technical amendment or a housekeeping amendment, but rather another attempt to deprive the Eskimo of vested property rights.

We don't know what was in Senator Stevens' mind during the Claims Act. We only know what the act says, and we also only know what the Federal courts have said about our rights, and to seek damages from those who unlawfully invaded our lands before our aboriginal title or aboriginal rights were extinguished by Congress.

The Settlement Act simply does not even purport to extinguish our trespass claims. The only part of the legislative history that discussed tort claims says they are not extinguished.

Let me read from a portion of the Senate report that was not quoted this morning by Senator Stevens:

All claims which are based upon grounds other than the loss of original Indian title land remained in effect.

The Federal courts have said that the Congress cannot constitutionally extinguish over trespass claims. What Mr. Martin and Senator Stevens are asking for is a private relief bill for powerful economic interests who invaded the Arctic Slope without the consent of the people there at a time when our aboriginal right was guaranteed by the Government of the United States, the Alaska Constitution and section 4 of the Alaska Statehood Act.

Those interests took an economic risk that they would never have to pay for their trespasses on our lands. They got the most valuable parts of our lands, and now they want Congress to protect them for the consequences of their trespasses.

Like Senator Stevens said this morning, a deal is a deal.

Mr. Chairman, the Inupiat people are trying to abide by the contents of the Settlement Act that was imposed upon us by Congress. Please don't go back now to attempt to take additional rights from us under the pretense of clarifying the Settlement Act.

In 1971, Congress could not constitutionally deprive us of our right to sue third parties who trespassed upon our lands prior to the Settlement Act. Congress cannot do so now.

That is the end of my testimony, Mr. Chairman. If you have any questions, Mr. Lewis will help respond to them.

Mr. MEEDS. Do you have any comment, Mr. Lewis?

Mr. LEWIS. I will be happy to respond to questions. I don't have any specific comment at this time. I have Judge Gasch's opinion.

Mr. MEEDS. Is it your view at all that there is a question about the title or status of all the lands which Mr. Martin mentioned?

Mr. LEWIS. I certainly don't want to make a case for the other side. I thought that Mr. Martin made a very nice statement of the argument for aboriginal title, and the court's construction of the same.

There obviously, though, there are claims which have been suggested here which the Arctic Slope has no intention of bringing. Earlier, Senator Stevens talked about the Homestead Acts and the Native Allotment Acts and that type of thing, and talked about universities and education and all of that.

Those, I think, have simply not been contemplated.

Mr. MEEDS. You would agree with me, Mr. Lewis, would you not, that if these exceptions are available to the Arctic Slope Natives, the Eskimos, they are available to all Native Alaskans?

Mr. LEWIS. I would say anywhere aboriginal title has been trespassed upon before it was acted on by Congress, that they would have a cause of action.

Mr. MEEDS. So what the Arctic Slope intends to do does not proscribe the area of activity, does it?

Mr. LEWIS. No.

Mr. MEEDS. So you really haven't answered my question, have you?

Mr. LEWIS. Well, aboriginal title is a very complex area, and the fact that Indians once had claim to all of Alaska doesn't mean that there is at this time an aboriginal claim to all of Alaska.

Mr. MEEDS. Let's assume for the purposes of this discussion that Mr. Martin is correct; that there is even some substantial question on the DEW line and airports and highways, and all that. Let's assume that that is correct. Do you think that Congress in the passage of the Alaska Native Claim Settlement Act then believed that situation existed in Alaska? Do you think that for 1 minute?

Mr. LEWIS. I think Congress very clearly extinguished any uncertainty as to land title.

Mr. MEEDS. Or actions based on land title.

Mr. LEWIS. Or actions for land.

Mr. MEEDS. For actions based on land title.

Mr. LEWIS. This is a very difficult question for me to answer, because there were trespasses to individual people's houses, there were interferences before the Settlement Act. There were explorations and use on occupied lands. Property was occupied that belonged to Natives. Natives were driven out to certain areas, and not allowed to come in before Congress had extinguished the aboriginal title, and and I don't know what the intent was.

It is clear the land title was extinguished and settled by the Settlement Act.

Mr. MEEDS. Well, I am sure you have read the language of the conference report. At the bottom of page 40, it says, "The conference report language is in substance the same as," and "it is the clear intent of Congress to extinguish all aboriginal claims and aboriginal land titles, if any of the aboriginal peoples of Alaska," and it goes on.

Mr. MEEDS. That is pretty broad.

Mr. LEWIS. It certainly is as to land. I don't think that immunizes, that language immunizes, a direct trespassatory action against Native lands prior to the Settlement Act.

Mr. MEEDS. Well, in addition to attempting to settle a longstanding claim of the Alaskan Natives to land in Alaska, would you agree with me that the Congress was somewhat concerned about settling titles in Alaska so that things could move forward?

Mr. LEWIS. Yes, and I think titles were settled by the Settlement Act, all titles to all of Alaska, at least insofar as aboriginal claims were involved.

Mr. MEEDS. I didn't say settlement claims. I said settlement question with regard to land so things could move forward.

Mr. LEWIS. Yes, sir, I do think that was the intent.

Mr. MEEDS. OK. If that were the intent, and if all of the things Mr. Martin suggested—I am not saying I agree with him, but assuming for the purposes of this discussion that all of the things he mentioned are left standing—do you think the Congress accomplished its intent by the passage of this act?

Mr. LEWIS. If all the things were left hanging that Mr. Martin said were left hanging, then the full congressional intent would not have been accomplished, but that would be, of course, where the difference would be.

Mr. MEEDS. Thank you. That is all I was trying to get to.

Mr. LEWIS. There is certainly nothing in the *Edwardsen* case that poses any threat to the development of Alaska, and states that oil and gas development is going to have to come to an end. All that is simply not justified by anything that we are aware of that has been asked for by the Arctic Slope, or mentioned in any judicial opinion between us and the Interior Department.

Mr. MEEDS. Now, you are a lawyer, Mr. Lewis. How would you advise your clients who were thinking of dealing with land that might be subject to this kind of claim? How would you advise them?

Mr. LEWIS. I would advise them that nothing they did or didn't do after December of 1971 would have any bearing on their legal liability for things they did before December of 1971, and in fact I assume that is the advice that has been given.

The pipeline is proceeding, the well digging, and so forth, is proceeding, and there is a great deal of activity on the 26-million acres that Senator Stevens mentioned.

Mr. MEEDS. How about some of the areas that are in specific dispute, in which there is a specific claim for trespass based on aboriginal title, which would under the ruling of Judge Gasch be pretty certain to lie?

Would you advise them to go ahead and deal with that land?

Mr. LEWIS. I would. There is nothing in Judge Gasch's opinion that affects what might happen to someone after December, 1971. There is no cloud on title raised by Judge Gasch's decision. I think that is awfully important.

Mr. MEEDS. I understand that.

Probably I should be asking my question this way: How would you advise the U.S. Government to proceed? Is it not probable that if Mr. Martin is correct, and again I don't know that he is, but if he is correct about all these lands on which there is some question of trespass, that the Federal Government might not have considerable liability? Either that, or we have not extinguished claims with regard to these matters.

Mr. LEWIS. Well, there is not considerable additional liability. When you said addition, more, liability, if there is more liability and the date of the Settlement Act were past trespasses, I think that liability still exists. No new liability has accrued after the Settlement Act in terms of the discussion we are having here.

Mr. MEEDS. Who do you think has that liability? The State of Alaska in some instances, the Federal Government in others, and other third parties?

Mr. LEWIS. The liability is with third parties who came onto the Arctic Slope before the Settlement Act without the consent of the Native people, and did things on the land. They dynamited, they drove off game, they drove the Natives off, they occupied Native residences, and those types of things.

Mr. MEEDS. Let's assume they came onto a section of land and drilled for oil.

Now, what is their liability? What is the measure of damage, if that is a proper question?

Mr. LEWIS. Mr. Martin said, and I agree, that that is a very complex question. I don't have the definitive answer. There is a question of torts, and other damage law which is applied by the courts which says that the trespassing parties were liable for any actual damage to the land, and for any benefit derived by the trespassing parties.

Something that the trespassing parties should have paid for, for example. There are well developed case laws that deal with geophysical trespass to land, where dynamiting and wells and that type of thing has been conducted without consent of the occupier of the land.

Mr. MEEDS. What if that party has already paid a price to another party, for instance, the State of Alaska, for the right to do that, mistakenly under your concept, but what if they had?

Mr. LEWIS. That would depend on the contract between those two parties. The fact that party A gives money to party B for a right which only party C has to give doesn't protect party A.

Mr. MEEDS. I am aware of that. He would have to go against party C to get the money back, the State in this instance.

Mr. LEWIS. Depending on the contract, but, you see, the question of those dollars, that issue turns on what those dollars were paid for. If they were paid for the lease right, the right to expropriate the resources, that is a different right than the right to go on the land and do the things which were actually done on the land. The bundle of rights is more than a single right. It is not unitary.

In this case, the Eskimos had the right to undisturbed use and occupancy of the land, and any disturbance of that right is accruing to the Natives. I am not really prepared to address that particular question, because I don't know the answer now.

I am very certain, though, as to the rights for the actual trespass to the land.

For example, any of us who rented a hotel room, even though we maybe only had the right to occupy that hotel room for 24 hours, would have a cause of action against somebody who came into that room and disturbed the use and occupancy of the room, and the same applies to leaseholds and so forth.

Those traditions are as old as our legal system in this country.

We are not talking about title to land.

Mr. MEEDS. I simply can't understand, Mr. Lewis, how you can sit there with a straight face and indicate to me that you don't think, assuming that the Gasch decision is carried to the ultimate end that Mr. Martin talked about, that it is not going to indeed throw into chaos the development of Alaska, because I think it is. Don't come and tell this subcommittee that we must treat this thing as important if that is going to be a problem. At least lay your cards on the table and say what the problem is and how serious it is.

Mr. LEWIS. I have not meant to suggest that it is not a serious problem. I don't think it is going to stop land use planning and the flow of oil along the pipeline, or the gas exploration that is going on.

It is going on right now, and I don't think any pre-Settlement Act as to a trespass is going to impede development because the land title has been clarified. There is no challenge to the land title.

That hasn't been contested by the Arctic Slope.

Mr. MEEDS. The gentleman from Alaska.

Mr. YOUNG. Thank you, Mr. Chairman.

Oliver, it's good to see you. We know this is short notice, but we are glad you were able to come in. Thank you for coming here.

Mr. Dixon would be available here, and Mr. Hopkins would be here, but they are out shooting a whale. We hope you wish them luck.

Now, this is a very complex issue. But I want you to feel assured that I have been trying to work toward a just solution in this matter. Of course, I was notified about the problem on very short notice, but I have relied on those people involved in the concept and final passage of the Alaska Native Claims Act. Of course, that includes Mr. Stevens, Mr. Meeds, et cetera.

I am going to listen very closely to their presentations and the presentations of the State representatives, and I know this—if I may philosophize for a moment—we are a State and I would hope the State would be united. We have made a lot of progress in the last year. I know there was a great division following passage of the act. But if there is any way we can avoid that type of personal division amongst the people of Alaska, I am going to attempt to do so.

I think it is disruptive of the State as a whole, it is disruptive to the people, it creates a situation that we just don't want. That is one of my goals of being on this committee, to see if we can alleviate some of these problems. I am going to listen to all the presentations and consider all aspects of this problem, and as the chairman has said, we want all the cards to be on the table.

Let's not deceive ourselves.

I thank you for coming down and I really have no specific questions.

Mr. LEAVITT. Thank you very much, sir.

Mr. YOUNG (presiding). Mr. Thomas E. Meacham, counsel for the Greater Anchorage Area Borough.

For those of you noticing that the chairman is gone, you will see his counsel is here and he will take the gavel away from me if I do something wrong.

We welcome you to the committee, sir, and we would be pleased to accept your statement.

**STATEMENT OF THOMAS E. MEACHAM, COUNSEL TO THE
GREATER ANCHORAGE AREA BOROUGH, ALASKA**

Mr. YOUNG. Do you have a prepared statement, sir?

Mr. MEACHAM. I do have a prepared statement which has been submitted. I would briefly like to summarize that statement because there have been some activities that have been going on that may in some way supercede the statement itself.

[The complete statement follows:]

**STATEMENT OF THOMAS E. MEACHAM, COUNSEL TO THE GREATER ANCHORAGE
AREA BOROUGH, ALASKA**

Mr. Chairman and members of the subcommittee:

I am appearing before you to represent the views of the Greater Anchorage Area Borough, Alaska. The Borough Assembly of the Anchorage Borough on May 5, 1975, adopted the following resolution:

The Greater Anchorage Area Borough Assembly opposes federal legislation being proposed by Cook Inlet Region, Inc. which would amend the Alaska Native Claims Settlement Act of 1971, insofar as such a legislation may affect title to federal properties within the Greater Anchorage Area Borough.

The amendments being proposed by Cook Inlet Region, Inc. include the transfer to the Corporation of lands at several locations in southcentral Alaska, including the transfer of approximately 10,000 acres of federal land within the boundaries of the Greater Anchorage Area Borough.

A brief explanation of the Greater Anchorage Area Borough in relation to the entire state of Alaska might be helpful. The Anchorage Borough is the most highly-populated and most densely developed unit of local government in Alaska. It includes the City of Anchorage, the largest city of the state, and several other smaller cities, as well as developed lands outside city limits. The 1970 census indicated that 126,333 persons lived in the greater Anchorage area. This was 42% of the entire population of the state of Alaska. In 1973, that population figure had grown to 149,000 people, comprising 45% of the population of the entire state. Present population figures indicate that in 1975, the initial year of the trans-Alaska pipeline construction boom, the population of the Anchorage Borough has grown to 160,000 people, comprising at least 46% of the entire state population.

Yet the Greater Anchorage Area Borough contains a land area which represents only three-tenths of one percent of the land area of the state of Alaska. The Borough contains within its boundaries 1,717 square miles, while the entire state comprises 586,400 square miles. Thus the contrast between population concentration and land area could not be more dramatic: 46% of Alaska's citizens live in an area comprising three-tenths of one percent of the state.

The population of Anchorage and its surrounding area has been extremely dynamic since World War II, growing from a population of 4,300 in 1939 to the present figure of 160,000. Compounding this dynamic population growth is the impact of the trans-Alaska pipeline, which will continue to expand both the gross total and the rate of population growth in Anchorage. By 1980, Anchorage is expected to have 192,000 residents, and by 1990 it will have 290,000 residents, with projections for 1995 indicating 353,000 persons. It is almost certain that these population totals will comprise more than 50% of the total state population. Clearly, Anchorage is in a dynamic growth cycle, and will continue to be caught by this cycle for at least the next three decades. The major concern of the Anchorage Borough is that proper planning take place now for the population growth which is inevitable. It is in this context that the land transfers requested by Cook Inlet Region, Inc. must be viewed.

Cook Inlet Region, Inc. has stressed in its analysis of the land set aside by the Secretary of the Interior for its deficiency selection that only perhaps 11 percent of those lands lie below 1,500 feet in elevation. The 1500 foot elevation is the approximate location of the tree-line at the latitude of Anchorage. The Anchorage Borough recognizes that this fact severely limits the use of the Region's deficiency selection lands for residential or agricultural purposes. However, the Anchorage Borough is faced with a similar situation, and one which has not received adequate

recognition by Cook Inlet Region, Inc. in their request for the transfer of federal lands within the Anchorage Borough. Of the total of 1,717 square miles within the Anchorage Borough, only 31 percent lie below 1500 feet in elevation. Twenty-seven percent of this land below 1500 feet is under water, is an active glacier, is in a national monument, or belongs to the Air Force or the Army. This leaves only 73 percent of the land below 1500 feet, or 23 percent of the total land area within the Borough, available for development for human habitation, for industrial and commercial purposes, and for parks, recreation and open space land. The useable land within the Anchorage Borough resembles a bowl in shape, being bounded on the north by the military reservations, on the east and south by the Chugach Range, and on the west by the waters of Cook Inlet. This is in fact a miniscule particle of land, when compared to the size of the state and the number of state residents living within the Borough.

The Anchorage Borough therefore feels that if the analysis of land below 1500 feet in elevation is a valid criterion by which to judge the lands made available to Cook Inlet Region, Inc. under the Native Claims Settlement Act, that criterion is equally applicable to the Anchorage Borough.

When weighed against the number of shareholders of the Regional Corporation, in comparison to the population of the Borough, the much greater public interest dictates that public lands in the Borough must remain in public ownership. According to the latest available figures, the Regional Corporation has 6,243 shareholders, about half of whom live in the Borough. The Anchorage Borough, as stated previously, has 160,000 residents. The Greater Anchorage Area Borough is charged with the protection and enhancement of the quality of life of all of the residents within its boundaries, including those Cook Inlet Region shareholders living within the Borough who compromise approximately 2% of the Borough population.

I sincerely apologize for the extensive use of statistics in my presentation, but I feel that it gives the most graphic and most easily understood comparison between the public needs of the entire Greater Anchorage Area Borough, and the particular, private desires of a very small segment of its population. The map which is attached to copies of my testimony illustrate some of the points I have mentioned, and give a visual representation of the major land areas in controversy, to which I will now address myself.

Under Section 12 of the Alaska Native Claims Settlement Act, Cook Inlet Regional Corporation is entitled to select 61 townships, or 2,200 square miles, of federal lands. Incidentally, this is a third larger than the entire Greater Anchorage Area Borough. The Corporation selections were to be made from public lands within the areas withdrawn for village corporation selection.

Under Section 11 (a)(3) of the Claims Act, the Secretary was empowered to withdraw lands for regional deficiency selection if sufficient lands were not available to satisfy the regional corporation entitlement within the areas withdrawn for village selection. Secretary Morton exercised the authority and discretion granted him by the Act, and withdrew certain lands across Cook Inlet for regional deficiency selection. It is these lands which Cook Inlet Region, Inc. now wishes to turn back to the federal government, in return for the land proposed by its legislation. It is obvious that the lands across Cook Inlet are not as accessible as lands closer to the villages of the region, nor are they of the same surface similarity. However, the Cook Inlet Regional Corporation is in a unique position, occupying the most urbanized land of the entire state, the land most subject to prior dispositions and withdrawals by the process of history over the past 70 years. It could not have been the intent of the Alaska Native Claims Settlement Act to reverse or overturn that past history. It's purpose instead was to strike the best possible balance between the Natives' aboriginal rights of occupancy and the public needs of a growing urban population. The Secretary, recognizing these competing factors, wisely determined that to withdraw federal public lands within the Anchorage Bowl for passage into private hands would have a devastating impact upon the general public good.

I might point out, as I am sure the committee is aware, that Cook Inlet Region, Inc. sued the Secretary of the Interior in Federal District Court to overturn the Secretary's regional deficiency land withdrawals, but lost that litigation when the court determined that the secretary had exercised reasonable discretion, and had withdrawn lands which had potential mineral and other values. The Court ruled that surface similarity was not the only criterion upon which regional deficiency withdrawals could be based. Prior to the conclusion of that lawsuit, the Department of the Interior apparently offered a compromise settlement to the Regional

Corporation, which the Corporation rejected. It should be noted that none of the major parcels of open space land within the Anchorage Bowl, including the Campbell Airstrip Tract, Point Campbell, and Point Woronzof, were offered as a part of that settlement, to the best of our knowledge.

The tracts of land within the Anchorage Bowl which Cook Inlet Region wishes to acquire can only be acquired by special legislation. The major portion of these tracts lies within a two-mile radius of the city limits of the City of Anchorage, and Native selections within that radius are prohibited by Section 22 of the Claims Act. That prohibition was enacted as a part of the original Native Claims Settlement Act for two reasons. The first was to reduce the impact of Native corporation land selections on developed, urbanized cities, specifically Anchorage and Ketchikan, among others. In addition, it was written to preserve some degree of equality between various Native regional corporations, most of which are not in the favored position of having highly valuable, densely settled urban lands within their regions. The Congress in its wisdom saw the necessity of maintaining that two-mile limit to prevent monopoly land ownership of undeveloped open-space lands within urban areas. If that concept was valid in 1971, experience has proved it even more valid today.

In summary, because the major parcels of land of specific concern to the Greater Anchorage Area Borough are within that two-mile radius of the City of Anchorage, and because the lands in the Anchorage Bowl are not a part of original Native village withdrawal, nor of the deficiency withdrawal of the Secretary, it is clear that Cook Inlet Region is not "entitled" to these lands as matter of legal right. Instead it must petition for a change of the law before any claim by it might legally attach.

As I stated previously, Cook Inlet Region, Inc. is seeking the transfer of approximately 10,000 acres of federal lands within the Anchorage Borough. Some of the lands which they have identified, located in the northern portions of the Borough, will apparently pass to the native village of Eklutna under the terms of the Native Claims Settlement Act. If this should occur, the Anchorage Borough has no objection, since the original Act, both in concept and in application, permits such a transfer. The federal properties within the Anchorage Bowl itself which the Cook Inlet Region seeks to gain are the following:

Federal Properties:	Acres
Point Woronzof FAA site.....	550
Point Campbell FCC site.....	41
Point Campbell Military Reservation.....	1, 280
Campbell Airstrip Tract (outside the 2-mile radius).....	1, 365
(total).....	5, 055
Ft. Richardson Tract.....	46. 5
Fire Island.....	4, 200

In addition, the Regional Corporation apparently intends to seek the release of excess military lands from Elmendorf Air Force Base and Fort Richardson, but the size and location of these possible acquisitions have not been determined.

Of the parcels which Cook Inlet Region has identified in the Anchorage Bowl, the areas which are of paramount importance to the Greater Anchorage Area Borough are the Campbell Airstrip Tract, Point Woronzof, and the Point Campbell FCC Site and Military Reservation. It would be safe to say that the major focus of the Borough's consideration of the Cook Inlet Region's proposals has concentrated on these sites. They represent the last large areas of open space, recreation and watershed lands within the Anchorage Borough, and must satisfy these needs of the Borough for all future times. They have been planned for open space, park and recreation lands from at least 1959, when the 1980 Anchorage Metropolitan Area General Plan was first drawn up. They are also the subject of the Borough's 1975 Comprehensive Plan, which is in the final stages of revision and will be placed before the Borough Assembly for adoption very shortly. If comprehensive planning for the future is to have any meaning, then the major outlines of such plans must be implemented. To pass 7,000 acres of planned urban park land into private ownership would make a mockery of the planning process, and would forever damage the Anchorage area's ability to acquire sufficient park, watershed and open-space lands.

The Campbell Airstrip Tract has received the most direct planning for future uses. It comprises the last major parcel of accessible, natural, wooded recreation and open-space land on the eastern side of the Anchorage Bowl, and in addition

provides the natural water recharge area for a very significant proportion of Anchorage's drinking water. Because of its location, its natural attributes and its contribution to the potable water supply of Anchorage, it is inconceivable that such lands might be placed into private ownership, where natural commercial pressures would dictate immediate high-density development for residential purposes, completely destroying the present values of the area and the ability of Anchorage to protect its high-quality water supply. The Campbell Airstrip Tract is the subject of the Far North Bicentennial Park proposal, which has received the endorsement of the Greater Anchorage Area Borough Assembly and the Anchorage and Alaska Bicentennial Commissions. Both an elaborate Park Proposal and a Master Development Plan for the Park have been compiled, and it has long been the hope of Anchorage citizens that this Park might become a reality, under joint federal-state-borough management, by 1976. Whether this will in fact occur will depend upon the disposition made of the Cook Inlet Region's proposal to acquire it.

The Point Woronzof site and the Point Campbell Military Reservation and FCC site must be viewed as a unit, since their ultimate use is governed by their proximity to Anchorage International Airport. Urban planning for the Point Woronzof-Point Campbell area has recognized since the mid-1950's that the airport would be the predominant use of these lands, and that their use for residential or commercial purposes would be extremely inadvisable, negating any comprehensive planning of the airport complex. The present and projected expansion of Anchorage International Airport has proved the wisdom of this planning concept. The surrounding lands are presently used for scenic, recreation and open-space purposes, consistent with their present mixture of federal and state ownership, and are entirely compatible with the airport. The Anchorage Borough has been working diligently to obtain trail rights and easements over lands not owned by it, to integrate the entire Point Woronzof-Point Campbell area into a comprehensive park and open-space management unit. If these lands, like the Campbell Airstrip Tract, were to be placed by Congress into the private ownership of the Cook Inlet Regional Corporation, the possibility of coordinating compatible land uses adjacent to the airport, for the benefit of all of the public, would be lost forever. At this location, the Borough feels that the active management of presently public lands for public, scenic and open-space purposes is much more preferable to the passive management, by means of the zoning power, of many independent and conflicting private intentions regarding these lands.

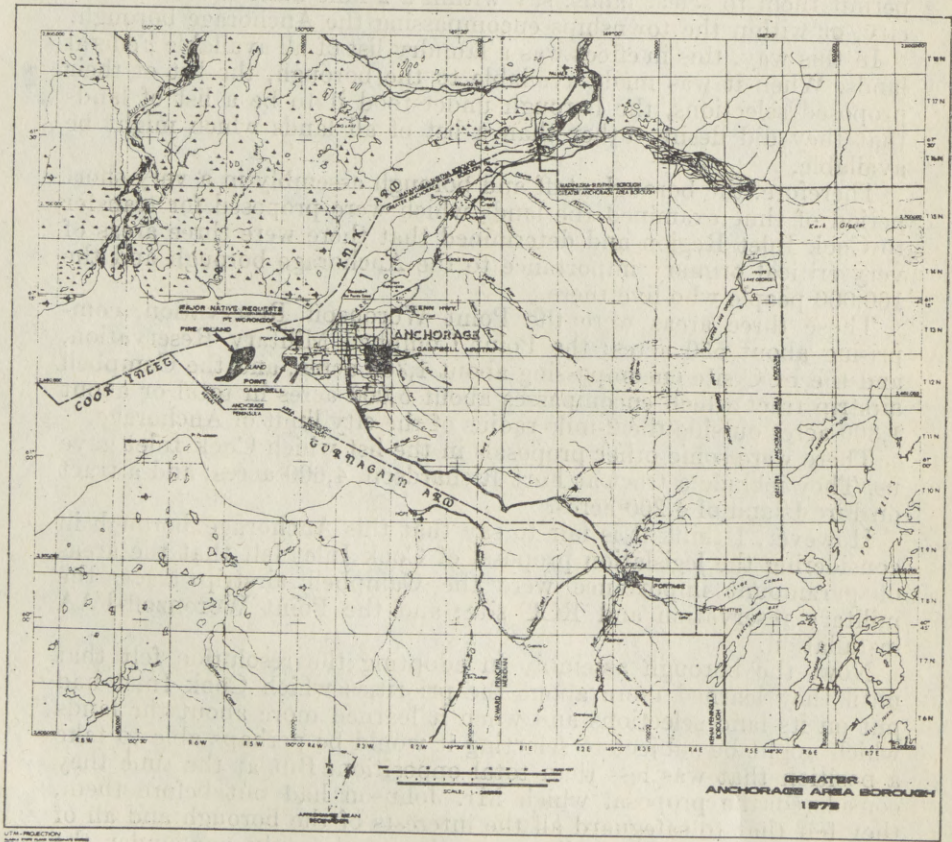
In its opposition to the transfer of these lands to Cook Inlet Regional Corporation, the Borough does not imply that it expects title will pass to the Borough to all of these tracts, if the Regional Corporation does not obtain them. The State of Alaska has filed selection applications on all of these tracts, pursuant to its rights under the Alaska Statehood Act. Under a program authorized by state statute, the Borough has filed with the state its application to acquire some of the same tracts. However, the important consideration, from the Borough's viewpoint, is that these lands must remain in public instead of private ownership, because they represent the last accessible public lands of any significant size within the Anchorage Borough. The Anchorage Borough has analyzed the value per acre of these lands, if they were to be used for private development purposes, and a present valuation of from \$7,000 per acre to \$10,000 per acre has been appraised on these sites. If they were to pass into private ownership, their owner would instantly become the largest private landholder in the Anchorage Borough, with monopolistic control over the available land market for a growing urban population. The Borough does not think that this is desirable, nor was it the intention of Congress in the passage of the Alaska Native Claims Settlement Act.

The other parcels of land within the Borough which are proposed for transfer to Cook Inlet Region, Inc., specifically the 46.5 acre tract at Ft. Richardson, the 4,200 acres at Fire Island, and the Railroad Reserve at Portage, have not received the full attention of the Anchorage Borough Assembly and staff because they are unknown quantities. Unlike Point Woronzof, Point Campbell and Campbell Airstrip Tract, they have not been planned for public park, open-space and recreation lands because they are inaccessible to the Borough population, and they do not have overriding public concerns from proximity to public watershed areas, to an airport, or to other factors which would influence their permissible uses. Nevertheless, until the Greater Anchorage Area Borough knows for certain which parcels the Cook Inlet Regional Corporation proposes to transfer by legislation, and which parcels it intends to forego, the Borough Assembly has

determined that the Borough must oppose Cook Inlet's legislation as to all tracts of federal land within the Borough boundaries. I would hope that discussion could continue on these points with the state of Alaska, with out congressional delegation, and with the Cook Inlet Region, so that the Borough's interest in those tracts of paramount importance to it might be protected.

In summary, I would point out that Congress could not have intended, with the passage of the Alaska Native Claims Settlement Act of 1971, to have a demonstrable, direct and damaging impact upon the lives and aspirations of 46% of Alaska's population, for the benefit of less than 1% of that same population. Nor could Congress have intended that lands adjacent to the largest urban area in the state, lands which have been owned by the public and planned for public uses, be transferred to a small fraction of that public for private purposes and uses entirely inconsistent with the needs of the public at large. The Alaska Native Claims Settlement Act was a federal act, fulfilling a national obligation to the Natives of Alaska. It did not settle a local obligation, and was not intended to do so. The burdens of the Claims Act must be shared as equally as possible among all areas of Alaska, with lands and funds from the national inventory. The Claims Act as it was written, and as it has been implemented by the Secretary of the Interior, accomplishes this result. The amendment being proposed by Cook Inlet Region, Inc. would achieve the opposite result, with devastating and permanent effect upon the citizens of the Greater Anchorage Area Borough.

This concludes my testimony on behalf of Greater Anchorage Area Borough. I would be happy to answer any questions which the committee might have.



Mr. MEACHAM. I am appearing before you to represent the views of the Greater Anchorage Area Borough, Alaska and the borough assembly on May 5, 1975, adopted the following resolution:

The Greater Anchorage Area Borough Assembly opposes Federal legislation being proposed by Cook Inlet Region, Inc., which would amend the Alaska Native Claims Settlement Act of 1971, insofar as such a legislation may affect title to Federal properties within the Greater Anchorage Area Borough.

Now, at the time that this was——

Mr. YOUNG. If I may interrupt you.

If you don't read the full statement, if I understand you correctly as to what you will do, would you summarize as closely as possible?

Mr. MEACHAM. Yes, sir, I would.

I did want to get the language of the resolution in the record.

I would request the full statement be in the record of the hearings though.

I believe—Well, at the time that resolution was passed we were dealing with a fairly fluid land situation. Cook Inlet Region had identified all Federal lands within the Anchorage area which might be available for their selection if the claims Act were amended to permit them to select lands, say within a 2-mile limit of a first-class city, or within the townships encompassing the Anchorage borough.

In this way, this in effect was a laundry list of all available Federal lands. When it was made available to the borough, the list of their proposed selections, the borough understood it to be a list of lands that they did desire rather than a list of all lands which might be available.

Therefore, the borough staff and borough assembly in a very short period of time examined the lands which were proposed for transfer to Cook Inlet Region and determined that there were three areas of very critical primary importance to the Anchorage borough and the 160,000 people who live there.

Those three areas were the Point Woronzoff Reservation, comprising about 550 acres; the Point Campbell Military Reservation, and the FCC site encompassing about 1,300 acres; and the Campbell airstrip tract which encompasses about 5,000 acres in total or about 1,300 acres outside the 2-mile radius of the city limit of Anchorage.

There were some other proposals in the list which Cook Inlet gave us. They include a tract at Fort Richardson, 4,600 acres; and a tract on Fire Island of 4,200 acres.

However, I think it is fair to say that this Anchorage borough in considering the legislation proposal of Cook Inlet felt that the areas of paramount importance were the Campbell airstrip tract, the military reservation and RCC site; and the Point Woronzoff-FAA installation.

Now, the borough assembly in adopting the resolution felt that until they learned more about the priorities which Cook Inlet had put on its land selections and when it learned more about the lands which might be subject to selecting it would be perhaps able to take a position that was less than total opposition. But at the time they considered the proposal which Mr. Johnson had put before them, they felt that to safeguard all the interests of the borough and all of its residents that the position stated was the only one under the circumstances they could adopt.

However, I would like to report that we have had very encouraging on-going negotiations with the Cook Inlet Region. We have also worked under the good offices of the State of Alaska.

Just today I was informed by Mr. Johnson that Cook Inlet Region would like to alter its selection proposal then so that the three critical areas that have been identified by the borough which are Point Woronzoff, Point Campbell and Campbell airstrip, would be deleted from any proposal for land selection which they would make.

I don't have authority at the present time to bind my client or to indicate to this committee or to Cook Inlet that this is acceptable to the Greater Anchorage Area Borough.

However, knowing the background behind the legislative attempts, the borough assembly action regarding the Cook Inlet proposal, I would be hopeful that this could be accepted by the borough and I would propose that it would be acceptable.

It is also understood that in this amendment to Cook Inlet's legislative proposal they are encouraged and they will take efforts to define the areas on Fort Richardson and Elmendorf Air Force Base which are not vitally necessary to the national defense purposes of those installations; and that the Cook Inlet Region under the Claims Act might make these lands available for native selection through implementation of section 3(e) of the Claims Act.

This is something I feel personally that the borough would encourage because the Anchorage Borough has no real hope of getting any of those lands relinquished for residential purposes because it doesn't have the legal mechanism to achieve this and it would take a period of 20 to 30 years and more, with intense population pressures—more than we have now—to achieve any practical reduction in the size of Fort Richardson and Elmendorf Air Force Base.

Therefore, I think the borough would agree with my statement that the Claims Act is a good mechanism for the Cook Inlet Region to accomplish this sort of reduction and to probably more closely analyze the paramount residential purposes of those lands and their appropriate selection under the Native Claims Settlement Act.

I think, Mr. Young, that fairly succinctly summarizes the position of the Anchorage Borough at the present time. As I indicated, they took a position of opposition to all the transfers because they felt they didn't know enough about any one of the transfers and they had not established priorities in their own minds except they did know that Point Woronzoff and Point Campbell and Campbell airstrip were important because they were the only open space areas within the borough.

They are also subject to other criteria such as Campbell airstrip with which they—which has a very important watershed contribution to the Anchorage Borough.

That is the source of a great deal of drinking water in Anchorage and it is also the subject of a Bicentennial park proposal which has been accepted and endorsed by the Anchorage Borough Assembly and by the Anchorage and State Bicentennial Commissioners.

The Point Woronzoff and Point Campbell areas are subject to the primary use of Anchorage International Airport and the borough has long felt, in fact since 1959, those should be used for recreation

and open space lands in conjunction with primary use of the airport, and that to subject them to other uses including private ownership and residential uses might not be appropriate.

In conclusion, I would like to state that I will convey to my client the proposal of Cook Inlet Region to delete these three areas of prime importance to the borough from any legislative solution or any agreed solution to their land selection problems and I would hope in all earnestness that the borough assembly and borough staff could accept this proposal and endorse the Cook Inlet Region's effort to achieve a more just and equitable land selection solution than that provided by the strict interpretation of the Claims Act.

Mr. YOUNG. Thank you, Mr. Meacham.

For the record, I officially have notified both parties involved that I oppose the selection by the Borough of Point Woronzoff, Point Campbell, and the Campbell airstrip. Now we apparently have this agreement, and I commend you and your group for working together with all the parties and I hope you take this back to the borough council to endeavor to work in association and in conjunction with the parties so they will have that legal right to these lands and for you to endeavor to see that that is accomplished as the act set out to do.

I know the Senate has been involved and you have been involved and Andy Johnson has been very, very directly involved. As the chairman said, we will take care of the Interior part of it, and you take care of the borough and State part of it.

I don't have any questions really. I would say that you—I would ask you do stress to the council that the points in contention were the three points that we have now agreed to withdraw and it is important that they do work together on this.

Mr. MEACHAM. I believe, Mr. Young, that there will be a majority on the borough assembly who would support such a resolution. I can't guarantee that there will be unanimity however.

Mr. YOUNG. I understand, I understand your position and I understand if there was unanimity there would probably be something wrong.

Thank you.

Next we have Andy Johnson, president of the Cook Inlet Region, Inc.

It is a pleasure to have you with us today. I know how much work you have put in on this problem. If there is anybody remiss in the program, it has been the Interior Department not reaching agreement with you about 2 years ago and especially in this past year when we thought we had reached agreement and there would be no need for legislation.

I hope there won't be a need for legislation this time, I hope we can reach agreement. As the chairman said, if we don't reach agreement acceptable to this committee and the parties, we will go to legislation.

STATEMENT OF ANDY JOHNSON, PRESIDENT, COOK INLET REGION, INC., ACCOMPANIED BY FRANK DEVINE, COUNSEL

Mr. JOHNSON. I would like to introduce Frank Devine. He is counsel representing us here.

Mr. YOUNG. If you excuse me, the chairman is back; and this is Mr. Johnson, Mr. Chairman.

Mr. MEEDS (presiding). Hello, Andy. Pardon me for being absent. You have a prepared statement. Could you please summarize it for us, Andy?

Mr. JOHNSON. My statement is quite short. I think I can read it in 5 minutes.

I am Andy Johnson—it says Ralph A., the middle name is Andy. I am president of the Cook Inlet Region, Alaska Native Claims Settlement Act. I am testifying on behalf of Cook Inlet Region, Inc. (CIRI)—and if I could, we do have a problem in our area because we have a sister organization that is nonprofit, which is the Cook Inlet Native Association, and we are quite often called Cook Inlet Native Association rather than Cook Inlet Region, Inc. I say this for Don's benefit.

As you know, it is the intent of Public Law 92-203, 92d Congress, passed December 18, 1971, commonly known as ANCSA, to return land to Alaskan Natives and to compensate them for the loss of use of other land.

To make land available that is similar to the land upon which the villages are located, a group of townships around the core township in which the village is located, is withdrawn and both village and region selections were to be taken out of this, as delineated in section 11(a)(1) of ANCSA.

In the case of CIRI—and I would like to submit this book here—

Mr. MEEDS. It will be made a part of the file. Without objection, so ordered.

Mr. JOHNSON. The villages are all located along the coast, approximately half of the land is in the inlet and not selectable by us. Due to the fact that Cook Inlet is the most densely populated portion of the State of Alaska and the villages are located on the most desirable land, the State wisely selected the land in our area and I am a resident and citizen of the State and I would criticize them very severely had they not done so.

They selected the land in the area, the towns and boroughs and individuals, and it ends up that we do have a land pressure problem. There isn't anything available for us to select.

In 1969 Secretary Udall realized that the State was selecting land under the Statehood Act that was land that probably belonged to the Native people. As of that date he froze selections by the State. But the State had already selected most of the good land in the Cook Inlet region, almost all of the flat, habitable land close to where our people lived. And in 1972, after settling a lawsuit with the State of Alaska, the Secretary gave to the State 30 more townships of our region that were relatively similar to the lands upon which we lived, hence there is no land in the area below 1,500 feet elevation in the region to select from.

As you know, 1,500 feet is the timberline in our country. This has been known ever since the passage of ANCSA that we had a problem and for 2½ years we have been negotiating to get land set aside for us to settle on that with no mountain tops and glaciers. We tried every effort available to us and at this late date the only land that is available is land that no one else wants.

Our selections are second to the village selections. They selected all the lands that were available.

If it was the intent of Congress that we should only have mountain tops and glaciers, they have succeeded. That intent has been accomplished. If Congress intended that we have land similar to the lands in which the villages are located, that has not been accomplished and in either case we come before you asking for your help.

We have been last at the table and contrary to the specific aims of Congress in establishing the Alaska Native Settlement Claims Act. We have tried every means possible to obtain land due us under the historic Settlement Act. Every one of the methods has been comprehensive and time-consuming and has diverted our efforts from more constructive work we should be doing to help our people.

One of the methods that was chosen was to—it asked the Alaska court to direct the Secretary to withdraw lands as directed by section 11(a)(3)(A) of ANCSA and an Alaskan judge ruled against us in part, stating that it wasn't clear from the evidence presented what standards the Secretary had used in delineating the land that was set aside for us.

But whatever they were, they were the correct ones. We are planning to appeal that decision, but the Ninth Circuit Court of Appeals is scheduled to—the schedule is such that we may have to wait as much as 2 years and our selection rights disappear on December 16, 1975. However, even if we win the appeal, if we take—we have been directed by some in the Department of the Interior that the act would have to be changed before we could get anything different than what has been set aside for us.

We have made repeated and consuming trips here to Washington and again and again to meet with the officials of the Department of the Interior, to have them change the withdrawals made for us. On one occasion a high official of the Department came to Alaska and made an almost acceptable offer to us, but that offer was later withdrawn.

We have sought a small portion of Moose Range because it is land most similar in character to the land upon which our people have lived for generations. The Secretary, we feel, is empowered to add land elsewhere to keep the range the same size. We have limited our surface requests in the Moose Range because of environmental reasons.

We like Moose, we live in the country, and we are in agreement with conserving them.

I would like to quote though a part of the findings of fact and conclusions of law, page 20, paragraph 42, proposed by the Department of the Interior in Civil Action A-40-73:

The Secretary withdrew all of the remaining coast lands along Cook Inlet for Native selection. These lands have good oil and gas potential—and these areas are in the mountains. "The other areas withdrawn, chiefly to the west of Cook Inlet and in the most northern part of the region, though much more mountainous [and that part is fact], contain river valleys and large lakes and provide good subsistence. The chief subsistence animals, moose and caribou, range throughout the areas * * *

If this statement is true and I assume it is because it is entered as findings of fact, there should be no objection from the Department of the Interior in using the land they offered us as Moose Range and returning to us land that people can range on.

In addition to going to court, pleading with the Department of the Interior and asking aid from Congress, we have had important discussions with the State of Alaska. After long last we are beginning to make headway.

In the last several weeks we have had productive talks with the State of Alaska about the problems of Cook Inlet and I want to right now publicly say that Guy Martin and some of the others have testified here. It is a result, I think, of the things that we have done. We are very close to an amicable settlement in what we are coming up with.

We have, as Tom Meacham said, almost reached agreement with the borough in these areas. We think we have made substantial progress in fruitful discussion with the Sierra Club, the Department of the Interior, the borough of the city, and a formal agreement is right on the verge of being signed.

We can't committee, none of us here, on some areas, but we feel close enough to be able to request Congress to support us in what we are doing.

The Congress, in section 2 of ANCSA, declared that the settlement should be accomplished rapidly, with certainty, without litigation and also with the maximum participation by Natives in decisions affecting their rights and property.

The course of events since December 18, 1971 has not been true to those goals. We have been trapped in litigation, fought every inch of the way for every acre of our land. We do not think——

Mr. MEEDS. Pardon me, Andy. We will have to go vote now. Let me just assure you that it was not this Member of Congress intent nor do I think it was the intent of the other Members of Congress who passed the Alaska Claims Act that you have nothing but mountain tops.

I think I have made it rather clear to all participants here that we expect some kind of reasonable settlement of Cook Inlet land selection. In the absence of that land selection problem being solved prior to the markup of this bill, that settlement is going to be legislated and I give you my assurance I will try to legislate something that does not include mountain tops. Is that all right?

Mr. JOHNSON. I want to thank you for that.

Mr. MEEDS. Without objection the prepared statement will be made part of the record. We will take the rest of the witnesses when we return.

We must rush out and vote.

[The complete statement follows:]

STATEMENT OF RALPH A. JOHNSON, PRESIDENT, COOK INLET REGION, INC.

Honorable Sirs,

I am Ralph A. Johnson, President of Cook Inlet Region, Inc., one of twelve Regional corporations established by the Alaska Native Claims Settlement Act.

I am testifying on behalf of Cook Inlet Region, Inc. ("CIRI"), asking you to assist in the expeditious settlement of the Cook Inlet land selection problem.

As you know, it is the intent of Public Law 92-203, 92nd Congress, H.R. 10367, December 18, 1971, commonly known as ANCSA, to return land to Alaskan natives and to compensate them for the loss of use of other land.

To make land available that is similar to the land upon which the villages are located, a group of townships around the core township in which the village is located, is withdrawn and both village and region selections were to be made therein as delineated in Section 11(a)(1) of ANCSA.

In the case of CIRI since the certified villages are located on or near the coast, approximately half the land in the core townships is underwater and not selectable. Due to the fact that Cook Inlet is the most densely populated area in Alaska and the villages are located on the most desirable land, almost all the rest of the land has been patented to individuals, towns, boroughs, the State of Alaska, or federal agencies.

In 1969, Secretary Udall realized that the State was selecting land under the Statehood Act that was land that probably belonged to the Native people. As of that date, he froze selections by the State. But the State had already selected most of the good land in the Cook Inlet Region, almost all of the flat, habitable land close to where our people lived. And in 1972, after settling a law suit with the State of Alaska, the Secretary gave to the State 30 more townships of our Region that were relatively similar to the lands where our people lived. Hence, there is no land in the area for regional selection.

This has been known ever since the passage of ANCSA, and CIRI has been trying for two and a half years to negotiate land withdrawals that were not mountaintops and glaciers. Virtually no land available to us is below the timberline. After trying every method available to us, at this late date the only land left for us to select from is land that no one else wants.

If it was the intent of Congress when ANCSA was passed that we have only mountaintops and glaciers, that intent has been accomplished. If Congress intended that we have land similar to the land upon which the villages are located as ANCSA states, it has not been accomplished. In either case, I come before asking your help.

We have been the last at the table, contrary to the specific aim of Congress in establishing the Alaska Native Claims Settlement Act.

We have tried every possible means of obtaining the land portion due us under the historic Settlement Act. Every one of those methods has been expensive and time consuming and has diverted our efforts from more constructive work to help our people. One of the methods chosen to try to get land was to ask the Alaskan courts to direct the Secretary of Interior to withdraw similar land as directed by Section 11(a)(3)(A) of ANCSA. An Alaskan judge ruled against us and in part stated that it was not clear from the evidence presented what standards the Secretary used in selecting the land withdrawals, but whatever they were, they were the correct ones.

We are planning upon appealing this decision, but the Ninth Circuit Court of Appeals schedule is such that we may have to wait as much as two years before we can be heard and our land must be selected on or before December 18, 1975, so time is running out. However, even if we win the appeal and the court directs the Secretary to withdraw other land for us to select, some in the Department of Interior feel the Act will still have to be changed before the land we are asking for can be returned to us.

We have also repeatedly made the consuming trek to Washington to meet again and again with officials of the Department of Interior to have them change the mountaintop withdrawals they made for us. On one occasion a high official of the Department came to Alaska and made an almost acceptable offer to us, but that offer was later withdrawn.

We have sought a small portion of Moose Range surface land because it is the land that is most similar in character to the land upon which our people have lived for generations. And the Secretary is empowered to add land elsewhere to the range to keep it the same size. We are limiting our surface request on the Moose Range for environmental reasons.

I would like to quote part of the Findings of Fact and Conclusions of Law (page 20, paragraph 42) proposed by the Department of the Interior in Civil Action No. A-40-73:

... The Secretary withdrew all of the remaining coast lands along Cook Inlet for Native selection. These lands have good oil and gas potential. The other areas withdrawn, chiefly to the west of Cook Inlet and in the most northern part of the Region, though much more mountainous [and that part is fact], contain river valleys and large lakes and provide good subsistence. The chief subsistence animals, moose and caribou, range throughout the areas

If this statement is true, and I assume it is since it is entered into evidence as findings of fact, there should be no objection from the Department of Interior in using the land they offered us as moose range and returning us land for people range.

In addition to going to court, pleading with the Department of Interior and seeking the aid of Congress, we have also had important discussions with the

State of Alaska. After long last, we are beginning to make headway. In the last several weeks, we have had productive talks with the State of Alaska about the problems of the Cook Inlet Region, Inc.

We now think that it is possible for the Region, its Villages, the State and the federal government to make real progress in resolving our mutual problems. We have had what I believe to be fruitful discussions with the State of Alaska, Department of the Interior, Sierra Club, Borough and City of Anchorage and we are very close to having a formal agreement with the State.

The Congress, in Section 2 of ANCSA declared that "the settlement should be accomplished rapidly, with certainty . . . without litigation, with maximum participation by Natives in decisions affecting their rights and property. . . ." The course of events since December 18, 1971, has not been true to these goals. We have been trapped in litigation, forced to fight every inch of the way for every acre of our land. We do not think that the Federal agencies have carried out the spirit of the legislation.

But we are beginning to see a glimmer of improvement. The State does not want uncertainty. They seem to be as interested in wise and prudent land management as is the Cook Inlet Region. We have had meaningful and productive talks that look as if they will result in an agreement that is satisfactory to all parties concerned. And we have indications that the federal government and the environmental groups will not oppose the steps we plan to take. Legislation will be necessary to achieve our goals, but we hope we are approaching the Congress united in our aims.

You will notice that the phrase "land is returned to us" is used many times in this testimony. This has been done deliberately to call to your attention that ANCSA is not a big give-away program, but is a contractual agreement to return land that is ours and to pay us for the loss of use of land that is not returnable.

Thank you.

Mr. MEEDS. Andy, did you have any further testimony?

Mr. JOHNSON. No, sir, I was through.

Mr. YOUNG. Mr. Chairman, again I would like to state that we have worked on this problem and he has the philosophy of the State in those areas and those people involved is a great collusion in an attempt to solve the problem.

As the chairman said, he assured that we will keep our ears open and our eyes open and our pencils sharp to be sure everything is handled as it should be. Again congratulations on the job you have done.

Mr. JOHNSON. Thank you.

Mr. MEEDS. Our next witness is Willie Hensley, NANA Regional Corp., accompanied by Richard Baenen, legal counsel.

Mr. Hensley is a State senator who has been extremely helpful in a regional capacity. We are happy to have you before the committee

**STATEMENT OF WILLIE HENSLEY, MEMBER, BOARD OF DIRECTORS,
NANA REGIONAL CORP., INC., ACCOMPANIED BY RICHARD A.
BAENEN, COUNSEL**

Mr. HENSLEY. Thank you, I see you have a copy of the statement.

Mr. MEEDS. Without objection the prepared statement of Mr. Hensley will be made a part of the record.

[The statement follows:]

**STATEMENT OF WILLIE HENSLEY, A MEMBER OF THE BOARD OF DIRECTORS OF
NANA REGIONAL CORPORATION, INC.**

INTRODUCTION

Mr. Chairman, Members of the Subcommittee:

I am Willie Hensley, a member of the Board of Directors of NANA Regional Corporation, Inc., one of the twelve regional corporations formed pursuant to

the Alaska Native Claims Settlement Act and located in the northwest region of Alaska centered about Kotzebue. I appreciate the opportunity to present this statement to you on behalf of NANA, the eleven village corporations within the NANA region and the approximately 4,900 shareholders of NANA and the villages in support of H.R. 6644, a bill to amend the Alaska Native Claims Settlement Act. Specifically, this statement is addressed primarily to section 107 of the bill, which would authorize the merger or consolidation of any corporations established pursuant to the Settlement Act for the same region. The bill covers both mergers among the village corporations of a region, as well as their merger with the regional corporation of the region. To the extent that H.R. 4851 is identical to the merger provisions of H.R. 6644, this statement speaks to the former as well.

While this statement is presented on behalf of NANA and the village corporations of the NANA region, I can assure the Committee that all Native leaders with whom we have discussed the merger provisions of these bills are in favor of the legislation and see the need for its enactment. In that regard, attached to this statement as Appendix 1 is a copy of Resolution No. 75-2 of the Alaska Federation of Natives, adopted on February 27, 1975, which supports legislation necessary to permit mergers. Resolution No. 75-2 was addressed specifically to S. 685, a Senate bill that would amend the Act to permit mergers, but it was so limited only because H.R. 4851 and H.R. 6644 had not been introduced at that time.

NEED FOR LEGISLATION AUTHORIZING MERGERS

Enactment of H.R. 6644, with its provision authorizing merger, is necessary because of the provisions of section 7(h)(1) of the Settlement Act which prohibit for a period of 20 years from the date of the enactment of the Settlement Act on December 18, 1971, any sale, assignment or other alienation of stock of any regional corporation by its shareholders. Section 8(c) of the Settlement Act applies these restrictions against alienation to village corporation stock. In any statutory merger of consolidation under Alaska law, a shareholder would be exchanging his shares of stock in one corporation for shares in another corporation, and, since this constitutes an alienation of stock, mergers or consolidations of corporations formed under the Settlement Act may not take place without enactment of this legislation which modifies the restrictions against alienation of stock contained in the Settlement Act. I wish to emphasize that the restriction against stock alienation would be modified only for the limited purposes of mergers or consolidations. In no other way is the Act amended as it relates to the alienation of stock, and even in a merger or consolidation under this bill, the principle of Native stock ownership for a twenty-year period would in no way be violated.

In order to fully understand the need for merger and what it is intended to accomplish, it is necessary to be aware of the true nature of the NANA region, its location, its stockholders and their way of life.

Unlike perhaps some of the other regions and villages in other parts of Alaska, the NANA region represents bush Alaska in its truest sense. The territory of the NANA region covers more than 23 million acres, or some 36,097 square miles. It is approximately 210 miles north to south, and almost 300 miles east to west. The village of Kivalina, in the northwest corner of the area, is approximately 160 miles from Buckland, a village in the southwest, and approximately 210 miles from Kobuk, the farthestmost eastern village. The other eight villages are spread about the area. Most of the region lies above the Arctic Circle, as do eight of its eleven villages. The largest population center in the region is Kotzebue, with about 2,000 inhabitants, and it is the transportation and communications center for the area. The villages are almost exclusively inhabited by Eskimos, virtually all of whom are village and NANA stockholders. Even Kotzebue, which has the largest number of non-Natives, is probably over 90% Native.

Life in the villages is still very primitive. Until perhaps no more than 20 or 30 years ago, the Native inhabitants lived as their ancestors had hundreds of years ago. Even today the villages are close to what the average non-Native imagines an "Eskimo village" to be like. The predominant language in many villages is still Eskimo, particularly among the older people, many of whom do not speak English very well. Most Natives live largely on subsistence hunting and fishing, as they always have.

Jobs are relatively few, and it is only recently that the phenomenon of a "money economy" as we know it started to become a reality in the villages. In many villages, the homes still have no running water or other plumbing, although by now

all have electricity, assuming the generators are working. Except for Kotzebue, only two of the villages have a telephone—one each—and they really are only a promise deferred. Communication is primarily by radio, via KOTV in Kotzebue, but that is not two-way communication. There is sideband radio communication, which is spotty at best, and which is utilized generally in emergencies.

Except for Kotzebue, each village only has a dirt runway for bush planes and the airplane is the primary means of transportation from village to village, although relatively few get to use it. During the winter months, additional transportation is available by snowmobile, and during the five or six months when the waters in the area are not frozen, it is possible to travel by boat in various parts of the region. An occasional trip to Kotzebue is as close as many of the Native inhabitants have ever come to visiting the "outside world".

It is on this scene that the Settlement Act arrived in 1971 and with great suddenness the Natives in part were forced to adopt the white man's way of doing things if they were to benefit under the Act. Many of the concepts involved were and still are totally foreign to them. Each village was told it had to form a corporation and the village residents would become stockholders and would own a certain number of shares of stock.

The land, which for centuries had been used jointly by everyone, would now be "owned" by the corporations. While the Natives of the villages always met periodically in a community meeting in their villages to discuss whatever problems arose and to resolve them, they now would have to hold annual stockholders' meetings. They would have to learn to operate a corporation, start some businesses with the money provided by Congress, and try to produce a profit. Until now the primary business existing in any of the villages was the general store, often only a very small and simple operation.

The foregoing should help explain some of the realities of how the corporations are operating and why the right to merge is so absolutely essential. Under the Settlement Act, a certain amount of land and roughly 50% of the funds designated for the region will remain with NANA. The remainder will go to the villages. NANA will survive. It has offices both in Kotzebue and in Anchorage and it has a well-functioning staff. Funds it receives under the Settlement Act, in excess of its immediate needs, are invested in various securities by Wells Fargo Bank in San Francisco. It owns the only hotel in Kotzebue. Over two years ago, it negotiated and entered into a contract with a major oil company, whereby the oil company conducted exploration for oil and gas in the region so as to enable NANA and the villages to select some land for oil and gas potential. NANA also was a successful bidder on a multimillion dollar contract in connection with the Alyeska Pipeline, and NANA has also entered into other ventures and contemplates entering into various other business projects in the future. Because of its size, NANA can operate on a large and therefore efficient scale.

The village corporations present an entirely different picture. Since most villages have only a small population, the amount of funds they receive is not large. To date, one has received less than \$80,000, and four others only about \$200,000. The villages currently have most of their money invested jointly with NANA's money, managed by Wells Fargo, in a separate pooled account. With very minor exceptions, this is their only business activity. They receive perhaps a few thousand dollars a year in income in the form of interest or dividends on investments. Their funding is not sufficient to permit them to study and undertake any major business enterprises. Thus, they lack not only capital, but funds necessary to make certain their capital is wisely invested.

Their extremely remote location and the lack of communications make any normal business enterprise, perhaps even in competition with other corporations elsewhere in Alaska virtually impossible. It must be realized that to undertake even routine business or corporate activities, such as holding stockholders' meetings or having the books audited, is far more expensive in bush Alaska than it is in the lower 48 states, or even in Anchorage or Fairbanks.

Experienced management talent invariably is also scarce. Most Native village inhabitants simply have never had anything to do with operating business corporations. As everyone knows, operating a corporation so as to produce a profit takes considerable training, skill and experience.

The most talented and experienced Native leaders in the region have been "drafted" by NANA, and NANA has for the past two years been "carrying" the villages. NANA's staff, consultants and lawyers assist the villages in almost every function they are to perform. In fact, each village corporation has entered into an administrative services agreement with NANA whereby NANA assists the villages in performing their various functions.

Initially, the NANA staff traveled from village to village to attend village meetings and to explain to the Natives what the Settlement Act was all about and what it would do to and for the people. Last spring, the NANA staff, over a two-day period, visited each village in order to conduct that village's annual stockholders' meeting. The NANA staff did the same this year.

The preparation of proxy materials, notices and ballots and the mailing of same in connection with the annual stockholders' meetings was taken care of by NANA and its staff and counsel. The village corporations' boards requested this, fully realizing their inability to hold legal stockholders' meetings unless each retained, at great cost, their own legal counsel, registrar and transfer agent, etc.

In the past two years, there were several rounds of visits to each village by the NANA staff in order to help the villages prepare for and select the best possible lands, in conjunction with village needs, to which they were entitled. The village people knew which lands they were most interested in, but the technical aspects of selecting land, calculating the acreages, filling out and filing the applications, etc., were tasks beyond their skills and resources and were therefore performed by NANA. It is also contemplated that with or without merger, once the land is conveyed, the land records system will have to be maintained centrally, at NANA's offices in Kotzebue.

Peat, Marwick, Mitchell & Co., auditors for NANA, also audit the books of the village corporations. The village books are in fact maintained centrally in Kotzebue, at NANA's offices. As with the other functions already mentioned, this joint method of operation is far more efficient and far less costly for the region as a whole than if each village undertook such tasks separately, retaining its own lawyers, accountants, investment advisors, registrar and transfer agents, land experts, and adequate staff.

It is, however, obvious that NANA cannot indefinitely go on assisting the villages in this manner. With this method of operation, the village corporations are not truly functioning corporations. More importantly, this presents an extensive drain on NANA's own resources. Yet, any other method of operation would result in vastly increased even minimal costs for the village corporations, with very little chance for any of the villages to attempt to undertake any major business projects which have any long-term chance of surviving. In fact, a study conducted by the Alaska Native Foundation to assist in the implementation of the Settlement Act, has concluded that any village with fewer than 600 stockholders will have a difficult time surviving. A copy of the study referred to is attached as Appendix 2 to this testimony. In the NANA region, only the Kotzebue village corporation has over 600 stockholders. If the other villages ever begin operating independently, on their own, even the minimal administrative expenditures would far exceed any income they derive from the assets received. They would be forced to use up capital, with little long-term prospect for turning the corner away from this disastrous course.

Under the Settlement Act, the land to which the village corporations received title eventually will be subject to taxation, and a village without sufficient funds would have to begin selling some of its lands in order to pay taxes on the remainder, if it attempted any development. Eventually, it is feared the village corporations would go bankrupt.

Thus, the need for legislation permitting mergers arises from the peculiar circumstances affecting corporations formed pursuant to the Settlement Act. While we address those corporations in the NANA region, in particular, whatever is said here has general applications throughout the state. The boards of the various village corporations in the NANA region therefore soon came to realize that because they were so small, inexperienced, and so remotely located, they would not be able to survive on their own and had little chance of ever becoming profitable business enterprises. The amount of funds they will receive under the Settlement Act is not substantial enough to permit operations on any sufficiently large or efficient scale, particularly in light of the exceptionally high cost of operating in bush Alaska. The village corporations generally do not feel they have any significant chance of ever becoming profitable business corporations on their own.

At meetings held in the villages in the NANA region, an overwhelming majority of the village corporation stockholders attending indicated they were in favor of merger and asked their various boards to pursue a merger proposal.

Several meetings were held, the various boards established merger committees and studied alternate proposals, and, ultimately, a plan of merger was drafted and approved by the boards of directors for each of the eleven village corporations within the NANA region, as well as for the board of directors of NANA. The plan provided for the merger of one or more of the village corporations into NANA.

The plan of merger was presented to the Secretary of the Interior and received his approval, conditioned upon the required vote of the shareholders pursuant to Alaska law and, of course, enactment of necessary federal legislation. However, because of action taken by the Securities and Exchange Commission, the planned vote was precluded and there can be no vote on the proposed merger until enactment of this or similar legislation.

PROVISIONS OF H.R. 6644 RELATING TO MERGER

Section 107 of the bill would authorize such mergers or consolidations. Subsection (a) permits merger among any regional or village corporations located within the same region. That is, only intra-regional mergers are permitted. The prohibition against any other alienation of stock would remain in effect and would preclude the merger or consolidation of Settlement Act corporations from different regions and the merger or consolidation of a corporation formed under the Settlement Act with a corporation not formed under the Settlement Act, thus assuring integrity of the regional boundaries and that any corporation resulting from a merger or consolidation carried out pursuant to this bill would continue to be owned and controlled by the eligible Alaska Natives, at least until December 18, 1991, when the present statutory prohibition against alienation of stock terminates.

We propose two amendments to section 107(a) as currently written. One expands the reference to corporations formed under section 7(d) or 8(a), being regional and village corporations, to include also corporations formed under section 14(h)(2) or 14(h)(3). Section 14(h)(2) relates to Native groups. The NANA region has no such groups, but other regions do, and Native groups also should be able to merge with each other or with the regional corporation or village corporations for the same region. The second of these, 14(h)(3), relates to the village corporations formed for Sitka, Kenai, Juneau and Kodiak. These, of course, should be afforded the same right to merge as all other Settlement Act corporations. Attached to this statement as Appendix 3 is a copy of section 107 of H.R. 6644, showing the exact wording of this proposed amendment, as well as a few other amendments which we wish to propose to the merger provisions of the bill.

The second amendment to subsection (a) is to add a proviso to clarify the question of dissenters' appraisal rights. Subsection (a) provides that the mergers or consolidations are to take place under the applicable provisions of Alaska law, and the merger provisions of Alaska law include a procedure under which a stockholder may object to the merger and, if the merger is approved, may demand and be paid the fair value of his shares. In effect, he may cash in his shares. In light of the prohibition against alienation contained in the Settlement Act, a bill authorizing mergers under Alaska law but not addressing itself to dissenters' rights could create an ambiguity as to whether or not the bill intended to permit stockholders to exercise dissenters' rights. Accordingly, we propose that the following proviso be added at the end of subsection (a) to make clear that such rights are *not* available:

Provided, That the rights accorded under Alaska law to dissenting shareholders in a merger or consolidation may not be exercised in any merger or consolidation pursuant to this section.

NANA believes that it would frustrate the expressed policy of Congress to permit shareholders to exercise dissenters' rights in any proposed merger. The provision against alienation of stock for a 20-year period is intended to insure that the Natives will retain their stock until 1991. Merely to authorize mergers does not violate the spirit of this, in that the corporations resulting from the mergers would continue to be owned by Natives for at least 20 years. In fact, to authorize mergers, because of the need for mergers if some of the corporations are to survive, is exactly in keeping with the intent and spirit of the Act. The same, however, is not true if the Natives are permitted in the merger to cash in their shares prior to 1991, for Congress intended the Natives to be protected in their ownership of settlement benefits for at least 20 years.

The bill also permits, in subsection (b), the subsequent merger or consolidation of any merged or consolidated corporation with other merged or consolidated Settlement Act corporations within the same region, as well as with other Settlement Act corporations in the same region that have not previously merged or consolidated. Possibly, in some regions various clusters of village corporations may decide initially to merge with each other and subsequently other village corporations may wish to merge with the merged corporations at a later date, or the merged corporations may desire to merge with the regional corporation.

Many of the village corporations in the state are still in the initial stages of organization and these corporations may not know for some time whether or not to seek merger with one or more village corporations or the regional corporation.

As in subsection (a), we again propose that a reference to corporations formed under sections 14(h) (2) or (3) of the settlement Act be added in subsection (b), in order to insure that the benefits of merger also are available to Native groups and to the corporations for Sitka, Kenai, Juneau and Kodiak.

Subsection (b) of section 107 states that the mergers or consolidations shall be on such terms and conditions as are approved by vote of the shareholders of the corporations participating therein. Under the merger provisions of Alaska law, all such terms and conditions would have to be spelled out in a plan of merger or plan of consolidation, to be adopted by the board of directors and to be voted on by the stockholders. We suggest, however, that, as shown in Appendix 3 to this statement, the following language be added in subsection (b):

... including terms providing for the issuance of additional shares of Regional Corporation stock to persons already owning such stock . . .

This language is merely intended to insure that no legal problems arise in connection with section 7(g) of the Settlement Act, which states that regional corporations are to issue such number of shares as may be needed to issue 100 shares of stock to each Native enrolled in the region. The merger of a village corporation into a regional corporation typically might involve the issuance of additional shares of regional corporation stock in exchange for village corporation stock, and the additional language is necessary to clarify that such a merger would not be in violation of section 7(g) of the Act. Under the additional language proposed, such additional stock could only be issued to persons already owning stock in the regional corporation.

Subsection (b) of section 107 makes the merger provisions expressly applicable to mergers which are voted on by shareholders either before or after the bill's enactment. This provision was included at the request of NANA, when discussing this legislation with the Congressional delegates from the State of Alaska, to permit mergers which might have been voted on and approved by the shareholders of NANA and the village corporations before legislation was enacted permitting mergers. At the time, NANA anticipated a vote on merger at the annual shareholders' meetings of NANA and the eleven village corporations of the region held this past April. A plan of merger was adopted by the boards of directors of NANA and each village corporation and this plan was to be presented to the shareholders for a vote at the annual meetings. Because of action taken by the Securities and Exchange Commission, pending Congressional action on proposed legislation, the plan of merger was not able to be presented to the shareholders of the corporations this past April. Therefore, the provision in the legislation which would apply its terms to mergers voted on prior to its enactment is no longer necessary for NANA and could be stricken, but on the offchance that other Settlement Act corporations may vote on a plan of merger prior to enactment of legislation, we suggest the provision remain in the bill.

The last sentence of subsection (b) provides that upon the effectiveness of a merger, the merged corporation would be entitled to all rights and benefits of the Settlement Act which otherwise would be directed at the individual regional or village corporations which participated in the merger and would be subject to all of the restrictions and obligations which were applicable to such corporations. Transfers of rights and titles pursuant to a merger would not affect the tax exemptions granted by the Act and the merger would not be considered a taxable event, nor would the merger be considered the exchange or development of land pursuant to section 21 of the Act, thereby qualifying the land for state taxation.

Subsection (c) of section 107 deals with the somewhat complex question of how to treat the at-large stockholders in a merger or consolidation. Under section 7(m) of the Settlement Act, non-village residents (at-large shareholders) in a region are entitled to receive additional dividends from the regional corporation whenever distributions are made by the regional corporation pursuant to section 7(j) to the village corporations. The first sentence of subsection (c) expressly permits the elimination of these extra dividend rights as part of the terms of the merger or consolidation. In this regard, as shown in Appendix 3 to this statement, we propose two minor technical amendments to this subsection, one of which clarifies that the dividend rights arise not only under section 7(m) of the Settlement Act, but also under 7(j), and the other of which takes into account the fact that the dividend rights might not be eliminated totally, but merely altered.

The reason for the first sentence of subsection (c) is to permit the type of merger originally contemplated for the NANA region. All the village corporations would merge into NANA, and each village corporation stockholder would receive additional share of NANA stock in exchange for the village corporation stock. As to the at-large stockholders, who have no village corporation stock, the plan of merger might provide that they simply retain their regional corporation stock and also retain their extra dividend rights. On the other hand, a plan of merger might provide that, since all corporations are going out of existence, the at-large stockholders give up their extra dividend rights and instead receive additional shares of regional corporation stock, thus putting them on the same footing as all other stockholders. The first sentence of subsection (c) is merely intended to provide the necessary flexibility to alter or eliminate the extra dividend rights in a plan of merger. As the sentence states, and as is required under Alaska law, the dividend rights of a class of stockholders, including the at-large stockholders, could not in any way be altered or eliminated in a plan of merger unless the class itself voted on and approved the plan of merger, voting separately as a class. Thus, there is no risk that any such change could be imposed on the at-large stockholders against their will.

We also suggest that a second sentence be added to subsection (c) to clarify how dividends are to be calculated and distributed to the at-large stockholders in the event of a plan of merger which does not provide for any change in their dividend rights. We propose the following additional sentence:

In the event that such dividend rights are not expressly altered or eliminated by the terms of the merger or consolidation, such class of stockholders shall continue to receive such dividends pursuant to section 7(j) or (m) as would have been applicable if the merger or consolidation had not taken place and all Village Corporations within the affected region continued to exist separately.

This language would insure that, even if all village corporations merged into the regional corporation and thus there were no more distributions to village corporations to trigger the dividends to the at-large stockholders, the at-large stockholders would continue to receive the same dividends as before. For example, if prior to the merger the at-large stockholders constituted 12% of all stockholders of the regional corporation and thus were entitled to receive 12% of the 50% share required to be distributed by the regional corporation to the village corporations, they would, after the merger, continue to be entitled to such a 12% share of these mandatory distributions. This would be true even if no village corporations continued to exist. The dividends would have to be computed and paid annually as if all village corporations still existed. This would be true also if only some village corporations had merged into the regional corporation.

To the extent that village corporations did merge into the regional corporation, the regional corporation, under Alaska law, would have succeeded to those village corporations' proportionate interests in these mandatory distributions, and could retain them. This is not to say that a plan of merger or consolidation could not provide for some other arrangement as to the village corporations and their stockholders, such as exchanging the village corporation stock partly for regional corporation stock and partly for distribution rights comparable to those of the at-large stockholders. Such an arrangement, for example, would reflect the fact that the village corporations already have the right to pay out all monies they receive from the regional corporation to the stockholders. Other arrangements are also possible, and how it is actually done depends on the terms of the plan of merger to be approved by the stockholders. Flexibility is required, however, for each situation will present its special circumstances.

Finally, subsection (d) of section 107 insures that no corporation will be able to merge under this bill unless that corporation's shareholders have approved the merger or consolidation. As a strictly technical amendment, we propose that subsection (d) be amended by expanding the reference to subsection (a) therein to read "(a) or (b)".

THE ALASKA FEDERATION OF NATIVES

RESOLUTION 75-2

Whereas, it has become apparent after three years of operation pursuant to the Alaska Native Claims Settlement Act that if many of the village corporations formed pursuant to the Act are to survive, and their Native stockholders are to enjoy the benefits of the Act, the corporations within a given Region must be permitted to merge or consolidate; and

Whereas, S. 685 has been introduced in the 94th Congress, 1st Session, which bill would modify the provisions of the Settlement Act on alienation of stock to permit mergers or consolidations within a given Region of corporations formed pursuant to the Act;

Now, Therefore, Be It Resolved, that the Alaska Federation of Natives hereby endorses the passage of S. 685, and urges the Senate Committee on Interior and Insular Affairs to conduct hearings as soon as possible on S. 685, and further urges Congress to enact the bill into law; and

Be It Further Resolved, that the Legislature of the State of Alaska, and its Governor are requested to support S. 685 as now written.

ROGER LANG,

President.

FRED T. ANGASAN,

Secretary.

CONSOLIDATION OF CORPORATIONS

SEC. 107. (a) Notwithstanding any provision to the Settlement Act, any corporation created pursuant to section 7(d), ~~or~~ 8(a), 14(h)(2) or 14(h)(3) of such Act within any of the twelve regions of Alaska, as established by section 7(a) of such Act may, at any time, merge or consolidate, pursuant to the applicable provisions of the laws of the State of Alaska, with any other of such corporations created for the same region: *Provided, That the rights accorded under Alaska law to dissenting shareholders in a merger or consolidation may not be exercised in any merger or consolidation pursuant to this section.*

(b) Any corporations resulting from such mergers or consolidations further may merge or consolidate with other such merged or consolidated corporations within the same region or with other of the corporations created in such region pursuant to section 7(d), ~~or~~ 8(a), 14(h)(2) or 14(h)(3) of the Settlement Act. Such mergers or consolidations shall be on such terms and conditions as are approved by vote of the shareholders of the corporations participating therein, *including terms providing for the issuance of additional shares of Regional Corporation stock to persons already owning such stock*, and may take place pursuant to votes of shareholders held either before or after the enactment of this Act, Upon the effectiveness of any such mergers or consolidations the corporations resulting therefrom and the shareholders thereof shall succeed and be entitled to all the rights, privileges and benefits of the Settlement Act, including but not limited to the receipt of lands and moneys and exemptions from various forms of Federal, State, and local taxation, and shall be subject to all the restrictions and obligations of such Act which were applicable to the corporations and shareholders which participated in such mergers or consolidations or which would have been applicable if the mergers or consolidations and transfers or rights and titles thereto had not taken place.

(c) Notwithstanding the provisions of section 7 (j) or (m) of the Settlement Act, in any merger or consolidation in which the class of stockholders of a regional corporation who are not residents of any of the villages in the region are entitled under Alaska law to vote as a class, the terms of the merger or consolidation may provide of the *alteration or elimination of the right of such class to receive dividends pursuant to such section 7 (j) or (m). In the event that such dividend rights are not expressly altered or eliminated by the terms of the merger or consolidation, such class of stockholders shall continue to receive such dividends pursuant to section 7 (j) or (m) as would have been applicable if the merger or consolidation had not taken place and all Village Corporations within the affected region continued to exist separately.*

(d) Notwithstanding any other provision of this section or of any other law, no corporation referred to in subsection (a) or (b) of this section may so merge or consolidate unless that corporation's shareholders have approved the merger or consolidation.

Mr. HENSLEY. I am Willie Hensley. I am on the board of directors of the NANA Regional Corp. With me is Mr. Richard A. Baenen, who is counsel for NANA.

Actually, Mr. Chairman, we are speaking primarily on section 107 of H.R. 6644 dealing with the question of merger and I am representing NANA and the 4,900 stockholders of the corporation. Mr. Shafer, our president, is on vacation. Consequently I am here.

Mr. Chairman, the question of merger has been discussed within the NANA region for about 18 months and as we see it, this is a relatively noncontroversial aspect of the amendments to the Claims Act. We have support from the AFN for the changes in the act to allow for mergers, the villages, amongst themselves and into the regional corporation.

The State supports the concept also, as does the Interior Department and other regions. Under section 7(h)(1) there is a prohibition against the sale, assignment or alienation of stock consequently the need for the amendment. The modifications on the restriction on stock alienation are strictly for the purpose of merger or consolidation.

Mr. Chairman, I know that there are some concerns that perhaps management of the corporations may for one reason or another want to do away with the village corporations, but I assure you that in the case of NANA it is basically the villages that recognize the problems that are created for them under the act because of their small number of stockholders and the fact that over a period of time if they even utilize the smallest amount of staff and had the expenses of running the corporation, very quickly they would soon be depleted of their funds coming to them under the act.

On the other hand, NANA, the regional corporation, has about 50 percent or so of the funds coming to the Natives of that region and that organization is viable. We have many ongoing ventures, economic ventures, business ventures that indicate that the regional corporation is quite viable. On the other hand, the villages are pretty much corporate entities in reality, but do not really function.

What we have done basically is most of the work on a regional basis for the village corporations and we assist in all their annual meetings, we have assisted the villages in selection of lands and in doing their financial reporting. The villages have very small capital, they are remote, with very little communications, very minimal management capability in the village corporations and basically most of the leadership of that area has been more or less drafted by the region.

For that reason, Mr. Chairman, the villages in our area and the region meet on several occasions, and there was creation of a merger committee in each village, and that finally culminated this winter in a lengthy 2-day meeting where we sat pretty much for 2 full days and nights trying to work out an arrangement for a merger plan, and it was eventually adopted by all of the village corporation boards, including Kotzebue and the NANA region. We submitted the question of the proposed merger to the Interior Department and in concept they had no objection to it providing that there was legislation to allow this to occur.

We have some problems or at least some recommended changes that are a part of our statement to the language that is in the bill. I won't go into those, Mr. Chairman, but I would say that we spent a great deal of time and effort in setting up the merger plan and at the 11th hour virtually the SEC decided that it was not feasible for us to proceed with the merger and, consequently, we could not put it before the annual meeting in April.

I would like to turn the rest of the time over to our counsel, but I want you to know that we hope that the fact that the SEC did not allow us to proceed is only a temporary halt to our efforts because we

feel that in the long run the best interests of the NANA stockholders will be served by merger and hopefully we will have an opportunity to devote to that with the amendments being proposed.

Mr. MEEDS. Go ahead, sir.

Mr. BAENEN. Mr. Chairman, I am Richard A. Baenen and I request my written statement be submitted as part of the record.

Mr. MEEDS. Without objection it will be made a part of the record at this point and you may proceed to summarize.

[The statement follows:]

STATEMENT OF RICHARD A. BAENEN, COUNSEL TO NANA REGIONAL CORPORATION, INC.

Mr. Chairman, Members of the Subcommittee:

My name is Richard A. Baenen. I am a member of the firm of Wilkinson, Cragun & Barker, in Washington, D.C., general counsel to NANA Regional Corporation, Inc., one of the twelve regional corporations formed pursuant to the Alaska Native Claims Settlement Act and located in the northwest region of Alaska centered about Kotzebue. I appreciate the opportunity to testify before the Subcommittee on behalf of NANA, the eleven village corporations in the NANA region and the approximately 4,900 enrolled stockholders of the region.

Initially, I wish to address my comments to section 103 of H.R. 6644, which provides for a temporary exemption for Settlement Act corporations through December 31, 1976, from the provisions of the Investment Company Act of 1940. NANA strongly supports this exemption, as well as any proposal to extend it through December 31, 1980.

While, technically, many of the more than 200 corporations formed under the Settlement Act may come within the definition of an investment company, it is clear that at least at present, most simply are not the types of corporations that were intended to be covered by that Act. Many of these corporations are still in the initial formative stages. The problem is that while the initial portions of the funds due under the Settlement Act have been forthcoming, only very minor amounts of land have as yet been conveyed. Thus, the largest portion of many of the corporations' assets consists of cash, and in order to make this cash fully productive and thus fulfill their duty to the stockholders, most of the corporations keep the money invested in securities. This brings them within the definition of investment companies.

The requirements of the Investment Company Act of 1940 are quite burdensome. They include registration, extensive periodic reporting, as well as stringent regulation on proxy materials. However, many of these requirements simply make no sense in the context of Settlement Act corporations, many of which are located in bush Alaska and whose stock is not publicly traded. Although since April, 1974, the Securities and Exchange Commission has had in effect a temporary rule exempting the corporations from many of the provisions of the Investment Company Act of 1940, and greatly simplifying the compliance requirements thereunder, we understand that the SEC intends to amend this temporary rule in a manner which will render it considerably more burdensome. We, of course, understand the need for Settlement Act corporations, like other publicly held corporations, to be subjected to some form of appropriate regulation and control. However, we fear the situation in which all or most of the more than 200 corporations without an exemption would be considered investment companies for some time to come. Each of the companies would need the services of experienced securities lawyers to fully comply with all the complex rules and regulations of the Investment Company Act, and the result would be the expenditure of vast sums of legal and accounting fees for purposes which, in this context, would be of limited and questionable value. The Settlement Act could truly turn into the Lawyers and Accountants' Relief Act of 1971.

However, an exemption that runs only through December 31, 1976, would not really serve its intended purpose, and we strongly urge that the exemption be extended to run at least through December 31, 1980. First, it appears likely that by the end of 1976 many of the corporations may not yet have received title to the largest portion of their land entitlement, and at the end of 1976, when the exemption would expire, such corporations would once again be considered to be investment companies by the Securities and Exchange Commission.

Secondly, even if most of the land has been conveyed by the end of 1976, we believe that a problem would still arise if the exemption then expires due to the fact that the vast majority of land at that time will not yet have any value placed on it. This will be true for many years to come. During the first few months of this year, we, as NANA's counsel, have had extensive dealings with the SEC in connection with the attempt to merge the village corporations in the NANA region into NANA. I will go into further detail on this later. However, throughout the dealings, it was evident that the SEC was greatly concerned about the fact that a merger would take place, involving the exchange of regional corporation stock for village corporation stock, where the principal assets of the corporations, namely, their land, were of unknown value. We see it as quite likely that the SEC would take the position that, until the land has actually been appraised, it may be given only nominal value, or no value at all, in determining whether the corporations are investment companies.

One of the principal tests for determining whether a corporation is an investment company is whether more than 40 percent of its assets (excluding cash) consists of securities. If most of the corporations' assets consist of land which has never been appraised and therefore cannot properly have a value placed on it, it is difficult to see how the SEC could do anything other than not take the land into account and thus conclude that the corporations still have over 40 percent of their assets invested in securities. Accordingly, for several years after 1976, until the land has been valued, it is likely that even with the land conveyed, many of the corporations nevertheless would come within the definition of an Investment Company.

There is also another reason why the exemption from the 1940 Act should continue well beyond 1976, and this ties in with the strong need, in the NANA region as well as some other regions, to be able to merge some of the corporations pursuant to the provisions of section 107 of H.R. 6644. To explain this reason, it is necessary for me briefly to relate some of what occurred when we attempted this spring in the NANA region to merge the village corporations into NANA. NANA and one of the village corporations are registered as investment companies under the SEC's temporary rule applicable to Settlement Act corporations. While this rule exempts the corporations from most of the provisions of the 1940 Act, it does not exempt them from section 17 of the Act, which prohibits transactions between "affiliated persons" unless the SEC has issued an order determining in essence that the terms of the transaction are fair and equitable to the parties involved.

It was our intention that the merger be voted on by the stockholders at their annual meetings in late April. On February 26, 1975, in response to a no-action request by NANA, the SEC took the position that no such application would be required for the transaction to be voted on. Subsequently, on March 10, 1975, the SEC modified its position and advised us that, in its view, it did have jurisdiction over the merger. While its reasoning was not fully spelled out, its conclusions are based on a determination that the regional corporations and the village corporations are "affiliated persons", primarily because of the SEC's conclusion, with which we do not agree, that certain provisions of the Settlement Act give the regional corporations the power to exert some control over village corporations. Finally, on March 27, 1975, the SEC reversed its position entirely, and advised us that no merger could take place unless the Commission first ruled on the fairness of the transaction. We have also been advised that no such ruling could be forthcoming unless extensive hearings were held. While obtaining such an order would be very burdensome and costly, it normally would not be an insurmountable problem. In the case of corporations formed under the Settlement Act, however, there would be a serious obstacle based on the fact that one of the corporations' principal assets is their land, and until the land had been fully and properly valued, it would be virtually impossible for the SEC or anyone else to determine whether, from strictly a mathematical point of view, the terms of the merger are fair. A merger typically would involve the exchange of shares of stock in one of the corporations for stock in another of the corporations, and if the land cannot be valued, it would be impossible to determine with any degree of precision the exact book value of any of the shares.

Accordingly, it would not be possible to determine whether the exchange ratio for stock is fair and equitable for all concerned.

In our extensive dealings with the SEC on the proxy materials which were to be sent to the stockholders in connection with the merger vote, it was evident that the staff of the SEC was quite concerned over this aspect of the merger. We have

also been advised by SEC staff involved with 1940 Act compliance that this aspect of any transaction might indeed be a serious problem and might indeed prevent the Commission from ever issuing an order determining that the transaction is fair and equitable for all concerned. If the corporations therefore continue to be subject to section 17 of the Investment Company Act and have not yet properly valued all land received under the Settlement Act, it would appear virtually impossible for them ever to succeed in having the SEC approve a merger. It would seem that the only solution, other than having the corporations exempted from the 1940 Act, would be to have the corporations, prior to a merger, each conduct a full appraisal of all lands conveyed to them. This solution would be prohibitively expensive. Therefore, unless the provisions on a 1940 Act exemption are enacted and remain in effect well beyond 1976, the provisions of H.R. 6644 which authorize merger would become an almost meaningless gesture, since as a practical matter the chances of any such mergers' receiving the approval of the SEC under the 1940 Act are extremely remote.

This concludes my comments specifically directed to the exemption from the 1940 Investment Company Act of corporations formed under the Settlement Act. I would, however, like to address one other problem, relating to the question of SEC exemptions generally, as well as to merger. While I have mentioned the problems which NANA encountered under the 1940 Act in attempting to bring merger to a vote this spring, there are other problems which arise under other securities laws in any attempts to merge. Any merger or consolidation would involve the issuance of stock in exchange for stock, and thus would constitute a public offering. The shares would have to be registered under the Securities Act of 1933, through the preparation of a registration statement and prospectus describing every detail of the transaction. Even if the Securities Act of 1933 were not applicable to the merger, any merger involving a corporation deemed to be an Investment Company would subject the merger to the proxy rules under the Investment Company Act of 1940. Similarly, if the merger includes any corporation with more than 500 stockholders, the proxy rules under the Securities Exchange Act of 1934 would have to be complied with. Compliance with these proxy rules would only be slightly less burdensome than a registration statement under the 1933 Act.

In the case of the NANA merger, we began our efforts with a meeting with several SEC staff members at which we pointed out that to register stock under the Securities Act of 1933 is an extremely costly undertaking, and the resulting extensive and very detailed description of every aspect of the transaction in the prospectus clearly under these circumstances is not the best way of informing the stockholders of what they are voting on.

In the NANA region, at least, most of the Native stockholders are quite unsophisticated on corporate matters, particularly mergers. Many do not speak English very well. While many can read, the written word is simply not the customary way of conveying information. Traditionally, communication has taken place by word of mouth, or at village meetings. The SEC staff refused to budge, and required us to go through the full-blown registration procedure. Since we had no other choice, we proceeded with the preparation of the registration statement, in large part on reliance on the letter I mentioned earlier which we received from the SEC stating that no application would be necessary under section 17 of the 1940 Act. The resulting effort that went into the preparation of the registration statement was rather monumental. In the end, in late March, when the SEC reversed its position on the 1940 Act, we were not able to proceed with the vote, and the proxy materials were never finalized and never sent out to the stockholders. However, I have brought along copies of the registration statement as it was filed with the SEC after receiving the SEC's letter of comment to our initial filing. This version takes into account those comments of the SEC. I will not ask that this document be formally reprinted as part of the record, since it is extremely long. However, I ask that the Committee and its staff briefly review what we were required to file with the SEC. The proxy statement, being the portion that would have to be mailed to the stockholders, includes almost thirty pages of extremely detailed, technical and complicated text, and almost 50 pages of financial statements covering all twelve corporations involved in the merger.

It seems to us, and should seem to almost anyone who reviews this document, that a very complicated, 80-page proxy statement such as this one is probably the one guaranteed way of assuring that virtually none of the stockholders will have any idea of what they are voting on. It must be remembered that, at least

in the NANA region, until not too long ago the people of the region lived as their ancestors had hundreds of years ago, and still now most people exist on hunting and fishing. The thought that they might gain any benefit from such a document is almost preposterous.

If this were all that were involved, the preparation of these materials would constitute no more than an unfortunate waste of time and effort. However, the cost of preparing a registration statement is extremely high. This is always the case, even when the corporation involved is located in the lower 48. When the corporations are headquartered in villages scattered about bush Alaska, many thousands of miles removed from the SEC, the costs skyrocket. On this document, the printing costs alone were \$16,000. The cost of preparing the 50 pages of financials exceeded \$30,000. Since my firm does not deal in SEC law, we were required to retain SEC lawyers in New York for this special purpose and their bill in assisting us alone came to \$17,000. We can assure you that in this context their bill was quite reasonable. Those of many SEC firms would have been considerably higher. In total, the project costs NANA and the village corporations well over \$100,000, and probably closer to \$200,000.

We proceeded nevertheless because of the great importance of merger to the survival of the NANA region. We proceeded in large part in reliance on the SEC's no-action letter regarding the 1940 Act, and also in reliance on the continuous assurances we received from the staff members of the SEC who reviewed the registration statement that every effort would be made to comply with our tight time schedule. As it turned out, at the eleventh hour the SEC pulled the plug out from under us and did not permit us to proceed, and all the effort and money expended was wasted. This can only be described as a tragedy. The insensitivity of the SEC staff to the amount of money that was wasted on this project was truly incredible, and in our opinion the SEC performed a great injustice on the Natives. Congress clearly did not intend the benefits of the Settlement Act to be wasted on SEC compliance which would serve little constructive purpose. This, however, is the story unto itself, and it is too late to do anything about it. The problem is that virtually any conceivable merger or consolidation between any two or more corporations formed under the Settlement Act would involve a similarly costly effort of equally questionable utility. Even if two of the smallest village corporations sought to merge, a public offering of stock would be involved and the stock would have to be registered under the 1933 Act. The cost of this would be a minimum of \$100,000, thus making merger virtually impossible in many situations, particularly among the small corporations that might be most in need of it. The effort largely would be wasted. While prospectuses may be designed to inform stockholders and may adequately inform a group of Wall Street brokers, such a document will only confuse most of our stockholders. However, regardless of how unsophisticated the stockholders may be, the SEC insisted on full disclosure of the type customarily associated with a merger.

As noted, even if the 1933 Act were not applicable, similar disclosure would in most instances be required under the 1934 or 1940 Acts.

The problem of disclosure in this instance is further complicated by the fact that, while everything must be described in detail in the proxy materials sent to the stockholders, very stringent limitations exist under the SEC's rules and regulations as to what may be said orally about the merger. In the case of the NANA merger, we recognized that the written materials would be of little assistance to the stockholders. However, any attempt to hold village meetings to discuss the merger in terms which the people might understand were completely frustrated by the SEC's regulations on the subject, since any such simplified presentation would constitute disclosure which, to the SEC's customary and technical way of thinking, would be deemed to be incomplete and misleading. It would perhaps be only a slight exaggeration to say that anything short of standing up at these village meetings and reading to the stockholders the entire text of the 80-page proxy statement could result in a violation of their disclosure laws. Thus, what historically has been the principal method of communication to and among the Natives is effectively eliminated.

We raise the foregoing as a serious problem. We fear that the SEC's customary way of doing business may frustrate any reasonable attempt to inform the stockholders of the terms of the merger and may make any real disclosure impossible. It also would make even a simple merger among two small village corporations prohibitively expensive.

We do not know what the best solution is, but we presently see the following possible alternatives. A partial solution would be to exempt any mergers of Settlement Act corporations from the provisions of the Securities Act of 1933.

If a merger involved any corporation with more than 500 stockholders and \$1,000,000 in assets, it would continue to be subject to the proxy solicitation rules under the Securities Exchange Act of 1934, which apply only to corporations of that size. The proxy rules under the 1934 Act are somewhat less burdensome and therefore less costly to comply with than the requirements for stock registration under the 1933 Act. With an exemption from the 1933 Act, however, at least mergers among the smaller corporations could take place without the need for compliance with SEC laws which, because of the cost involved, would make the mergers virtually impossible. Mergers among larger corporations, subject to the proxy rules of the 1934 Act, would, of course, still be extremely burdensome. The 1934 Act also would continue to apply to such mergers in a manner which would make any attempt to hold village meetings to explain the terms of the merger in a simple, understandable, and meaningful way virtually impossible.

Another possible solution, which would first have to be studied in depth, would be to transfer, perhaps for a period of 20 years from the date of enactment of the Settlement Act, all jurisdiction over mergers of Settlement Act corporations and related disclosure to the stockholders, from the Securities and Exchange Commission to the Department of the Interior. Interior has had the benefit of many years of dealing with American Natives and clearly would be more sensitive than the SEC to the particular problems involved in informing Native stockholders of the terms of mergers as complicated as these would be.

We, of course, understand the need for full disclosure to the Native stockholders, just as to any other stockholders. We feel very strongly, however, that the normal method of disclosure simply is not useful or applicable in this situation.

There are of course solutions to the problem other than those which we have here suggested. We respectfully ask that we be given until the end of this week to submit to the Committee a more definite statement of what we view as the best possible solution to this difficult problem. In any case, in light of our experience in attempting to arrange a vote on merger in the NANA region, we very much appreciate the opportunity given to us to bring this matter to the attention of the Committee.

Mr. BAENEN. The main reason for my speaking relates to the application of the Securities and Exchange Commission law as applied to ANCSA. I believe my prepared statement will set forth most of the problems which the various villages and regional corporations will face should they seek to merge, assuming that Congress adopts the necessary legislation.

The basic reason we are not able to have a vote on the NANA merger this spring was an 11th hour determination by the SEC in which because they had construed NANA to be subject to section 17 of the 1940 Investment Company Act, they decided that they would not take it upon themselves to pass upon the fairness of the merger which is required if a merger is to take place between more than one and another affiliated persons, as it is described under the act.

In this connection because of their unconscionable activity—and I can only call it “unconscionable” because on February 27 we asked them for a no-action letter concerning 17(d). We received the letter.

On March 10 they, in effect, withdrew their no-action letter, but gave us a conditional go-ahead on the ground that there would be legislation ultimately to take care of the problem of application of the 1940 Investment Company Act to NANA and other regional corporations, and then on 27 of March, literally the last day, the day we were to go to press, that night in final printoff they called up and withdrew their conditional go-ahead and said that we would have to wait until legislation was passed in which we were exempt from the provisions of the 1940 Investment Company Act.

As my statement details, printing costs \$16,000, outside SEC counsel in excess of \$17,000 and they gave us a break. Pete Marwick & Mitchell, which worked 24 hours a day, 8 days a week to prepare the financial statements, \$30,000, they gave us a break. Most of this is wasted.

We did not plan on addressing the SEC problem because we were under the impression that the SEC would appear today and have a prepared statement. We thought that we would address it orally. Having determined yesterday that they would not appear today with a position paper, we spent yesterday afternoon drafting my statement, which is now a part of the record.

We would also request as part of the record, but not to be printed, that the staff have an opportunity to take a look at what the SEC put us through and what they expected to be an intelligent presentation of the question of merger to the Natives in the NANA region.

It is seven pages of material, approximately 40 pages of single-spaced detailed text; another 40 pages of financial information.

We pleaded with the SEC, we explained to the SEC in informal meeting after informal meeting that this was utter nonsense, that there was no way the average individual in the villages would understand what we were presenting to them, that everything we sent to them would end up in the wastebasket. In fact, we made a couple of suggestions that it be made on a very fine tissue paper and a hole be printed in it so it could be hung in an appropriate place and that stockholders' money would somehow—they would receive some benefit for it.

This is not to say that we did not on occasion run into a cooperative person down at the SEC. I must add for every cooperative individual we found at the SEC two that were rank with arrogance. It has been the most frustrating and disappointing experience I have ever witnessed in my practice of law in approximately 15 years in Washington, D.C., and I want it a matter of record.

We now find that the SEC will submit a paper or a position to this committee concerning the application of the Securities Act. We respectfully request an opportunity to rebut whatever they say in that paper.

The SEC by applying its laws to these proposed mergers will make it impossible to go out and make an oral presentation, without in effect reading everything that has been presented in this document, by virtue of their rules that the presentation must be as they see it to be full and fair. Their concept of "full and fair" is based on the fact that since that Commission was established apparently it has done nothing but deal with crooks and people who are out perpetrating frauds.

I can assure you that the leadership of NANA is highly incensed with the attitude that the SEC has expressed verbally and in its actions toward the Native leaders of the village corporations.

Frankly, the SEC is not at all capable by virtue of its own structure inherently to deal with the question of mergers as they would relate to these corporations at least during the formative stages and perhaps throughout the period from 1970 to 1991 when the 20-year stock alienation provision evaporates.

We have suggested in our testimony the possibility of transferring the question of mergers to the Department of the Interior. We will at the time, if we are permitted to, comment upon the SEC submission, give concrete and definitive recommendations as to what we think should be done.

The rules as presently applied would, in effect, nullify any action taken by Congress to permit merger by adopting section 107 of Congressman Brown's bill, because they would apply their rule, we fear, in such a way that it would be prohibitive not only financially, but as a practical matter. In that connection, as Mr. Hensley has mentioned, we have suggested some clarifying language to Congressman Brown's bill. It is attached as an appendix to Senator Hensley's testimony in which we delete the language we suggest be deleted and which we underscore the language we suggest be added.

I would be happy to answer any questions and I would be most pleased to have an opportunity to respond to whatever the SEC files.

Mr. MEEDS. Do I understand you to be nominating the SEC for the "Boo of the Week" Award?

Mr. BAENEN. I would like to expand it to perhaps the year award. We have in our office what we award every now and then and it is known as the "Bronze Buffalo Chip Award." We would be happy to give them that, too.

Mr. MEEDS. I assume that Wilkinson, Cragun & Barker have also lowered their legal fees because everybody else gave a break?

Mr. BAENEN. I am happy to say that we have.

Mr. MEEDS. Atta-boy.

Mr. BAENEN. When you work with Willie Hensley and John Shafer, you have to.

Mr. MEEDS. Very good. I think we probably ought instruct the clerk to clip this part of the testimony, and we will send it to the SEC.

Mr. BAENEN. I would be happy if you did, sir.

Mr. MEEDS. Thank you very much for your testimony, Willie. It is clear that it is not only a critical matter to NANA, but many of the other regional and village corporations, and merger is badly needed in the legislation. I don't think there is any great argument about that.

Mr. YOUNG. No, Mr. Chairman.

Mr. MEEDS. Except with the SEC.

The gentleman from Alaska.

Mr. YOUNG. Your amendment would assure that the merger could take place and it is your proposal for stock interchanging, that that could take place. Under the presenting wording of my bill they have already started promulgating rules that would negate the legislation before us? Is that it?

Mr. BAENEN. I am not certain, Congressman Young, what position the SEC will take. We believe because of the experience we have gone through that if we are exempt from the 1940 act, we can go ahead and get the merger presented to the stockholders for a vote. If we are not exempted from the 1940 Investment Company Act, then because the SEC considers village corporations under section 17 of that act to be "affiliated" persons with the NANA Regional Corp., the SEC has the power—unless it issues a no-action letter—to pass upon the fairness of a merger.

This is based upon a feeling and the belief that if you have affiliated companies, that is, one which has some dominance or influence over

another, it may create a bad feel for the stockholders. You can imagine us trying to deal with the staff of the SEC, which understands nothing much other than book value, when we start talking about NANA owning a subsurface estate of 2.4 million acres and the village, surface estate. We start to explaining 90 percent of this is above the Artic Circle and they say, "What is the value of it?" And they want a book value.

Well, you will never be able to give them a book value, not for 25 years, if then.

Mr. YOUNG. You can rest assured we don't want to pass any legislation that doesn't do what we want it to do. That is why we are here today.

One other question, Willie, in a merger is there any way that the merging of the villages will affect the voting of the corporation board? Right now the villages would have a right to nominate and do other things. Would that change it all?

Mr. HENSLEY. What we did during our merger meeting, Congressman Young, was basically restructuring of the board. We had basically to double the size—more than double the size of our board to increase the representation, and a part of this also was a land management plan that would allow each village to have some say over the use of land within their area since, in fact, the lands that they owned would be merged with that of the region.

So there was a give and take, I think, on both sides.

Mr. YOUNG. The reason for the question is I want to be sure if we don't—so that we don't narrow it to NANA, this will affect all the corporations. I want to be sure that the villages that participate in the due process and election of board members retain that right. We want to be sure of that.

Mr. HENSLEY. That's right, yes. Well, every village has a board member. In fact, I think we have added a board member for every village and more for Kotzebue than they had earlier.

Mr. YOUNG. Mr. Chairman, thank you.

Mr. MEEDS. Thank you very much, gentlemen.

The director of the Sierra Club, Brock Evans, was here and he had to leave, so in the absence of objection his statement will be made a part of the record at this point.

[The statement follows:]

STATEMENT OF BROCK EVANS, DIRECTOR OF SIERRA CLUB WASHINGTON OFFICE

We appreciate the opportunity to be here, and to express our continuing concern for proper resolution of native claims settlement in the State of Alaska. As you know, the Sierra Club has had a deep and long-standing interest in the environmental future of Alaska, and problems in that State have been among the very top of our priority issues for many years.

We supported the Alaska Native Claims Settlement Act, and we are certainly prepared to support appropriate amendments to it, which clarify unresolved issues, or which do justice to the rightful claims of the native peoples. Unfortunately, we have not had much time to review legislation which is or will soon be considered by this Subcommittee; the pace of events has been very fast in the past few days, and as we understand it, proposals are constantly changing. Therefore, we would like to address some basic principles of what we consider to be necessary elements of any legislative solution to fundamental problems of potential environmental impact: public easements and land-use in the Cook Inlet Region.

Public Easements. Along with the native peoples, we also have been greatly concerned about recent proposals of the Bureau of Land Management for reserving easements across private lands, including native lands, in Alaska. We were surprised to see local and transportation corridor easements combined in a single draft, because previously, these categories had been kept separate for purposes of public discussion. We were also surprised that new easements, such as power and utility sites and other commercial uses not related to access through native-owned land, were also included. We would support any legislative proposal which would eliminate these types of easements across native land.

We have been naturally most concerned with local and recreation easements, particularly long recreational streams, lakes, and bays and the Coastline. We have generally supported guidelines for such access which protects present use patterns, with the strong proviso that the phrase "present recreation uses" include all streams and bodies of water within the boundaries of proposals currently pending before the Congress for additions to the national park, forest, wildlife refuge, and wild and scenic river systems. This is for the reason that we believe that Congress clearly contemplated the establishment of such reserves in the Alaska Native Claims Settlement Act, and thus it reserved to itself the determination of their final boundaries. Congress therefore could not have contemplated a transfer of rights of public use and access to waterways within areas where it knew it would very soon thereafter be considering for public reserves.

We would make one other exception to the present recreation use viewpoint: That is, where the pattern of native ownership makes it necessary to reserve new routes to gain access to tracts of public land. We can foresee instances when the existence of the native selections may make old routes unnecessary, but may require the reservation of new ones.

Finally, it is our strong view that, for the most part, ingress and egress to Federal reservations should be reserved primarily to those uses and activities which do not require motorized means of transport, nor which involve products or services of commercial value.

Cook Inlet Region Problems. We recognize that the natives of the Cook Inlet Region have faced a particularly difficult problem in finalizing their land selections, since a great portion of their potential lands were previously selected by the State of Alaska. We favor any reasonable means of resolving this problem which would do justice to the outstanding environmental values in the area. We understand that at the present time extensive discussions are taking place between the State and the Region, to see if some solution can be worked out. We have ourselves engaged in some discussions with both parties as well. We strongly urge the subcommittee not to take any final legislative action until the full results of these meetings and discussions have become known. Then we will be able to determine whether or not an agreement suitable to all can be reached.

As we see it, there are several fundamental principles which should be observed in order to arrive at a proper solution to the problem:

1. The integrity of the Kenai Moose Range must be preserved. This means support and reasonably quick enactment into law of the citizens' proposal for the Andy Simon Wilderness within that refuge, advanced by citizen groups some time ago. Protection of a large portion of the Moose Range as wilderness would go a long way to ensuring protection of critical moose habitat.

Along the same lines, we feel that it is important that, whatever the ownership pattern, the canoe routes in the northern part of the Range, especially the Swanson River portion, be protected and managed as such.

While we might be able to favor, in view of the problems involved, the transfer of perhaps up to five townships from the northwest corner of the Range to native ownership (with some more transfers of subsurface rights to other townships), we would hope that this would be coupled with a specific directive to the Secretary of the Interior to select substitute lands elsewhere in Alaska for management for wildlife refuge purposes. There has already been a great deal of encroachment upon existing Alaskan wildlife refuges because of native selections, and we must find a way to protect crucial habitat.

2. The Lake Clark area be managed under one ownership. As you know, the Lake Clark area is the subject of various national park proposals. If this is impossible, it would do equally well as a well-managed state park. Thus, we favor discussions which would lead to a transfer of native selections away from Lake Clark, and into other suitable lowland areas around Cook Inlet, from existing state lands. This would serve both to the advantage of the natives and of the State, by permitting large blocks of ownership in one contiguous place.

We feel reasonably confident that a solution to the problem of the Cook Inlet natives, which will secure for them their just claims, and yet protect environmental values can be reached.

Thank you for this opportunity to testify.

Mr. MEEDS. Edna Berg indicated she would like to make a statement.

You have a statement. If you would like to summarize it, we will make it a part of the record.

Mrs. BERG. Yes.

[The statement follows:]

STATEMENT OF EDNA BERG, A DIRECTOR OF THE ALEUT CORPORATION

My name is Edna Berg. I am currently enrolled into the Aleut Corporation at-large. I am a director of the corporation. In addition I am on the Board of Directors of AFN's Washington chapter and a member of the Pacific Northwest Aleut League Council. I am testifying today on behalf of the Aleut Corporation and its shareholders, some of whom will be transferred to a 13th region should one be created by Congress as has been proposed.

The Aleut Corporation is a party to the lawsuit filed by AFNI and ANAO against the Secretary of Interior, which resulted in Judge Gasch's decision. The Corporation is appealing this decision because it believes it is erroneous as a matter of law and was based upon a shifting set of facts—the exact vote count—which could not provide a firm basis for a judicial decision.

Accordingly, it is the position of the Aleut Corporation that if a thirteenth region is to be created, certain minimum safeguards must be included in the legislation to protect the individual natives whom everyone concedes were misled by the inept and confusing manner in which the election was conducted. This Committee has heard testimony that numerous persons, including one who has personally appeared before you, Mr. Dalrymple received no notification of any amendment process for changing the original enrollment application. In fact, Interior never published a regulation indicating that amendment could be filed. As Mr. Soller, Assistant Solicitor of the Department of Interior testified at his deposition in the AFNI litigation, no such regulation existed. I now quote Mr. Soller's sworn testimony:

"Never was there a regulation inviting nor permitting expressly amendments to enrollment application." (TR. 93, Sept. 25, 1974 Deposition)

Legislation which would limit an option in or out of the 13th region to those persons who amended their application in writing would effectively deny numerous natives the benefit of a choice they were never informed they had.

The fact is that a substantial body of individual natives should not be locked into a 13th region for any period of time unless it is their true choice to belong to it. The record before this Committee shows that many natives either attempted to amend or were unaware that they would be permitted to amend. These people should be given a choice now, not three years from now.

The argument that a new 13th region should not be forced to compete with the existing 12, as might be the case if a new choice is now permitted, is wide of the mark. The 13th region has no interest in being hampered by a dissident block of shareholders locked in. The Committee has apparently recognized the force of this point by its proposal to favor nominees for incorporators from existing native associations which supported creation of the 13th. But if dissident shareholders pose a threat to the 13th, then an immediate option in or out will ensure the departure of the dissidents while simultaneously guaranteeing accumulation of new, enthusiastic 13th shareholders—those who opt in. The currently proposed legislation does not, however, permit such an option.

If there is to be a 13th region created with a 3-year waiting period for an option in or out, it becomes even more important that access to the ballot for incorporator be free. Instead, the current legislation would apparently burden those who need the protection of having a representative as an incorporator and later on the Board by requiring that a person may be nominated for incorporator only if he or she has obtained the signatures of 200 supporters. We submit this is far too burdensome a number and that fairness requires that no more than 50 such names be on a petition to nominate for incorporator. As we see it, the disadvantage is

currently placed precisely on those who are most in need of protection, those who clearly wish to opt out now. Indeed it was the clear intent of Congress in passing the Settlement Act by providing that only those who elected in favor of a 13th region would become members of it.

We wish to draw the Committee's attention to an aspect of Judge Gasch's decision which seems to have been left out of the Committee's considerations. Judge Gasch recognized that his creating of a 13th region ought not to limit administrative flexibility to permit enrollment amendments in or out by regulation issued by the Secretary of Interior. The Order creating a 13th region in no way detracts from this needed flexibility. The Order is merely a starting point. The fairest disposition of the interests and conflicts which are bound up in the creation of the 13th region can best be solved by observing the spirit of the Settlement Act's declaration of policy; "The settlement should be accomplished rapidly, with certainty, in conformity with the real economic and social needs of the natives, without litigation, with maximum participation by natives in decisions affecting their rights and property . . ."

This means an option in or out now if a thirteenth region is legislatively created.

Finally we urge that language be included providing that enrollment of non-residents into the 13th will not affect (1) any current entitlement of Regional or village corporations to land, revenues, or funds, other than the Alaska Native Fund, nor (2) the eligibility of any village under the Settlement Act.

Thank you.

STATEMENT OF EDNA BERG, DIRECTOR, ALEUT CORP.

Mrs. BERG. Mr. Chairman and members of the subcommittee, I have prepared a written statement and in consideration for your time I would like to make two points clear.

I am on the Aleut Corporation's Board of Directors and I am a nonresident and also I am on the Alaska Federation of Natives (Washington Chapter) and a member of the Pacific Northwest Aleut League Council.

I really feel there should be legislation to create the 13th and shareholders should be allowed an option in or out of the 13th region. The reasons are, one, that it would be good for the 13th region because I feel there is a large group of dissident shareholders that would be in the 13th region.

It also would be good for the regional corporations in Alaska to allow those who wanted to join the 13th region.

Second, I think the option should be given to those who never amended since many nonresidents were never allowed to or didn't know they could amend their enrollment. I really feel there should be an option now and not at a later time.

That is all I would like to say on it. My statement covers all of the issues that have been presented to you.

Mr. MEEDS. Do you think, Edna, that if you are going to provide the opportunity for those who made a definite decision and never changed, to opt out of the Thirteenth Regional Corp., you should also allow those who made a definite decision against the 13th region and never changed an opportunity to opt into the 13th?

Mrs. BERG. I think there will be shareholders who will want to go into the 13th region also.

Mr. MEEDS. And all of those people who indicated some ambivalence, some question about what they were doing, those who amended should have that new option?

Mrs. BERG. Right.

Mr. MEEDS. So that we are now talking about all nonresident Native Alaskans, right?

Mrs. BERG. I am talking about those who are eligible to vote in or out of the 13th.

Mr. MEEDS. That is what I mean.

Mrs. BERG. Yes.

Mr. MEEDS. And it is my understanding you feel that election should take place now?

Mrs. BERG. Yes.

Mr. MEEDS. OK.

Mrs. BERG. That is it.

Mr. MEEDS. Thank you very much.

Mr. YOUNG. I have no questions, Mr. Chairman.

Mr. MEEDS. Thank you very much. Your prepared statement was made a part of the record.

This concludes our hearings at least for now on H.R. 6644. I want to thank all of you for your patience and for your testimony.

[Whereupon at 3:45 p.m. the subcommittee adjourned, to reconvene at the call of the Chair.]

[Additional statements submitted for the record follow:]

WILKINSON, CRAGUN & BARKER,
LAW OFFICES,
Washington, D.C. May 29, 1975.

HON. LLOYD MEEDS,
Chairman, Subcommittee on Indian Affairs, House Committee on Interior and Insular Affairs, Rayburn House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: This letter is in response to the comments made in the recent letter to you from the Securities and Exchange Commission regarding the provisions of H.R. 6644 which relate to an exemption for corporations formed under the Alaska Native Claims Settlement Act from the Investment Company Act of 1940, as well as to the applicability of the securities laws to mergers among Settlement Act corporations. In connection with the merger in the NANA Region, which was proposed for this spring but which was precluded by action of the SEC, our client, NANA Regional Corporation, Inc., had extensive dealings with the SEC, and as a result of this first-hand experience, we believe we are qualified to discuss the practical inapplicability of the securities laws to Settlement Act corporations while their stock remains inalienable under law and they therefore are not publicly held and traded corporations.

The Commission argues against any exemption from the Investment Company Act of 1940 (the "1940 Act") contained in section 103 of H.R. 6644. However, as the SEC consistently did in its dealings with NANA on its proposed merger, it again totally ignores the special circumstances surrounding Settlement Act corporations and their stockholders, and the fact that these circumstances tend to render any strict or literal application of the securities laws a meaningless but very expensive technical exercise. The 1940 Act, for example, is intended to regulate companies, such as mutual funds, which are engaged in the business of fund management and in which the public at large invests. The SEC appears to see no legitimate distinction between the average Wall Street mutual fund or investment management company and a small, fledgling village corporation whose stock was issued at Congress' direction and may not be traded until 1991, which is headquartered in an Eskimo village north of the Arctic Circle, and whose stockholders' primary lifeline is, and for centuries has been, hunting and fishing. Because these corporations have received money under the Settlement Act and keep the money temporarily invested through a reputable money manager, such as Wells Fargo Bank, N.A., in the case of NANA and its villages, until they are sufficiently organized to engage actively in business, this may cause the corporations technically to come within the 1940 Act's definition of an investment company. Yet this fact obviously does not make these corporations the type of entity the 1940 Act is aimed at, nor does it make the application of that Act produce any social benefit. In fact, the requirement that 100 or 200 of these corporations each separately comply with the complex and detailed rules and regulations of the 1940 Act would create, as its principal result, a bonanza for the scores of lawyers and accountants that would have to be retained for this purpose. This

obviously is not the purpose for which Congress is appropriating funds for these corporations in settlement of their land claims.

More specifically, the SEC argues that at least certain provisions of the 1940 Act should be applicable to Settlement Act corporations. It appears most concerned about section 17, but also maintains that the proxy, reporting and record-keeping requirements of the 1940 Act should apply.

Section 17 of the 1940 Act basically prohibits any transaction between "affiliated persons" until an application has been filed with the SEC and the Commission has determined that the transaction is fair and equitable. In its dealings with the NANA Region, the SEC took the position that, because the regional corporation under the Settlement Act may exert some control over the village corporations, regional and village corporations are "affiliated persons". Thus, any significant transaction between the two requires an application and SEC order. The same may also be true for transactions between village corporations of the same region. If both are affiliates of the same regional corporation, the section 17 requirement for an application and order could also be applicable to these transactions. Applying such cumbersome, time-consuming and expensive procedures to so many transactions could seriously hinder the development of the corporations, waste large portions of their assets on additional legal and administrative costs, and frustrate rather than produce the intended benefits of the settlement.

Two recent examples in the NANA Region are quite demonstrative of this. In January, 1975, NANA and the eleven village corporations agreed on a plan of merger and intended to have the stockholders vote, at the April stockholders' meetings, on whether to merge each village corporation into NANA (subject, of course, to Congress' enacting legislation authorizing mergers among Settlement Act corporations). At first, we received a "no-action" letter from the SEC, advising us that no section 17 application would be required, although the SEC viewed the merger as a transaction between affiliated persons. In reliance on the letter, we undertook most of the work required for compliance with the stock registration requirements of the Securities Act of 1933. The prospectus which the SEC required and which we prepared entailed vast amounts of attorney, accounting and administrative costs, as well as printing costs. The total amount expended was well over \$100,000, and probably closer to \$200,000. At the last moment, however, the SEC reversed its position, withdrew the no-action letter and advised us that the vote on merger could not proceed until a 1940 Act application had been filed and an order received. The intended "protection" of section 17 therefore resulted in wasting close to \$200,000 of NANA's money received under the Settlement Act. We were also advised that no such order could be forthcoming until "extensive public hearings" were held.

Finally, we have been advised by staff members of the SEC that serious problems may exist for several years to come in ever receiving a determination by the SEC that the terms of any merger are fair and equitable, and unless the SEC makes such a determination, merger cannot take place. The problem is that the value of the land rights of the corporations has not yet been determined. While the village corporations, many located in bush Alaska many miles from civilization, had many "intangible" reasons for wishing to merge, the SEC is inclined to view the fairness of the transaction strictly in terms of dollars and cents. Until the value of the land received is known, the true book value of each corporation's stock is not known, and it thus would be impossible for the SEC to determine whether the exchange ratio of stock for stock in the merger is in fact fair and equitable strictly by the one artificial yardstick of book value. All the land cannot be appraised for years to come, and it may never be subject to appraisal, and we therefore seriously doubt if the SEC would ever approve a merger among Settlement Act corporations which it deemed to be investment companies. The result, of course, is obvious. While the SEC holds up mergers because it cannot fit the facts of bush existence into its "square holes", the smaller corporations will start to collapse into bankruptcy. This, of course, will solve the SEC's problems, for it will have protected the stockholders from an "unfair" merger. The fact that there are no more stockholders is irrelevant.

The second example involves the Kotzebue village corporation, which recently sought to purchase a building, for purposes of renovation and then rental. The building previously had been owned by three brothers, one of whom was director of the corporation. The Kotzebue corporation is registered as an investment company and the SEC therefore views the transaction as one between affiliated persons, again requiring a Commission order that the transaction is fair and equitable. This, however, is proving to involve a more extensive proceeding than is

customary, since it is difficult to produce an appraisal of the Kotzebue property which is considered satisfactory to the SEC. The problem here is that there are not enough other comparable real estate transactions in a town the size of Kotzebue to produce the normal, full-fledged type of appraisal to which the SEC is accustomed. Accordingly, this transaction also may not be able to be consummated. In a smaller village, at least in the NANA Region, this would be even more of a problem. We also note that, because of the smallness of many of the Native communities, the high degree of family interrelationship between the members, and the small number of Native business and community leaders in the average Native village, a very substantial proportion of business undertakings by Settlement Act corporations would end up being transactions between affiliated persons and would require SEC approval under section 17 of the 1940 Act before being able to proceed.

With regard to the applicability of the 1940 Act's proxy, reporting and record-keeping requirements, these similarly lose their purpose when applied to Settlement Act corporations. The SEC continues to ignore the fact that the stock of Settlement Act corporations may not be traded until 1991, thus defeating much of the purpose of the periodic reporting requirements, *i.e.*, the filing of extensive reports which are kept on public file with the SEC (but not mailed to the stockholders). Similarly, the proxy rules require, in connection with any vote of stockholders, an extensive and detailed written description of all aspects of what is voted on. In the case of the NANA merger, the proxy statement would have run to over 80 tightly printed pages, including 50 pages of financial statements. In the NANA Region, at least, such a complex and detailed proxy statement does not serve its intended purpose of informing the stockholders, most of whom are new to stock ownership and are still unsophisticated in financial matters, and many of whom are less than familiar with English, and who is any event are not accustomed to the written word as the primary means of communication. The stockholders in the NANA Region customarily receive their information at village or community meetings, at which the matters are discussed and explained, often of necessity in simplified terms. Extensive, written proxy materials will serve mostly to confuse and will be a wasted but very costly effort.

The SEC's letter also appears to understate the number of corporations to whom the Investment Company Act of 1940 would apply. The Act generally applies to corporations with over 100 stockholders and 40% of their assets (excluding cash and government securities) invested in securities. While the letter states that the 1940 Act would only apply to those Settlement Act corporations which "choose" to register with the Commission, this obviously is not truly a matter of choice. If a corporation comes within the definition of an investment company, then its failure to register with the Commission would constitute a violation of the 1940 Act. From a numerical point of view, approximately 175 Settlement Act corporations have over 100 stockholders and could be considered investment companies. While not all may have the requisite percentage of their assets invested in securities, we note that merely the receipt of title to the land will not necessarily take them out of the definition. This is true because much of the land for many years to come cannot be appraised, in fact, may never be subject to an appraisal, and without having an accurate value placed on it, the SEC, we are certain, would take the position that the land may be given only nominal value, or no value at all, in determining whether the corporations are investment companies. It would in fact have little choice but to ignore the land in making the determination, and thus would conclude that most of the corporations still are investment companies, and will be for years to come.

Keeping in mind the detailed and technical nature of the 1940 Act requirements, and the large number of corporations to whom they could apply, it is evident that if no exemption is enacted, vast amounts of money will be expended by the corporations on the necessary compliance, to very little useful purpose. More importantly, however, mergers will be precluded as a practical matter. The application of the SEC's rules and regulations to up to 175 separate and often very small corporations, each of which would have to retain lawyers expert in securities law and incur additional accounting and administrative costs, could result in a rather phenomenal expenditure of Settlement Act funds. We can assure you from our own experience that it is far more expensive for a corporation headquartered in a small village in bush Alaska, without telephones or other proper communications, and thousands of miles removed from the SEC's headquarters in Washington, to comply with the SEC's myriad rules and regulations than it is for the average Wall Street mutual fund.

This brings us to the next point. If Settlement Act corporations are exempted from the 1940 Act until 1991, many will instead become subject to the Securities Exchange Act of 1934, which applies to corporations with over 500 stockholders and \$1,000,000 in assets. It again will impose on the corporations most of the same onerous, costly and in the context of Settlement Act corporations meaningless registration, proxy and reporting requirements. The Commission itself, in its letter, characterizes the 1934 Act as "a statute which is designed basically to inform the Commission and the investing public as to securities of publicly traded companies." Since the stock of Settlement Act corporations may not be traded and the "public" may not invest in it until 1991, the 1934 Act has no proper application to these corporations.

Finally, the issuance of stock in any merger or consolidation separately will be subject also to the registration and prospectus requirements of the Securities Act of 1933, with the same results achieved as in NANA's case. The SEC will require a long, detailed, costly and to most Natives meaningless document that will only confuse and mislead, thus causing the Natives not to vote on the merger at all. As noted, in the case of the NANA merger, the prospectus, intended to inform the Natives, would have been 80 printed pages long and included 50 pages of financial statements and accompanying footnotes. While such a document may properly serve the needs of the Wall Street community, no self-respecting Eskimo would spend even one minute trying to decipher its meaning. The requirements for a 1933 Act prospectus would apply even to mergers of two of the smallest village corporations, and because of the high cost of compliance, would preclude any such mergers from ever taking place.

Therefore, we strongly urge that the Committee Report recommend that H.R. 6644 be amended to exempt Settlement Act corporations from the provisions of the Investment Company Act of 1940, and the Securities Exchange Act of 1934, until 1991, when their stock becomes alienable and they are truly publicly traded corporations. We also recommend that section 107 of the bill, on merger, be amended to exempt mergers or consolidations from the stock registration requirements of the Securities Act of 1933. Such a provision has already been introduced in the Senate by Senator Ted Stevens as part of S. 1824.

We attach as Appendix A to this letter a suggested redraft of sections 103 and 107 of H.R. 6644, showing all of the changes we proposed, both in the written testimony of Senator Willie Hensley, presented at your Committee's hearings on May 13, 1975, and in this letter. Also attached, as Appendix B, is a separate memorandum outlining the applicability and requirements of the three principal securities laws.

We firmly believe that the failure to exempt the Settlement Act corporations until 1991 from the provisions of the Investment Company Act of 1940 and the other securities laws would seriously hinder their development, would make impossible many of the transactions they may wish to undertake, and would not serve the true intended purpose of protecting the stockholders, but rather would entail the expenditure of many thousands of dollars for technical compliance to little useful gain.

We appreciate the opportunity of submitting this response to the SEC's comments. If you have any questions, or if we can be of help, please let us know.

Sincerely,

RICHARD A. BAENEN,
Counsel to NANA Regional Corporation, Inc.

APPENDIX A

EXEMPTION FROM INVESTMENT COMPANY ACT AND SECURITIES EXCHANGE ACT

SEC. 103. The Settlement Act is amended by adding at the end thereof the following new section:

"SEC. 28. Any corporation organized pursuant to this Act shall, through December 31, 1991, be exempt from the provisions of the *Securities Exchange Act of 1934* (48 Stat. 881), as amended, and the *Investment Company Act of 1940* (54 Stat. 789), as amended. Nothing in this section shall, however, be construed to mean that any such corporation shall or shall not, after such date, be subject to the provisions of such acts."

CONSOLIDATION OF CORPORATIONS

SEC. 107. (a) Notwithstanding any provision of the Settlement Act, any corporation created pursuant to section 7(d), or 8(a), 14(h)(2) or 14(h)(3) of

such Act within any of the twelve regions of Alaska, as established by section 7(a) of such Act may, at any time, merge or consolidate, pursuant to the applicable provisions of the laws of the State of Alaska, with any other of such corporations created for the same region: *Provided, That the rights accorded under Alaska law to dissenting shareholders in a merger or consolidation may not be exercised in any merger or consolidation pursuant to this section.*

(b) Any corporations resulting from such mergers or consolidations further may merge or consolidate with other such merged or consolidated corporations within the same region or with other of the corporations created in such region pursuant to section 7(d), or 8(a), 14(h)(2) or 14(h)(3) of the Settlement Act. Such mergers or consolidations shall be on such terms and conditions as are approved by vote of the shareholders of the corporations participating therein, *including terms providing for the issuance of additional shares of Regional Corporation stock to persons already owning such stock*, and may take place pursuant to votes of shareholders held either before or after the enactment of this Act. Upon the effectiveness of any such mergers or consolidations the corporations resulting therefrom and the shareholders thereof shall succeed and be entitled to all the rights, privileges and benefits of the Settlement Act, including but not limited to the receipt of lands and moneys and exemptions from various forms of Federal, State, and local taxation, and shall be subject to all the restrictions and obligations of such Act which were applicable to the corporations and shareholders which participated in such mergers or consolidations or which would have been applicable if the mergers or consolidations and transfers of rights and titles thereto had not taken place.

(c) Notwithstanding the provisions of section 7 (j) or (m) of the Settlement Act, in any merger or consolidation in which the class of stockholders of a regional corporation who are not residents of any of the villages in the region are entitled under Alaska law to vote as a class, the terms of the merger or consolidation may provide for the *alteration or elimination of the right of such class to receive dividends pursuant to such section 7 (j) or (m). In the event that such dividend rights are not expressly altered or eliminated by the terms of the merger or consolidation, such class of stockholders shall continue to receive such dividends pursuant to section 7 (j) or (m) as would have been applicable if the merger or consolidation had not taken place and all Village Corporations within the affected region continued to exist separately.*

(d) Notwithstanding any other provision of this section or of any other law, no corporation referred to in subsection (a) or (b) of this section may so merge or consolidate unless that corporation's shareholders have approved the merger or consolidation.

(e) *Until December 31, 1991, any merger or consolidation pursuant to this section and the issuance of securities pursuant to any such merger or consolidation shall constitute transactions exempt from the provisions of the Securities Act of 1933 (48 Stat. 74), as amended.*

APPENDIX B

MAY 23, 1975.

MEMORANDUM

RE: APPLICABILITY OF SECURITIES LAWS TO SETTLEMENT ACT CORPORATIONS

This memorandum outlines the applicability to corporations formed under the Alaska Native Claims Settlement Act of the (a) Investment Company Act of 1940, (b) Securities Exchange Act of 1934, and (c) Securities Act of 1933, assuming no legislative exemptions. Also outlined are the compliance requirements, as well as certain special problems resulting from the applicability of each such Act.

Several points should be kept in mind in connection with the review of the laws. First, there is considerable overlap in the applicability of the three securities laws, so that more than one might apply in a given circumstance and the exemption of Settlement Act corporations from the provisions of one of the acts may not affect the applicability of another of the acts whose requirements may be just as burdensome. For example, registering under the 1940 Act exempts a corporation from the provisions of the 1934 Act. However, if all corporations are exempted from the 1940 Act the larger ones would automatically become subject to the 1934 Act. Similarly, if the issuance of stock in a merger is exempted from the stock registration and prospectus requirements of the Securities Act of 1933, the vote on merger might nevertheless be subject to the proxy solicitation rules under the 1934 or 1940 Acts, which are only slightly less burdensome.

Second, although this is not noted below separately for each item, most of the compliance requirements of the securities laws are extremely detailed and technical, require particular expertise, and are therefore very costly, involving attorneys and accountants, plus requiring corporate staffs to devote much time and attention to the matters. While this is always the case, the fact that all the corporations are headquartered in Alaska, and often in bush Alaska, greatly increases the expenses involved. If most of the almost 250 Settlement Act corporations separately must comply with one or another of the securities laws, a considerable portion of the funds appropriated by Congress under the Settlement Act would have to be expended for this purpose.

Third, many of the requirements of the securities laws make little sense in the context of Settlement Act corporations. For example, the fact that no Settlement Act stock may be sold or traded prior to 1991 deprives the periodic reporting requirements of the 1934 and 1940 Acts of much of their purpose, *i.e.*, of having extensive reports on public file with the SEC (but not mailed to the stockholders). Similarly, the requirements for very detailed and complex proxy statements or prospectuses, including financial statements on all corporations involved, in connection with any stockholder vote on a merger, do not properly serve the intended purpose of informing the stockholders, most of whom are new to stock ownership and are still unsophisticated in financial matters, and many of whom are less familiar with English than with their Native language (*e.g.*, Eskimo) and also are not accustomed to the written word as the primary means of communication. Conversely, the tight restrictions which the securities laws place on oral presentations virtually eliminate any effective use of what for many Natives is the primary means of receiving information, *i.e.*, discussions and explanations (of necessity simplified) at village or community meetings. It must be remembered that discussions and the resulting conveyance of information are often meaningful *only* if bilingual.

A summary of the acts follows:

I. INVESTMENT COMPANY ACT OF 1940

A. Applicability. Corporations with over 100 stockholders and 40% of assets (excluding cash and government securities) invested in securities. *Note:* Until land is appraised, SEC might exclude it in determining applicability of 1940 Act to Settlement Act corporations.

Approximately 175 Settlement Act corporations have over 100 stockholders and could be subject to 1940 Act.

B. Requirements.

- (a) Initial registration with SEC;
- (b) Proxy solicitation rule compliance;
- (c) Periodic reports filed with SEC;
- (d) Under sec. 17, any transaction between "affiliated persons" requires application to SEC for order that transaction is fair and equitable.

C. Special Problems.

(a) *General:* SEC views regional and village corporations as affiliated persons, and most transactions between the two would require sec. 17 application and order;

(b) *Merger:* Would require long, detailed, complex and very costly proxy statement;

(c) *Merger:* Proxy solicitation rules place tight restraints on oral solicitations, making village meetings to explain merger in simplified terms virtually impossible;

(d) *Merger:* If village corporation merges with regional corporation, need sec. 17 application and order for transaction between affiliated persons. *Note:* SEC has indicated that with land value unknown, true book-value of stock is unknown, and it may be impossible to determine whether transaction (*i.e.*, stock-for-stock exchange ratio) is fair and equitable. SEC therefore would not approve the merger, and it would not take place.

(e) *Merger:* Corporation with under 100 stockholders loses exemption if it "proposes" to make a "public offering" of its securities. If two small village corporations (each with 40 stockholders) "propose" to merge, one might thereby become an investment company and first have to register as such.

II. SECURITIES EXCHANGE ACT OF 1934

A. Applicability. Corporations with over 500 stockholders and \$1,000,000 in assets. (Registered investment companies under 1940 Act are exempt from 1934 Act.)

All regional corporations and approximately 19 village corporations would be covered (if they are not investment companies).

B. *Requirements.*

- (a) Initial registration with SEC;
- (b) Proxy solicitation rule compliance;
- (c) Periodic reports filed with SEC.

C. *Special Problems:*

- (a) *Merger:* Would require long, detailed complex and costly proxy statement;
- (b) *Merger:* Proxy solicitation rules place tight restraints on oral solicitations, making village meetings to explain merger in simplified terms virtually impossible.

III. SECURITIES ACT OF 1933

A. *Applicability.* A "public offering" of stock (for value) by *any* corporation (Until 1991, '33 Act would come into play only in mergers, since any other public offering of stock by Settlement Act corporations may violate inalienability provisions.)

Covers all mergers or consolidations among Settlement Act corporations involving an exchange of stock for stock. *Note:* Whether a stock offering is "public" depends partly on number of persons to whom it is issued and their financial sophistication and knowledge of the corporation—probably covers all Settlement Act mergers. (Intra-state exemption exists but is usually unavailable if even one stockholder resides out of state.)

B. *Requirements.*

Stock must be registered with SEC and a prospectus prepared and mailed to all stockholders whom stock is issued. (If '34 or '40 Act proxy rules apply, one document serves both as proxy statement and prospectus).

C. *Special Problems.*

(a) 1933 Act stock registration is very extensive and costly project, particularly with added complexities of Settlement Act;

(b) Stock registration would be required even in a merger of two small village corporations, and costs and expenses of registration could make merger impossible. (e.g., In merger of two village corporations, each with 30 stockholders—or even two Native Groups, each with 20 stockholders—issuance of stock in exchange for stock would constitute a public offering, requiring registration);

(c) Restrictions on solicitations of sales place tight restraints on oral solicitations, making village meetings to explain merger in simplified terms virtually impossible.

STATEMENT OF HARRY CRANDELL, DIRECTOR OF WILDERNESS REVIEWS, THE WILDERNESS SOCIETY

Mr. Chairman, I am Harry Crandell, Director of Wilderness Reviews, The Wilderness Society, 1901 Pennsylvania Avenue, NW, Washington, D.C.

The Wilderness Society has a longstanding continuing interest in Alaskan public lands and native affairs. As you know, we supported the Alaska Native Claims Settlement Act and certainly would like to go on record in support of appropriate strengthening or clarifying amendments to that important legislation. However, it appears that events are occurring very fast and present proposed legislation is in process of rapid change. Therefore, I shall confine my remarks to one concern only—land-use in the Cook Inlet Native Region.

The Cook Inlet Region has a peculiar land selection problem since available lands have largely been preempted by the State or had been previously set aside and not available for Regional selection.

It is our understanding that detailed discussions are taking place on a continuing basis between the Cook Inlet Region and the State of Alaska relative to how best to solve land selection problems of the Region. We have participated in some of these discussions.

At stake, from our vantage point, are several basic principles which must be incorporated into the decision making process leading to a solution of this unique problem.

1. The integrity of the Kenai National Moose Range as a viable and important unit of the National Wildlife Refuge System must be preserved.

While there has been discussion of the transfer of five townships from the Range to native ownership (in the Northwest corner) we presume that *acreage* is the principle criterion and *not townships per se*. Thus, whole townships need not be divorced from the Range in all cases; rather, lesser legal subdivisions can and should be used, particularly near the Canoe System units.

2. Any lands which might be transferred from the Kenai National Moose Range to the Cook Inlet Region should be replaced elsewhere. The Alaska Native Claims Settlement Act established this principle and we see no reason to deviate from it in this case. We favor state lands on the Alaska Peninsula in exchange for Kenai National Moose Range properties.

3. The citizen's wilderness proposal for the Kenai National Moose Range should be placed immediately in the National Wilderness Preservation System. The citizen's wilderness proposal consists of an enlarged Andy Simons Wilderness Unit (including Tustumena Lake) (986,600 acres); Mystery Creek Basin Wilderness Unit (45,640 acres); Elephant Lake Wilderness Unit (10,400 acres); and Swan Lake-Swanson River Wilderness Canoe Unit (192,000 acres) for a total wilderness dedication in the Kenai National Moose Range of 1,267,240 acres.

4. The Lake Clark area be established as a National Park. We favor proposals which exchanges native selections in the Lake Clark ecosystem for State lands in the Cook Inlet region more compatible with native objectives in land stewardship.

As events leading to a proper and just solution to this complex situation evolve, we are certain that adoption of the environmental concerns enumerated above will provide the means to protect the outstanding wildlife and wilderness of the Kenai Peninsula as well as securing a just and equitable land base for the Cook Inlet Native Region.

Thank you.

STATEMENT OF CHUGACH NATIVES, INC., SUBMITTED BY RICHARD JANSON,
EXECUTIVE DIRECTOR

We have been notified by BIA Enrollment Office of several of our members whose eligibility was denied on the basis of filing after the March 30, 1973 deadline, and we also know of some people who did not file yet because they did not know of the deadline, others thought they were enrolled because they had enrolled under the Tlinget-Haida Enrollment, therefore, we urge opening of the roll for late filers.

ESCROW ACCOUNTS

A portion of the legislation deals with an amendment to set up escrow accounts for development which takes place on lands withdrawn for Native selections prior to conveyance of lands to the appropriate Native corporation. As you know the Land Claims Act provides for a three year selection period for villages which is now passed and a four year selection period for regions which ends this year. Various regional and village corporations have been working with private companies to negotiate agreements on lands which have been withdrawn for their selections or has been selected by the Native corporation. Presently if any of these agreements are consummated the money from the agreement would go to the Federal Government and the Federal Government would keep it in the U.S. Treasury. Even though the Native corporation would negotiate the agreement, they would not receive any financial benefits from the agreement prior to the time the land was actually conveyed. On those lands that have already been selected the Bureau of Land Management is estimating a minimum of nine months for processing and some selections have been waiting for fifteen or sixteen months and have yet to be conveyed to Native corporations.

This escrow account section would allow the U.S. Government to hold monies from lands that have been withdrawn and/or selected by Native corporations into an escrow account until final determination of entitlement is made. This protects the Natives financial interest in the land.

The bill as it is now written would provide for escrow payments to take place from the date of enactment of this Act. We recommend a change in this language so that proceeds are put in escrow from the date of enactment of the enactment of the Alaska Native Claims Settlement Act which is December 18, 1971. We feel this is only fair because there is substantial agreement among all parties involved, the Natives, the State, and the Federal Government that escrow accounts are necessary. Escrow accounts would have been set up prior to this date if the Department of Interior felt they had any authority to do so. Because all this legislation does give the department this authority we feel that any money which has been received since December 18, 1971 by the Federal Government as a result of any kind of lease, permit, contract, right-of-way, or easement on Native lands should be protected for the Native corporation involved.

INCOME FROM PUBLIC EASEMENTS

This section provides that any income from public easements reserved pursuant to Section 17(b) of the Act to be paid to the owner of the land. As you know many easements will be placed on Native lands and we feel it is only fair that if there is any revenue from these easements the land holder be the one that benefits not the U.S. or State Government.

INCOME FROM CONTRACTS, LEASES, PERMITS, RIGHT-OF-WAY, ETC.

This section allows Native corporations to share on a proportionate basis any income from contracts, lease, permits, right-of-way, or easements that are issued for surface or minerals when such agreements are made prior to conveyance to the Native corporation. The Native corporations will share on a proportionate basis in relationship to their land and ownership. Again we believe that this section should take effect on December 18, 1971.

INVESTMENT COMPANY ACT OF 1940

Most Native regional and village corporations are now subject to regulations under the Security & Exchange Commission because of the Investment Company Act of 1940. The situation comes about because corporations have begun to receive their money but have not received their land. Because most of the money is held in some form of investment these companies are now investment companies. However, when the land is transferred these corporations will no longer be investment companies because in most cases land and not investment will be primary business of the Native corporations. Therefore, we are recommending an exemption from the 1940 Act through 1980.

FOOD STAMPS

We are asking for some specific language which would prevent the Department of Agriculture from determining that payments under the Alaska Native Claims Settlement Act can be used to reduce food stamp eligibility. We feel that the Claims Settlement Act is fairly clear on this subject and that food stamps should not be reduced because of Native payments. I think that it is important for you to know that the Department of Health, Education, and Welfare has looked at the Land Claims Act and based on the language in it the Congressional history has concluded that welfare payments should not be reduced by payments under the Native Claims Settlement Act. However, the Department of Agriculture has come to the opposite conclusion and therefore we are asking for specific language on the Food Stamp Act. We feel all this section does is to clarify what was the original intent of Congress in the first place.

INTEREST ON THE ALASKA NATIVE FUND

The United States Government determined that they could pay interest on the Alaska Native Fund only for the first two years of the funds existence. This was the period when all monies were being held in the fund prior to the completion of the Alaska Native roll by the Secretary of Interior.

The language we are suggesting in this Act would allow the Federal Government to pay interest on the Alaska Native Fund while monies are being held each quarter. At times the amount of money is fairly substantial and we do not feel that it was the intent of Congress that this money should sit idle in the U.S. Treasury and draw no interest.

MERGER LEGISLATION

The NANA Regional Corporation has developed an amendment to the Claims Settlement Act which would allow for merger of village corporations into the regional corporation or allow villages to merge among themselves within a region. We feel that this legislation is absolutely necessary if many of the village corporations are to survive. Those people that have closely studied the cash flow of village corporations in relation to their administrative costs find that many of the corporations may well end up bankrupt.

There has been some discussion as to whether or not dissident shareholders should be allowed the right to have their stock bought by the corporation if they

do not agree with the merger. We think this is a very bad precedent. The original congressional intent was obviously the intent that individuals not alienate their stock for at least twenty years, which we believe is a good concept. We also believe that it would be virtually impossible to value the stock of the village corporations at this time in order for individuals to be "bought out". Therefore, we recommend that dissident shareholders be subject to the will of the majority in any merger situation.

LAND USE PLANNING COMMISSION

We support the continuation of the Land Use Planning Commission at least until 1979.

13TH REGION

Many people who have previously voted for or against the 13th region who have since acquired a better understanding since the implementation of the Land Claims Act now wish to change their vote. We recommend a new vote of all those eligible to vote for the 13th region and those who vote "yes" will be transferred to the 13th region.

We strongly recommend that the change in the rolls of the 12 regions and villages does not change the land selection, in other words, the roll used to select village lands will stand for all land selections; village, groups and regional.

