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AMENDMENTS TO ALASKA NATIVE CLAIMS SETTLEMENT ACT

PART 1

HEARING

BEFORE THE

COMMITTEE ON INTERIOR AND INSULAR AFFAIRS UNITED STATES SENATE

NINETY-FOURTH CONGRESS

FIRST SESSION

ON

S. 131

A BILL TO AUTHORIZE THE SECRETARY OF THE INTERIOR TO ENROLL CERTAIN ALASKAN NATIVES FOR BENEFITS UNDER THE ALASKA NATIVE CLAIMS SETTLEMENT ACT, AND FOR OTHER PURPOSES

S. 685

A BILL TO AUTHORIZE CERTAIN CORPORATIONS UNDER THE ALASKA NATIVE CLAIMS SETTLEMENT ACT TO MERGE OR CONSOLIDATE, AND FOR OTHER PURPOSES

S. 1469

A BILL TO AMEND THE ALASKA NATIVE CLAIMS SETTLEMENT ACT TO CONTINUE THE AUTHORITY OF THE JOINT FEDERAL-STATE LAND USE PLANNING COMMISSION FOR ALASKA UNTIL JUNE 30, 1979

S. 1501

A BILL TO EXTEND THE EXISTENCE OF THE JOINT FEDERAL-STATE LAND USE PLANNING COMMISSION FOR ALASKA

MAY 16, 1975

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

U.S. GOVERNMENT PRINTING OFFICE

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AMENDMENTS TO ALASKA NATIVE CLAIMS SETTLEMENT ACT

FRIDAY, MAY 16, 1975

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

The committee met, pursuant to notice, at 10 a.m., in room 3110, Dirksen Office Building, Hon. Floyd K. Haskell presiding.

Present: Senators Haskell, Fannin, and Hansen.

Also present: Steven P. Quarles, counsel; and Harrison Loesch, minority counsel.

OPENING STATEMENT OF HON. FLOYD K. HASKELL, A U.S. SENATOR FROM THE STATE OF COLORADO

Senator HASKELL. Today's hearing of the Interior Committee concerns various bills relating to the Alaska Native Claims Settlement Act.

The committee is about to undertake the difficult and time-consuming task, required by section 17(d)(2) of the Settlement Act, of designating areas of public land in Alaska as components of the "four systems"—the national park, wild and scenic river, wildlife refuge, and forest systems.

However, before we embark on this course, I think it is appropriate that we consider these so-called "housekeeping" changes in the Settlement Act.

At this point in the record I will insert the texts of the bills before us, S. 131, S. 685, S. 1469, and S. 1501, along with the Department of the Interior's executive report.

[The material referred to above follows:]

94TH CONGRESS
1ST SESSION

S. 131

IN THE SENATE OF THE UNITED STATES

JANUARY 15, 1975

Mr. STEVENS introduced the following bill; which was read twice and referred to the Committee on Interior and Insular Affairs

A BILL

To authorize the Secretary of the Interior to enroll certain Alaskan Natives for benefits under the Alaska Native Claims Settlement Act, and for other purposes.

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

SECTION 1. That the Secretary of the Interior (hereinafter 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, 85 Stat. 688 (hereinafter 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 said 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 said 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 said 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 said Act, shall not lose its status as a Native group because of any enrollment pursuant to this Act.

SEC. 2. (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 land selected pursuant to that Act have been conveyed to the selecting corporation or individual entitled to receive benefits under said 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 said 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 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 such escrow account proceeds referred to in subsection (a) of this section and the United States shall pay interest thereon semiannually, from the date

of deposit to bear simple interest at the rate as may be determined by the Secretary of the Treasury: *Provided, however,* That the Secretary in his discretion may withdraw from the United States Treasury such proceeds received by him under this Act and reinvest such proceeds in the same manner provided for by section 162a of title 25, of the United States Code: *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.

SEC. 3. Any and all proceeds from public easements reserved pursuant to paragraph (3) of subsection 17(b) of the Settlement Act shall be paid to the grantee of such conveyance in accordance with such grantee's proportionate share.

SEC. 4. Any and all income on all earnings from contracts, leases, permits, rights-of-way, or easements issued for the surface or minerals covered under a conveyance prior to the issuance of such conveyance under the Settlement Act, 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, or from the date of conveyance under the Settlement Act, whichever occurs first.

SEC. 5. Any distribution of funds from the Alaska Native Fund pursuant to subsection (c) of section 6 of the Settle-

ment Act made by the Secretary or his delegate prior to enactment of this Act on the basis of the final roll certified on December 18, 1973, shall not be affected by the provisions of this Act. Immediately upon certification of the amended final roll pursuant to this Act, the Secretary shall make any necessary adjustments in future distributions of funds pursuant to subsection (c) of section 6 of the Settlement Act to accommodate the changes in the final roll made by the amended final roll: *Provided,* That such adjustments shall not take effect until the next regularly scheduled distribution period following certification of the amended final roll.

SEC. 6. The Settlement Act is amended by adding a new section 28, to read as follows:

"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 after such date be subject to the provisions of the Investment Company Act of 1940."

SEC. 7. The Settlement Act is further amended by adding a new section 29 to read as follows:

"SEC. 29. (a) The payments and grants authorized under this Act constitute compensation for the extinguishment of claims to land, and shall not be deemed to sub-

stitute 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 subsection 5(a) and any other provision of the Food Stamp Act of 1964 (78 Stat. 703), as amended, 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 person, shall be disregarded."

SEC. 8. 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.

94TH CONGRESS
1ST SESSION

S. 685

IN THE SENATE OF THE UNITED STATES

FEBRUARY 17, 1975

Mr. STEVENS introduced the following bill; which was read twice and referred to the Committee on Interior and Insular Affairs

A BILL

To authorize certain corporations under the Alaska Native Claims Settlement Act to merge or consolidate, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) notwithstanding any provision of the Alaska Native Claims Settlement Act (85 Stat. 688), 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 corporation or corporations created for the same region.

(b) Any corporations resulting from said 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 said region pursuant to section 7(d) or 8(a) of the Alaska Native Claims 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 Alaska Native Claims 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, as are applicable to the corporations and shareholders which participated in said mergers or consolidations or as 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(h)(1) or 8(c) of the Alaska Native Claims Settlement Act, the stockholders of any corporation participating in any such mergers or consolidations may exercise the rights accorded under Alaska law to dissenting shareholders in a merger or consolidation.

(d) Notwithstanding the provisions of section 7(m) of the Alaska Native Claims 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 said class to receive dividends pursuant to said section 7(m).

SEC. 2. Notwithstanding any other provision of this Act or of any other law, no such corporation referred to in the first section of this Act may so merge or consolidate unless that corporation's shareholders have approved such merger or consolidation of that corporation with any other such corporation or corporations.

94TH CONGRESS
1ST SESSION

S. 1469

IN THE SENATE OF THE UNITED STATES

APRIL 17, 1975

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

A BILL

To amend the Alaska Native Claims Settlement Act to continue the authority of the Joint Federal-State Land Use Planning Commission for Alaska until June 30, 1979.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 17(a)(10) of the Alaska Native Claims Settlement Act (85 Stat. 688) is amended by striking out "its final" in the first sentence thereof and substituting "a" and by striking out the last sentence thereof and substituting the following: "The Commission shall continue its activities and make such additional reports and recommendations as may be appropriate after May 30, 1976, but the Commission shall cease to exist effective June 30, 1979.".

94TH CONGRESS
1ST SESSION

S. 1501

IN THE SENATE OF THE UNITED STATES

APRIL 22 (legislative day, APRIL 21), 1975

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

A BILL

To extend the existence of the Joint Federal-State Land Use Planning Commission for Alaska.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 17(a)(10) of the Alaska Native Claims Settlement Act (85 Stat. 688, 708) is amended to read as follows:

"(10) The Planning Commission shall submit, in accordance with this paragraph, comprehensive reports to the President of the United States, the Congress, and the Governor and legislature of the State with respect to its planning and other activities under this Act, together with its recommendations for programs or other actions which it de-

termines should be taken or carried out by the United States and the State. A comprehensive report covering the above matter shall be so submitted on or before May 30, 1976. A final and comprehensive report covering the above matter shall be so submitted on or before December 31, 1978. The Commission shall cease to exist effective December 31, 1978.".

54-919 O - 75 - 2

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

MAY 15 1975

Dear Mr. Chairman:

This responds to your request for our views on S. 131, S. 685, S. 1469 and S. 1501, four bills which would amend the Alaska Native Claims Settlement Act (85 Stat. 688).

We recommend enactment of both S. 131 and S. 685, if amended as suggested herein. We have no objection to the enactment of either S. 1469 or S. 1501.

S. 131

S. 131 is a bill "To authorize the Secretary of the Interior to enroll certain Alaska Natives for benefits under the Alaska Native Claims Settlement Act, and for other purposes."

Section 1 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 1, 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.

CONSERVE AMERICA'S ENERGY

Save Energy and You Serve America!

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 1 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 1, 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 1 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.

While section 1 provides that the Natives enrolled thereunder shall be issued stock, the section does not clearly authorize regional corporations, village corporations, groups or any of the Native associations for the four named cities to issue stock to the late enrollees. We recommend that after the words "shall be issued" on page 2, line 3 the following language be inserted: "in the appropriate regional, village, group or other corporation."

Section 2(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 2(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 2(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 2(b) would establish an unfavorable precedent.

Section 2(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.

Subsection 2(a) refers to "any and all 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 2(a) should be amended in order to exempt these two payments from the application of this provision.

Section 2 should contain a provision parallel to that of section 26 of ANCSA. We recommend that a new subsection (c) be added:

> (c) To the extent that there is a conflict between the provisions of subsection (a) 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 9(f) of the Alaska Native Claims Settlement Act (85 Stat. 688).

Sections 3 and 4 of S. 131 clarify certain accounting procedures related to the proceeds in the escrow account established by section 2(a) of the bill. A system is necessary to accurately relate revenues to specific tracts producing the revenues and the tracts selected.

Section 3 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, section 3 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. Without the certainty provided by section 3, it would be administratively prohibitive to distribute the income to the owners of the land covered by the easement reservation.

We recommend an addition to section 3. On page 4 line 13, after the words "the Settlement Act" the following language should be inserted: "(85 Stat. 688), from or after the date of enactment of this Act,." This addition will render section 3 consistent with section 2(a).

We further recommend that section 3 contain a provision similar to the addition we recommended to section 2 whereby reimbursement for application costs and for the costs of environmental impact statements be exempted from the application of section 3.

Section 4 will clarify accounting procedures under ANCSA, so that although most constracts, leases, permits, rights-of-way and easements may be paid on lands withdrawn for 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.

We recommend an amendment to section 4 which will provide consistency with section 2(a) of S. 131, and with section 3 of the bill as amended herein. We advise that on page 4, lines 22-23, the words "or from the date of conveyance under the Settlement Act, whichever occurs first.," be deleted.

Section 5 of S. 131 provides that no prior distributions from the Alaska Native Fund under section 6(c) of ANCSA shall be affected by this legislation. Upon certification of the amended final roll pursuant to this bill, the Secretary shall make the necessary adjustments in future distributions from the Fund necessitated by the new final roll to accommodate such roll. Such adjustments shall not take effect until the next regularly scheduled distribution period following certification of the amended final roll.

Section 5 will allow the Secretary to make distributions from the Alaska Native Fund so that the regional corporations can continue to receive and invest funds in keeping with their plans and commitments. However, section 5 would also insure that the

adjustments necessary to make everyone whole in accordance with section 1 of this bill will be made at the same time.

Section 6 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 6 of S. 131 to those of the Securities and Exchange Commission who, we understand, will submit a report to the Committee.

Section 7 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 in connection with an aboriginal land claim of such person, from consideration in determining the eligibility of any Native household to participate in the food stamp program under the Food Stamp Act of 1964 (79 Stat. 703).

We recommend a new section 29 of ANCSA in lieu of the section 29 created by section 7 of S. 131:

> "Sec. 29. The payments authorized under this Act constitute compensation for extinguishment of claims to land. None of the payments distributed per capita under this Act may be considered as income as the basis for denying or reducing the financial assistance or other benefits to which a household or member thereof would otherwise be entitled to under the Social Security Act, the Food Stamp Act of 1964, or the supplemental security income program for the aged, blind and disabled."

Under section 8, except as specifically provided in S. 131, 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.

S. 685

S. 685 is a bill "To authorize certain corporations under the Alaska Native Claims Settlement Act to merge or consolidate, and for other purposes."

S. 685 authorizes mergers or consolidations among regional or 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. The bill would also allow the subsequent merger or consolidation of merged corporation with each other, as long as 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 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 bill gives to the merged corporation, upon the effectiveness of the merger, all rights and benefits that the Alaska Native Claims Settlement Act 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 bill 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.

Under subsection 1(c) of the bill, the shareholders of any corporation participating in any such merger or consolidation may exercise the rights accorded to dissenting shareholders in a merger or consolidation under Alaska law. In our judgment, Alaska law protects those shareholders who may choose to exercise their dissenters' rights under this bill.

Subsection 1(d) 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.

Section 2 of the bill 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 may be lessened by bringing together 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 may also dissipate the funds distributed to the villages which can be used for improvements for the Native people rather than being paid out to large numbers of professional managers.

This bill 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. S. 685 will modify this restriction on alienation sufficiently to authorize mergers and consolidations.

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

S. 1469 and S. 1501

S. 1469 is a bill "To amend the Alaska Native Claims Settlement Act to continue the authority of the Joint Federal-State Land Use Planning Commission for Alaska until June 30, 1979." S. 1501 is a similar bill "To extend the existency of the Joint Federal-State Land Use Planning Commission for Alaska."

S. 1469 would amend section 17(a)(10) of the Settlement Act to extend the life of the Joint Federal-State Land Use Planning Commission to June 30, 1979.

S. 1501 would also amend section 17(a)(10) of ANCSA, but would extend the life of the Planning Commission to December 31, 1978. Further, S. 1501 would require the Planning Commission to submit a final and comprehensive report, such as the one presently required under section 17(a)(10) of ANCSA, by the date of expiration under this bill.

We have no objection to the provisions of either bill.

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,

Royston C. Hughes

Assistant Secretary of the Interior

Honorable Henry M. Jackson
Chairman, Committee on
Interior and Insular Affairs
United States Senate
Washington, D. C. 20510

Senator HASKELL. We will now commence the hearings, and it is my great pleasure to welcome as the first witness, the Senator from Alaska, Senator Stevens.

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

Senator STEVENS. We have several bills pending. If I may, with your concurrence, I would like to have my full statement and the attachments entered in the record, and let me summarize it for you.

I am very pleased you have given us the opportunity to appear here and discuss this legislation. There are several pieces of legislation actually pending before your committee.

My colleague, Senator Gravel, appeared before me in connection with another matter this week, but he is not able to be here today.

I believe, with regard to the bills pending before the committee, that we have cosponsored them, and I think you probably have a statement from him on them, and we would ask that you print those also.

Senator HASKELL. That will be included in the record.

Senator STEVENS. I do not speak with regard to the *Edwardsen* case, for my colleague. That will have to wait for his comments.

I do not want you to think my comments on the *Edwardsen* case were endorsed also by Senator Gravel. I do not know if he has taken a position on that issue or not.

The first bill is S. 131, that I introduced in January to extend the deadline for enrollment under the Alaska Native Claims Settlement Act. There are approximately 1,000 people who did not meet the deadline of March 30, 1973.

And the Interior Department has—and I think rightly—said they could not permit these people to now enroll or enroll after the deadline established by the act.

On the other hand, I think that Congress intended this 2-year period for enrollment to expedite the concept of starting the settlement and the mechanism of the settlement was very important to get the Alaska Native Roll completed, but I also think we have no intent to deny any benefits to Alaska Natives solely on the basis of an arbitrary time frame.

What we are asking in this bill is to extend the time frame under which Alaska Natives could enroll under the act, and to establish revenues received by the Department to see to it that these late enrollees are equitably treated.

I would like to recommend one major change in the bill. As we introduced it on page 3, line 1, after the word "proceeds," I would like to insert "received by an agency or instrumentality of the Federal Government".

This serves to clarify that section of the act.

Senator HASKELL. Where was that again, Senator?

Senator STEVENS. It is on page 3, line 1, after the word "proceeds"—"received by an agency or instrumentality of the Federal Government".

Senator HASKELL. What is the purpose?

Senator STEVENS. It clarifies the intent of this, so it is clear what we are talking about is the escrow funds derived by the United States or its instrumentalities and not all funds received from contracts, leases, et cetera.

Senator HASKELL. I understand.

Senator STEVENS. The second bill is S. 1469 which would amend the Alaska Native Claims Settlement Act to continue the authority of the Federal-State Land Use Planning Commission until June 1979.

Members of the Commission are here and will testify. I believe we are all quite pleased with the work the Commission has done. Their accomplishments are many. They have made recommendations, some of which, I do not exactly agree with, but on the other hand, I understand completely their procedures. They have made many important contributions to land use planning and it is a unique Commission. Unfortunately, it would expire before the time frame within which Congress has to act on the 17(d)(2) land recommendations.

This group, I think, is developing a good track record for being impartial and it should continue, in my opinion, until the total procedure of the recommendations made under 17(d)(2) are completed.

Senator HASKELL. This would seem entirely logical to me, Senator.

Senator STEVENS. I do not see how we could disband that Commission prior to the final action. By that time, I hope that we have a land use concept that will envision a Federal-State cooperation, a basis for Federal-State cooperation that will permit us to continue something like this.

Or, the Federal Government is going to continue to own over 60 percent of the land, even after this is completed.

Senator HASKELL. We discussed that yesterday in connection with the Organic Act, and Mr. Silcock and Mr. Jackman were here then, also.

Senator STEVENS. We have accepted the Federal-State Land Use Planning Commission, for Alaska, or at least preserved it so that it would not be disbanded and set up in another form.

Anyway, this would continue—this Commission—until June 30, 1979, which I consider an adequate time frame for that activity. I am delighted to have your comments about that Commission. I think that if you examine their work, you will find that they are very professional and they have a very competent staff.

Whether we agree with their conclusions or not, I do not think we can argue about the fact the procedures they have used and the work they have done is very complete.

I only wish we had more time to use their services. The third bill we have is S. 685, which would authorize a merger of consolidation of village corporations within the same region under the Alaska Native Claims Settlement Act.

Many of these village corporations were small.

Senator HASKELL. What number is that bill?

Senator STEVENS. That is S. 685. Many of them are very small and yet the act imposes the same burdens on these village corporations, whether they are small or large, whether their resources are great or small, and whether the areas they are involved with overlap other village areas.

I think that this proposal that was put forward by those who are managing the corporations themselves, to permit them to consolidate, either have villages consolidate to form a larger village corporation or have the village corporations within a particular region consolidate with the regional corporation, again dependent on the desires of those people who are involved in each area—I think this is good.

This merger can only be accomplished by legislation, because the Settlement Act prohibits, for a period of 20 years from the date of enactment of the act, any assignment of any regional corporation and the village corporation stock also.

I think that is a very worthwhile concept. It is entirely in accord with the concept of self-determination. I want to suggest on this bill, also, on the suggestion we have received that we could possibly be in conflict—with regard to subsection C of the bill—with the restraint-on-alienation clause of the Alaska Native Claims Settlement Act.

We would like to delete subsection C of S. 685, which appears on page 3, Mr. Chairman. And, we have been informed by the American Law Division of the Library of Congress that if this is deleted, in their opinion, it would not violate any of the dissenting shareholders' fifth amendment rights.

We were trying to avoid a constitutional issue in that regard.

Senator HASKELL. This would allow a vote of the affected villages.

Senator STEVENS. Yes; it would have to allow a vote, but this would prohibit—the intent of subsection C was to protect the right of dissenting shareholders to the *n*th degree.

We now believe that the dissenting shareholders will be protected under the normal concepts of corporation law without that provision.

Senator HASKELL. I do not know what the rights of dissenting shareholders are.

Senator STEVENS. I think you will have some comments from the corporations themselves. This suggestion is made at their request.

Let me comment on two or three other items if I may, Mr. Chairman. I will be as brief as I can. Negotiations are taking place regarding land selection by the Cook Inlet region. Eventually, we believe that proposed legislation can be drafted to provide for better land selection base, for that region.

I support this concept and feel they have not been given the opportunity that other regions have to select lands which are similar in character to those which are denied them because of actions that preceded the enactment of the Alaska Native Claims Settlement Act.

The legislation I am talking about is now the subject of negotiation between three parties, that being a Cook Inlet region, the State of Alaska, and the Greater Anchorage Borough. I have told those parties I would introduce and would support legislation that could be agreed upon by those three groups.

We, at one time, thought that the matter could be handled administratively, by the Department of the Interior, and because of the issues involved, we have not been able to get it resolved without legislation.

So, what I am really doing is suggesting to you that hopefully before you can complete the markup on this bill, we will have an additional section for amendment to the Alaska Native Claims Settlement Act that will be agreed upon by the three Alaska parties and hopefully by the Department of Interior, too. Another comment is, if there is language in a bill to amend the Alaska Native Claims Settlement Act, in regard to the 13th regional corporation, as reported out of this committee, I would hope it would include a guarantee that the land rights of the other 12 regions will not change.

I do not feel that we can change the existing land selection rights, that the procedure has already been instituted and, Mr. Chairman, this

may come about because some of the people who may be enrolled in a village corporation in a particular region in Alaska, if the 13th region would be enrolled in the 13th regional corporation, and I believe the land distribution pattern that has been settled upon this role, as it exists without regard to the 13th regional corporation, should continue.

We should not go back and start the process all over again. That would delay it and I do not think there would be any dispute on that.

At least, I hope not, because the formation of the 13th will, in effect, take people out of every region in the State, and should not disturb the land selection pattern that much.

There is another matter that I would bring before the committee. We do not have a bill to do this, although I would be most pleased to introduce one, if the chairman wishes me to do so.

This is a matter that also came to our attention subsequent to the introduction of these bills, and I would like to put in the record a telegram from Nancy Anderson, the president of the Kodiak, Inc., concerning the difficulties faced by that corporation.

In the original period of selection, we advanced money to the regional corporations. Those regional corporations advanced money in some instances to the village corporations within their region.

There were four villages that received no funds under the act. Kodiak, Kenai, Juneau and Sitka, and they were entitled under the act to select up to 28,000 acres of land.

They have not had a cash base to work on to prepare those selections and they have had to proceed on a loan basis. I would like to see this amendment authorized, and a grant of $250,000 to those corporations to carry out the duties Congress imposed on them.

Otherwise, they do not have the capital base the others have, since they are not entitled to receive funds under this act.

They are not villages, per se. These are in the urban areas, where the villages have been absorbed by heterogeneous communities.

And, they no longer have a village, per se, although there was, at one time, a village in that area.

Senator HASKELL. Who are we going to lend the money to?

Senator STEVENS. We are not going to lend it to them, we are going to grant it to them. The others were an advance on moneys they were entitled to—money under the act.

These four villages are not entitled to money under the act. Therefore, they have no cash base, and I believe that they should have money to operate with.

The four of them would add up to $1 million and I think that it is a reasonable request. The others had money that came to them by virtue of being a village recognized under the act.

Senator HASKELL. Perhaps I ought to get into this later. I do not think that I have a full understanding of the facts. These villages have been absorbed, yet they have something to do—they are still an entity?

Senator STEVENS. This was an agreement and I offered the amendment to entitle these villages that were absorbed by the integrated heterogeneous communities to a land base, and Kodiak, Kenai, Juneau, and Sitka, which are first class cities under the laws of Alaska, still have a recognizable native village group.

They are entitled—that Native village group—to land, but they are not a recognized village under the act. Therefore, they did not get the

cash flow that was involved in the management of money in the beginning of this and they are in dire stresses, I think, as far as the cash to operate them, and I believe it would be entirely consistent with the act to make available the moneys they have to have.

Incidentally, I now have a statement of Senator Gravel.

Senator HASKELL. That will be received and it will go in the record after the statement of Senator Stevens.

Senator STEVENS. The last item I want to comment on—I appeared before the House committee the other day to make certain that the committee was aware of my feeling of the implications of the decisions in the *Edwardsen* v. *Morton* case.

Before I get to that, Mr. Chairman, if I may, I would like to bring to your attention a situation that regards to Sealaska, which is the South Eastern Alaska Regional Corporation.

Most of that land there for selection is in the National Forest, and we faced in Congress this problem before, because there is no viable land there that could be selected by that Regional Corporation, except in the forest.

I would hope that the committee would examine the problem and agrgee with me that they should be given the rights to use 200,000 acres of their entitlement to select forest land which is contiguous to other land that they have a right to under the act.

If they are not given this opportunity, the intent of the Land Claims Act will be frustrated.

With regard to the case of *Edwardsen* v. *Morton*, this was a case pending before the enactment of the Alaska Native Claims Settlement Act.

It was decided by Judge Gasch of the district court here, in the District of Columbia and it is now referred to in some of the documents I have filed as the Gasch decision.

Judge Gasch has held that Congress did not intend the Alaska Native Claims Settlement Act to extinguish, damage actions filed by Alaska Natives following trespasses that were claimed prior to the effective date of the act.

He has in effect done two things; as I understand the decision, he has said that Congress did not have the intention of extinguishing claims for damages based on tort arising on lands to which there was a claim of aboriginal title when those claims for damages arose prior to 1971, which is the date of the act. That is his first point, as I understand it.

Thus he concluded that there was no clear intention by Congress to extinguish those damage claims which are extinguishable, Mr. Chairman and members of the committee, for the use of the lands which were claimed under the doctrine of aboriginal title.

Second, he stated, even if we have that intention, in his opinion, the fifth amendment would have prevented Congress from doing that, except on the basis of condemnation and adequate compensation. Let me address myself to the first part of his decision, as I understand it.

I think he has an incorrect interpretation. One of the things that we wanted to do specifically was to extinguish all claims and to prevent the myriad of litigation that would come in terms of trying to litigate the rights of Alaska Natives to lands or to claims based upon the claim of aboriginal title.

When I was a member of this committee, I questioned Justice Goldberg, and I think the committee will have that in the record—it is in statement, my complete statement—and I asked Justice Goldberg if the Alaskan Natives were prepared to accept an extinguishment of anything, any claim based upon aboriginal title.

The effect of Section 4 of the Land Claims Settlement Act in my opinion is to extinguish all claims and that is our intention, to exercise to the full extent possible, Congressional authority to extinguish claims and to compensate for that action.

I think that we complied with the fifth amendment even if it is applicable, but the point I want to make sure that I convey to the committee is, what I am suggesting is, in this act, that Congress reaffirm and restate again its absolute intention to use the full extent of congressional power to extinguish and terminate all litigation regarding the claims of aboriginal title in Alaska and any claim that is based upon or derived from any right that accrues to a person who has such a claim of title.

Senator HASKELL. Do you have a bill in, to this effect?

Senator STEVENS. We have not gotten the bill yet, Mr. Chairman. As part of the attachments, I have the stipulation and agreement, which just came to my attention, within the last month.

It was entered into between the parties in the *Edwardsen* case, in the district court, here in the District of Columbia. My problem is, I disagree with the judge and I think that our intent in section 4 was met and it is specific.

The problem is how to be more specific. This is sort of like the *Three Sisters Bridge* case, with which I think some members of this committee are familiar.

Congress twice said build the Three Sisters Bridge, and the courts in the District of Columbia said that we did not need it.

Here, we have a judge telling us that the statement which says, all claims against the United States, the State, and all other persons that are based upon claims of aboriginal title, use or occupancy of areas of Alaska or based on any statute or treaty of the United States, including any such claims pending before any Federal or State court or the Indian Claims Commission, are hereby extinguished. The *Edwardsen* case was pending at the time we passed that act, but the judge would not dismiss it and he assumed we had no intention to extinguish such claims.

My problem is to draft another section which would say what I thought we said very clearly then.

Senator HASKELL. All I can say is, counsel for the plaintiff must have been very articulate.

Senator STEVENS. He is in the room. He is a very articulate young man. I am sure that you will hear from him.

I understand that his statement says that the decision applies to the North Slope and not to the whole State. My feeling is that the Gasch decision applies not only to the State of Alaska, but it sets an entirely new precedent for the whole country.

And if the counsel for the plaintiff is correct, that there is a constitutionally protected right to sue third persons for actions that took place prior to a settlement and compensation for the extinguishment of aboriginal title itself—then we have got a whole new era of native and Indian litigation before us.

It is going to be a very controversial period and I have some telegrams which call the committee's attention to that. Our conference report was very clear.

It stated it was the clear and direct intent of the Conference Committee to extinguish all aboriginal claims and all aboriginal land title, if any, of the Native people of Alaska and the language of the 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.

Now, we have a State that is entirely composed—with very few exceptions—of titles derived directly from the Federal Government.

The public land laws were extended to Alaska, the University Grant Lands Act was extended to Alaska. We have had our Alaska Statehood Act, which authorized conveyance to the State of a substantial land base for the support of our vast area.

We have native allotments and township grants and mining claims and mining patents. We have the whole array of Federal laws that have granted the rights to the State or third persons to establish an interest in land. I believe that the *Gasch* decision established a precedent for claims against third party in every one of those categories and we can foresee class actions against all of those who entered and used lands even pursuant to Federal law, prior to the Land Claims Settlement Act, unless this is clarified.

You will find that counsel for plaintiff does not read it that broadly. You will have testimony from the State of Alaska, and I want to make certain, as did Senator Metcalf, when I was questioning Justice Goldberg, when the land claims bill was before this committee, we had no intention of extinguishing personal tort actions based upon claims for interference with the person or interference with improvements on property that came about as a result of actions prior to 1971.

The language Judge Gasch referred to was put in the Senate report in 1970. In order to carry out that desire of Senator Metcalf to make certain such actions persisted the judge has read, unfortunately, that report language too broadly, in my opinion.

Mr. Chairman, the Indian Claims Commission has in fact dismissed all of the aboriginal title claims that were pending before that Commission.

The district court in Alaska has refused to entertain one action that had a similar—not quite the same scope—but a similar type of action. The problem is, one of the cases dismissed by the Court of Claims actually contained a claim similar to the one Judge Gasch has ruled upon, and we have the Court of Claims dismissing the action, based on an act of Congress, and Judge Gasch ruling we had no right to extinguish such a claim.

I think that we have a job to do to make certain that the congressional intent to extinguish all claims and to terminate all litigation that is based upon or derived from a claim of aboriginal title be stated categorically and that the compensation in the Alaska Native Claims Settlement Act was, in fact, the compensation for any constitutionally protected right, under the fifth amendment.

I would call it to the attention of the committee—the fact that attached to my statement, I have filed a telegram from one of the attorneys and I would venture he say that he spent more time with me

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in the days when we were trying to get this act passed, than any other of the attorneys.

Former State Senator Cliff Groh, who now is no longer State Senator, obviously, is now president of the Security, Title and Trust Co., of Alaska, and he has stated—and I am reading from his telegram, "In my opinion, the decision by Judge Gasch is counter to the clear intent of Congress in passing the Alaska Native Claims Settlement Act.

The Settlement Act was designed to extinguish all claims based upon aboriginal title. Almost all of the lands in the State were the subject matter of claims by native groups.

As I read Judge Gasch's opinion, it would support the filing of trespass actions covering the lands in Alaska if the lands had been occupied or utilized by the Native groups.

The consequences of that ruling would be disastrous insofar as all land titles in Alaska are concerned."

Senator HASKELL. Senator, I certainly appreciate your views on the *Edwardsen* case, but we did not notify people who were appearing at this hearing that that would be an issue. For that reason, when you introduce your bill, you should have a hearing on the bill, and give people who have divergent views to yours an opportunity to be heard.

Obviously, it is not an uncomplex problem.

Senator STEVENS. No, it is not an uncomplex problem, but I think that you will find, Mr. Chairman, those people are here.

Senator HASKELL. They might be here, but, in my opinion, they were not notified that this would be an issue and for that reason, I would want to give them an opportunity to prepare ahead a little bit.

Senator STEVENS. I agree with that and perhaps another day of testimony ought to be arranged by the committee. I am hopeful that we will not have a series of bills that will deal with this subject. I think that we should have one bill that deals with the comprehensive amendments that are necessary.

The Chairman has mentioned housekeeping matters.

Senator HASKELL. This is hardly housekeeping.

Senator STEVENS. It goes beyond housekeeping and so does my amendment. The amendment would extend enrollment to a thousand who missed it, and it will mean a complete rearrangement which can be done by computers, but a complete rearrangement of the distribution patterns of the moneys, the extension to those people who failed to apply for one reason or another, the amendment with regard to the selection of lands is a unique one and I am sure the Forest Service is not aware of that suggestion and will want to be heard in that regard.

I would hope—and I am sure that this committee will consider one omnibus bill. After the Alaska statehood bill passed, we had an omnibus bill to contain all of the amendments that were necessary to make that act effective, and I think the Land Claims Act—this Land Claims Act—is comprehensive as it was. We are not asking to modify the settlement.

What we are asking is to make the settlement and the intent of Congress in that settlement complete. I do not think that there is any Member of Congress who served on that conference committee or on either of the Interior Committees who would disagree with me and

my statement, it was the intent of Congress to extinguish all of the claims that had accrued prior to the date of that act.

As such, I appreciate what the chairman has said, but I would hope that the committee will work with us. You have two of the most talented young lawyers in Washington who worked through the whole period of the land claims settlement and the ability of anyone to restate that section which we all worked on—section 4(c)—so that it is more clear, I think, is a very tough problem.

How do you restate something the judge has said is not clear, when as far as I know, everyone who reads it says it is absolutely clear, other than the judge and my learned counsel for the plaintiff.

Senator HASKELL. Senator, when you submit the bill——

Senator STEVENS. I do not intend to submit a bill until I get expert advice as to what will work, when we see now that what we worked on for 4 years does not work.

Senator HASKELL. Until you do submit a bill, we will have to hold it in abeyance, obviously. But, when you submit a bill, we will have a hearing on it, and we will have all parties there.

Maybe the circuit court will take care of your problem.

Senator STEVENS. With the stipulation I have attached here, that is not so, in my opinion. This stipulation places upon the Government now, the burden of filing actions, and I invite the committee's attention to it.

It is to file actions against the third parties which were involved in the removal of sand and gravel in regard to the extraction of oil or gas, the utilization of the surface of Alaska for airfields, buildings, roads, living units or other structures, or drilling operations.

The only two things that are excluded from this stipulation—and it is specifically stated—the parties aknowledge and agree the resolution of the following action shall be recommended by the Attorney General or deferred, and one is the extraction of sand and gravel pursuant to a sale or free use permit issued or authorized by the Department of the Interior and the second is use of any Arctic Slope lands for the DEW lines or military airfields.

Now, until the scope of the action itself is more fully defined, I do not think that there will be any appeal to any court of appeals.

In other words, I think we are going to be involved in litigation for some time. Mr. Chairman, the thing that is going to be litigated is aboriginal title.

As I pointed out to my friends from the North Slope, the risk is there. If they fail to prove aboriginal title, what happens to the Settlement Act we labored so hard to get through.

Are the Members of Congress going to appropriate $962 million to settle claims that some court might hold they did not have title to?

I think that this is a sword that cuts both ways. I have never seen an action like this that did not. I want to get the thing settled.

Again, I understand what the chairman says, but I do not intend to introduce a bill until we get the most expert advice possible as to where this differentiation comes, but I also intend to put a hold on this bill until this matter is covered in this bill.

I do not think we can afford to have separate bills enacted by this Congress affecting the Alaska Native Claims Settlement Act.

Senator HASKELL. Let me see if I understand you, Senator. You would prefer we do not move any of the bills before us today?

Senator STEVENS. Until we can resolve this issue, yes.

Senator HASKELL. I do not know all of the facts and circumstances, but I have assumed that some of the bills in and of themselves are desirable.

Senator STEVENS. They are all desirable. But, again, I say, an omnibus amendment is the only thing that will work this thing out, in my opinion, so all of these matters are covered and they are all interrelated.

This is too large a subject to deal with by piecemeal legislation and particularly the *Edwardsen* case, I think, must be part of the total change.

Senator HASKELL. We will give your views very careful consideration—that is all I can say.

Senator STEVENS. Thank you for your courtesy. Do any of your colleagues have any questions of me?

Senator FANNIN. Senator, I know how hard you struggled on this bill and the conferees to arrive at the final deadline as far as time is concerned.

Now, we are considering extending that and I am just wondering whether or not the Federal Government has been at fault, who has been at fault in not completing this role within the allotted time which I know you will remember, we struggled with that deadline, and decided it was adequate to carry through with any type of a program that would be necessary.

I just wonder, what happened?

Senator STEVENS. What really happened was the time frame involved was such that in order to properly inform people as to their rights, and where they should enroll in order to protect their rights, and also even in terms of the notice to people that they were entitled to participate took so much time that some of them missed it, the enrollment date. The last time I checked, it was almost 1,000 people who had not completed their forms by that date.

Senator FANNIN. As I recall, there was concern about reaching some of the people who had moved down to the lower 48.

But, are we talking about those people, or are we talking about people who were living in Alaska?

Senator STEVENS. They are both. Some are in the Army, some had problems of proving their eligibility, some had no knowledge that they had to proceed, some were living in other areas of the country outside of Alaska, although there was an extensive publicity campaign to try to notify people of their rights.

Some were not certain where they should enroll in order to protect them. The total cost of this action will not increase——

Senator FANNIN. I understand that, but the division would change.

Senator STEVENS. The amount each individual would be entitled to would change.

Senator FANNIN. The amounts involved would change, and my concern is, we arrived at a deadline. I am not saying this legislation is not entitled to very serious consideration and perhaps approval. I am not taking a stand one way or the other. But, we arrived at a deadline with this legislation. Then, what will the future hold?

Senator STEVENS. I think I can assure the Senator that we would never again make a request for an extension, and I do not think it would be supported.

It is my understanding that this request for extension is supported by all of the beneficiary representatives here, and I think that in all fairness, they should be congratulated.

It does reduce their personal interest to enroll these late filers.

Senator FANNIN. I am not opposing it—I am trying to delve into why this did come about. It is very unfortunate. I would imagine that there is considerable work involved.

You say you could put it through the computer; I hope it is that simple. If so, I agree your legislation should be given a reconsideration.

I cannot say, at this time, that I see anything that would be unfair about it, except I would hope we would finalize the matter, and this would accomplish that objective and I think it would be a step forward.

Senator STEVENS. The bill is designed so it will not delay the rights of those who did file in time.

Senator HASKELL. Senator Hansen.

Senator HANSEN. I do not have any questions, Mr. Chairman.

I am always impressed with any request or appeal that comes from the distinguished Senator from Alaska, by virtue of his earlier experience in the Solicitor's Office, in the Department of the Interior, and his subsequent responsibilities as Senator from the State of Alaska.

I know of no one who has been more diligent and more careful in having the background to know whereof he speaks, and I just want to say, Ted, I will do everything I can to give earnest and sincere consideration to any request coming from you.

Senator STEVENS. Thank you very much. Mr. Chairman, members of the committee, I have just been running my mental computer a little bit here, and I do not mean to challenge the jurisdiction of this committee to proceed with legislation, which I have already introduced. I am grateful to you for the time you have taken, but my problem is, the issue—the *Edwardsen* case—is reaching a crescendo, and it happened after that other legislation was introduced and it has happened so quickly that I have literally and figuratively been unable in 25 years of experience in practicing law, to redraft that section.

If I can find a way to do it, to put before this committee, even before next Monday, I will do it. But, I respect your request for legislation, so you will have something that people will have something to address themselves to when they appear before this committee. My problem is, we have looked at this and there must be a way to say what we intended to say, and have other persons interpret it the way we meant to say it.

Remember the old saying about whether you understand what I said—I do not wish to appear discourteous to this committee, to the chairman, or any member—I say this is probably going to be more of a cause celebre than the act itself was, in my State, within a short period of time.

Senator HASKELL. I appreciate that. This is apparently not a simple matter at all. Counsel tells me that there is some question constitutionally of whether you can extinguish private tort claims.

And, if you wrap a solution to the *Edwardsen* decision, in an omnibus bill, and the court finds—despite its severability laws—the reversing of the *Edwardsen* decision is unconstitutional and goes to the heart of the basic act, the whole thing might fall on its face . . . both the omnibus act and the Settlement Act itself.

I do not know—it is brand new to me. Maybe this is something you would want to think about in making a determination whether or not to introduce an omnibus act.

I pass this information on to you, but I do not know, in my own knowledge, of anything about it.

Senator STEVENS. Counsel has raised two of the serious questions that have delayed us so far. If the court would hold that Congress has no such constitutional authority, of course, we would abide by that decision, but I am afraid, though, the *Edwardsen* case would take the matter to the Supreme Court, on the basis that even if Congress had such authority, it did not use it.

That is the problem. Now, with regard to the severability situation, if that is the case, then the Land Claims Act itself would fall, because the Land Claims Act contains section 4, and the court would have to construe section 4 as well as any section we would put in this bill.

And, not only would this bill fail, but the Land Claims Act itself would be declared unconstitutional, if it were not severable.

We all have a problem and I hope that my Native friends agree that it is a very serious problem.

Senator HASKELL. Thank you very much, Senator, your full statement will appear in the record at this point.

I also have a statement from Senator Gravel who is chairing a hearing outside of Washington, D.C. and could not make it here today.

[The statements referred to above follow:]

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

Mr. Chairman, I am pleased to have the opportunity to appear before this committee to discuss several pieces of legislation which have evolved out of the Alaska Native Claims Settlement Act, and to comment on some other areas that also need legislative action in the near future.

On January 15, 1975, I introduced a bill, S. 131, to extend the deadline for enrollment under the ANCSA. This move was necessary because approximately 1,000 Native people who could be enrolled for benefits under the Alaska Native Claims Settlement Act were not included in the final roll because they missed the March 30, 1973, deadline. The Department of the Interior's position was that it would be inequitable to those who met the enrollment deadline to allow late filers to claim benefits. The total amount of land and money is not affected by the number of people claiming benefits, so the only impact on the Federal budget would be the costs of processing some additional applications. As to any inequity to those who filed on time, I cannot believe that there is one Alaskan Native who would deny benefits to another because a deadline was missed.

I believe that the intent of the Congress in specifying a two year period for enrollment was to provide for expeditious conveyance of the benefits of the Act. This is important, but it is equally important that every Alaskan Native be entered in the Alaska Native roll. I also believe this was Congress' intent.

Besides extending the time frame in which otherwise qualified Natives could enroll under the ANCSA, this bill would also direct the Secretary of the Interior to establish an escrow fund for revenues received by the Department for activities on Federal lands subsequently patented to Natives; insure that payments under the Claims Act are disregarded when determining the eligibility of any household to participate in the Food Stamp Program; and exempt Native corporations from the Investment Company Act of 1940 through December 31, 1976.

Mr. Chairman, at this time I would like to recommend one minor change in the wording on Page 3, line 1. After the word "proceeds" insert "received by an agency or instrumentality of the Federal government." This insertion will merely serve to clarify this section of the Act.

The second bill under consideration today is S. 1469, a bill to amend the Alaska Native Claims Settlement Act to continue the authority of the Joint Federal-State Land Use Planning Commission for Alaska until June 30, 1979.

Established by the ANCSA of 1971, the Commission has provided invaluable assistance to State and Federal officials, Members of Congress, Native corporations, and private landowners in the State of Alaska. It has broad responsibilities in the area of the ownership, management, and use of Alaskan lands.

The Commission's accomplishments are extensive; the most significant include elaborate studies on Alaskan resources, the submission to the Secretary of the Interior of several options relating to land selections under section 17(d)(2) of ANCSA, detailed studies and recommendations concerning Native village eligibility under that Act, identification of public easements, formulation of suggested rules to be applicable to various land selections, protection of mining claims, and numerous other reports, studies, and recommendations germane to the implementation of ANCSA. In addition, the Commission has published several important studies which have proven to be extremely useful in dealing with legislation regarding land, minerals, and other resources within the State.

Congress has until December 18, 1978, to act upon recommendations on the classification and use of lands covered by ANCSA. Subsequently, it will become necessary to detail regulations specific to these lands and many questions will remain to be studied. It is clear that the expertise of the Commission has become an invaluable resource in dealing with the problems involved in implementing ANCSA. It would be deplorable to let the Commission expire before a final decision is made on the D–2 lands and the other unresolved issues regarding ANCSA.

I come now to S. 685, a bill which will authorize the merger or consolidation of village corporations formed within the same region of Alaska under the ANCSA.

Since the enactment of the Settlement Act, many of the village corporations established under the Act have found that they are too small and inexperienced to effectively manage their own resources, and that they have little chance of ever becoming established business enterprises.

Sufficient funds are not available to allow the corporations to operate without incurring losses. Management talent, of course, is also scarce; few Natives in these villages have ever managed corporations. In some regions, the problem is further compounded by the fact that many of the villages are in extremely remote locations, with little if any communications facilities to the outside world, and only the airplane as transportation. For these reasons, some regions, until now, have been carrying their village corporations, assisting them with virtually all administrative actions that are required. The corporations, therefore, have come to realize that the only permanent solution is to merge with each other, or with their regional corporation. The resulting larger corporation or corporations would then stand a much better chance of long-term survival.

This merger can only be accomplished by legislation due to the provisions of the Settlement Act which prohibits, for a period of 20 years from the date of enactment of the Act, any sale, assignment, or other alienation of stock of any regional corporation by its shareholders. These restrictions also apply against alienation of the village corporation stock.

Many of the stockholders of the village corporations have indicated that they would favor a merger and have asked that the proposal be pursued. This support results in part from the fact that the Natives in the various villages in the region historically share a strong common heritage and bond. Regardless of what village in the region they may be from and which village corporation they may be stockholders in, they view themselves as all being united as part of the region, and their main interest is in the survival of the region as a whole and of the regional corporations.

Alaskan Natives desire to succeed in the endeavor begun under the Settlement Act. They want to become self-sufficient, but they realize that this cannot occur if they continue to operate as separate entities. Thus, the key to them realizing this goal lies within the merger of the village corporations into a strong and vital body capable of handling the many needs of the village corporations and their shareholders. This legislation will do just that.

Mr. Chairman, regarding S. 685, I would like to make one recommendation. I suggest that section (c) of the bill be dropped as it could possibly be in conflict

with the 20 year "restraint on alienation" clause of the ANCSA. I have been informed by the American Law Division of the Library of Congress, that such a move would not violate any of the dissenting shareholders' Fifth Amendment rights.

Mr. Chairman, in conclusion there are a few matters I would like to bring to the Committee's attention for possible action.

I understand that at the present time, negotiations are taking place regarding land selections by the Cook Inlet Region. Eventually, proposed legislation will be drafted to provide for these land selections. I will support, and I suggest that the committee consider, any legislation that comes out of these negotiations which all three parties involved agree to, the three parties being Cook Inlet, the State of Alaska, and the Anchorage Borough.

In regard to any language regarding the 13th Region included in the bill that comes out of this committee, one important point that it should include is the guarantee that the land rights of the other 12 regions do not change. I do not feel that we can change the existing land selection rights and procedures of the other 12 regions in order to develop a 13th.

Mr. Chairman, there is another matter I would like to bring to the attention of the committee. The Native corporations established in Kodiak, Kenai, Juneau, and Sitka receive no funds under the Act. They are entitled only to the surface estate in up to 23,040 acres of land. I would like to include in the Record a telegram from Nancy E. Anderson, President Natives of Kodiak Inc., and others, concerning the difficulties faced by their particular corporation. I would appreciate the committee's reviewing this matter to determine whether this, too, may be corrected by an additional amendment to authorize a grant of $250,000 to each of the village corporations (Kodiak, Kenai, Juneau, and Sitka) to carry out the duties imposed upon them by the ANCSA.

Mr. Chairman, the Alaska Native Claims Settlement Act made history as the first legislated aboriginal claims settlement in the Nation. As such, I feel that the Congress has a clear responsibility to follow through with the implementation of the Act and take action to remedy potentially discriminatory or detrimental situations which cannot be resolved administratively. I urge that the committee take prompt action on these bills and the amendments I have offered to insure fair and equitable implementation of the ANCSA.

I would also like to bring to the attention of the committee the situation which exists in regard to Sealaska. Very little good land is available for selection in the Sealaska area, except for that in the National Forest or lands soon to be included in the National Forest. Thus Sealaska would like to obtain 200,000 acres of land in the National Forest as part of their selection. The Forest Service claims they have no right to the land. However, none of the other parties involved, the State or the City of Juneau, seem to object.

I am submitting for the committee's consideration the following sentences that could be added at the end of section 16(b) as an amendment to the ANCSA to correct this situation. "Such allocation as the Regional Corporation for the southeastern Alaska region shall receive under section 14(h)(8) shall be selected and conveyed from lands not selected by such village corporations that were withdrawn by subsection (a) of this section; provided, if such lands are not sufficient to satisfy the entitlement of such corporation under section 14(h)(8), it may select the deficiency from any other public lands."

I now 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 judgment 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 claims 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 pror to the Settlement Act. Mr. Chairman, I ask that this stipulation be made a 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 claims "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 claims.

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. 2906 and Related Bills before the Senate Committee on Interior and Insular Affairs*, 90th Congress, 2d Session 511 (1968) (report of the Federal Field Committee).

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 sett'e-ment. 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. Rept. 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, the House Interior 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.[1]

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 of all Native claims thereto.

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.

H.R. Rep. No. 92–523, 92d Congress, 1st Session 8 (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 "alls" 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. 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

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[1] The extinguishment provision as reported read as follows. The italicized words 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 the Act of May 17, 1884 (23 Stat. 24), or the Act of June 6, 1900 (31 Stat. 321), or any other statute or treaty of the United States 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.

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 Congressional 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 38,433 (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 with more experience in Indian claims and legislation, have correctly construed the Settlement Act as extinguishing all claims, including trespass, based on aboriginal title.[2]

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[3] 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.

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 orginally 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 by one acting without color of law.

Mr. Chairman, if *Edwardsen* is allowed to stand I foresee a myriad litigation over these claims. Exactly what we tired to prevent with the passage of the 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. 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 prob-

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[2] *E.g., Aleut Community* v. *United States*, 202 Ct. Cl. 182, 480 F.2d 831 (1973) ; *Native Village of Gambell* v. *United States*, 27 Ind. Cl. Comm. 140 (1972).

[3] *Tee-Hit-Ton Indians* v. *United States*, 348 U.S. 272 (1955).

lems for the State and its citizens, and is spawning divisive litigation of the sort we had intended to settle in 1971.

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 Senate Interior 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 any one 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 desolution the Native land claims in Alaska.

I would like to submit at this time and ask that they be placed in the Committee Record samples of letters I have received in my office supporting the passage of the bills and amendments I have proposed.

Thank you, Mr. Chairman.

ALASKA TRIBAL ASSOCIATION,
Kenai, Alaska, May 9, 1975.

HON. TED STEVENS,
U.S. Senate, Washington, D.C.

DEAR SIR: Lack of monies to provide for expenses incurred in land selection and/or Land Use Planning/Management is seriously hindering the four named cities and seven reserve cities formed under ANCSA in their drive for self determination. Alaska Tribal Association does, therefore, hereby request your assistance for the introduction and passage of legislation to make funds available to these cites in the following amount: Juneau, Kenai, Kodiak and Sitka—250,000 dollars each—total one million dollars. Arctic Village, Elim, Gambell, Klukwan, Savoonga, Venetie and Tetlin—one hundred thousand dollars each—total seven hundred thousand dollars. This assistance would be appreciated.

GEORGE MILLER, JR.,
President.

NATIVES OF KODIAK, INC.,
Juneau, Alaska, May 9, 1975.

Senator TED STEVENS,
U.S. Senate, Washington, D.C.

DEAR SIR: It is our understanding that the amendments to the Alaska Native Claims Settlement Act are being considered in the U.S. House of Representatives next week. On behalf of the 2,640 shareholders of Goldbelt, Incorporated and the 1,800 shareholders of Shee Atika, Incorporated we hereby request your assistance in the introduction and passage of a bill which would grant 250,000 dollars to each of the Native corporations representing Juneau, Kenai, Kodiak, and Sitka. This bill was previously introduced as an amendment to a bill concerning Native enrollment by Senator Stevens last year, but Congress adjourned before any action could be taken.

As you are aware, the Native corporations formed for the four-named cities are not defined, classified or identified as village corporations under the Alaska Native Claims Settlement Act and they therefore receive no funds under 43 U.S.C. section 1605. This lack of funds has severely handicapped us in establishing our corporations, hiring consultants to assist us in our land selections, and the other areas of corporate concern requiring financing. We have received offers of financial assistance from interested parties, But these offers require committing our land resources before we have even completed our land selection.

Due to unanticipated obstacles which may delay completion of our land selections it is still very difficult to estimate the length of time required for Goldbelt, Incorporated and Shee Atika, Incorporated to realize any revenues to be derived from their land. It would therefore seem only just and proper that Congress make a supplemental appropriation of some type to provide Goldbelt, Incorporated, Shee Atika, Incorporated and the other urban corporations with the funds necessary to sustain us until we are able to become self-sufficient from the revenues to be derived in the future from the lands selected. We feel 250,000 dollars for each corporation would be adequate to help us in completing our organizational process and land selections. Both Greenbelt, Incorporated and Shee Atika, Incorporated are operating under a loan and will have expended at least 125,000 dollars for FY 1974–75.

We hereby request your assistance in the introduction and passage of a bill in which would grant each of the four named cities—Juneau, Sitka, Kenai and Kodiak $250,000. As you are aware, the above Native corporations are not defined, classified or identified as a village corporation under the ANCSA and we therefore receive no funds under 43 U.S.C. section 1605. The lack of funds have us at a standstill in setting up our corporation, the hiring of personnel and all other corporate operations requiring financing. There is no problem of financial assistance from private groups, but this would mean committing our land resources before we have completed our final land selections.

We understand that the amendments to the ANCSA are being considered in the U.S. House of Representatives this week. This bill was previously introduced as an amendment to a bill concerning native enrollment by Senator Stevens, but Congress adjourned before any action could be taken. Due to many obstacles which may delay completion of our final land selections, it is very difficult at this time to even start estimating the time involved and required for the Natives of Kodiak, Inc. to foresee any revenues to be derived from our land.

On behalf of the 492 shareholders enrolled to the Natives of Kodiak, Inc., we would very much appreciate all aid and assistance which you can give us.

We are operating under a loan of $25,000 from our regional corporation. I am sure you are well aware of the terrific expense of organizing a new corporation.

The act provided us with no funds in which to operate. It would seem only just and proper that Congress make a supplemental appropriation to provide the Natives of Kodiak, Inc. and the other three urban (non-village) corporations with fund necessary to sustain us until we get organized and become self-sufficient from revenues to be derived in the future from our selected lands.

We have discussed at our Alaska Tribal Association meetings and feel that $250,000 for each urban corporation would be not only fair and just, but adequate to help us in completing our organizational process and selection of lands.

Natives of Kodiak Inc. urge you to help us in all aspects of the passage of the bill. It will be greatly appreciated by all shareholders. Thank you for your time and attention.

Sincerely,

NANCY E. ANDERSON, *President.*

COOK INLET NATIVE ASSOCIATION,
Anchorage, Alaska, May 6, 1975.

Senator TED STEVENS,
Russell Senate Office Building,
Washington, D.C.

DEAR SENATOR STEVENS: For your information the Cook Inlet Native Association supports and endorses Senate Bill S. 685, A bill to authorize certain corporations under the Alaska Native Claims Settlement Act to merge or consolidate,

and for other purposes, and Senate Bill S. 131, A bill to authorize the secretary of the Interior to enroll certain Alaskan Native for benefits under the Alaska Native Claims Settlement Act and for other purposes. Both Bills are referred to the Committee on Interior and Insular Affairs.

We would appreciate it if you would submit this letter of endorsement to the appropriate committees for us.

Sincerely,

ROBERT W. RUDE,
President/Executive Director, Cook Inlet Native Association.

DOYON, LIMITED,
Fairbanks, Alaska, May 9, 1975.

Hon. TED STEVENS,
U.S. Senate, Committee on Appropriations,
Washington, D.C.

DEAR SENATOR STEVENS: Your Bill, (S–1469), proposing to amend the Alaska Native Claims Settlement Act to extend the authority of the Joint Federal-State Land Use Planning Commission to June, 1979, has been brought to my attention.

Doyon, Limited has worked closely with the Commission on several instances. As a result, we feel that we are keenly aware of their value not only to state and federal governmental agencies but to the people as well. We support S–1469 as presented and feel confident that the Senate Committee will respond in a positive manner.

We would appreciate having our support brought to the attention of the Committee.

With kindest personal regards,

Sincerely,

JOHN C. SACKETT, *President.*

STATE OF ALASKA,
OFFICE OF THE GOVERNOR,
JUNEAU, *March 17, 1975.*

Hon. TED STEVENS,
U.S. Senate,
Washington, D.C.

DEAR SENATOR STEVENS: As you know, the Joint Federal-State Land Use Planning Commission for Alaska, which was initially established in the Alaska Native Claims Settlement Act, will cease to exist under the terms of the Act on December 31, 1976. With this in mind, I am writing to you at this time to express my strong support for an extension of the Commission until December 31, 1978. My support for the Commission is based upon the excellent work which I believe has already been accomplished and on the special ability of the Commission to deal with a number of future issues.

With respect to its past activities, I have been especially impressed by the following specific efforts. First, the Commission has submitted what I believe to be a well conceived series of initial recommendations for the future use of lands currently withdrawn under Section 17(d)(2) of the Settlement Act for possible inclusion in one of the four Federal management systems, although much work remains on this subject. Second, the Commission has been of great assistance in the implementation of the Settlement Act. Its assistance has included a series of recommendations to the Secretary of the Interior concerning various land-related matters arising under the Act and technical and other advice to native corporations respecting land withdrawals and selections. Third, the Commission has rendered advice to the State Administration and the State Legislature on proposed legislation and advice on a number of land-related policy issues. Fourth, the Commission has developed a natural resource inventory which will contribute greatly to the formulation of sound public policy respecting Alaska lands. Fifth, the Commission has helped to improve intergovernmental coordination and consultation between the Federal Government and the State of Alaska. Among its other activities in this area, the Commission is now working toward the development of a joint management plan for the lands around Mt. McKinley National Park. To develop such a plan, a task force composed of representatives of various levels of government, native corporations, and land user groups has been established. Sixth, the Commission, pursuant to Section 17(b) of the Settlement Act, has considered a number of questions involving access across native lands. Most

recently, this activity culminated in a series of recommendations to the Secretary of the Interior regarding policies and criteria for identifying local easements across lands to be conveyed to native corporations.

One key area of Commission study and recommendation, which was specifically mandated by Congress, is the addition of up to 80 million acres of lands in Alaska to the four national conservation systems. Under the terms of the Settlement Act, Congress has until December 18, 1978, to take final action on these so-called Section 17(d)(2) lands. In view of the valuable contribution of the Commission to these decisions of highest importance to both the State and the national interest in Alaska's lands, it would be extremely unfortunate if the Joint Commission were allowed to expire before final action is taken on the d–2 lands. A simple two-year extension of the Commission's life would enable it to continue to serve as an important independent source of information and recommendations to Congress on the complex set of issues surrounding the d–2 decisions.

In addition, as the State of Alaska and native corporations continue their selections under the Alaska Statehood and Settlement Acts, respectively, there will be a continuing need for the type of land use planning and intergovernmental coordination which the Commission is directed to undertake in various portions of its statutory mandate. Among the many issues which are likely to arise in these areas, the checkerboard pattern of land ownership which will emerge in the period beyond 1976 will require the continuing attention of a joint instrumentality of government like the Commission. Various other considerations, including the continuing need for the type of socioeconomic, management, and land use studies now being conducted by the Commission, also indicate to me that the life of that agency should be extended at least until many of the emerging issues involving Alaska's land have been resolved or seriously considered.

With the foregoing considerations in mind, I want to assure you of the support of this Administration for any legislation to extend the lifespan of the Commission.

Thank you for your consideration in this matter.

Sincerely,

JAY S. HAMMOND,
Governor.

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 writen.

ROGER LANG,
President.
FRED T. ANGESON,
Secretary.

JUNEAU, ALASKA,
May 15, 1975.

Senator TED STEVENS,
U.S. Senate,
Washington, D.C.

DEAR SENATOR: It is our understanding that the amendments to the Alaska Native Claims Settlement Act are being considered in both the House and the Senate this week. On behalf of the 2,640 shareholders of Goldbelt, Incorpo-

rated we hereby request your assistance in the introduction and passage of an amendment which would grant funding, preferably 250,000 dollars, to each of the Native corporations representing Juneau, Kenai, Kodiak, and Sitka. This provision for funding was previously proposed as an amendment to a bill concerning native enrollment by yourself before the Senate Interior Committee last year.

As you are aware, the Native corporations formed for the four-named cities are not defined, classified or identified as village corporations under the Alaska Native Claims Settlement Act and they therefore receive no funding. This lack of funds has severely handicapped us in establishing our corporations, hiring consultants to assist us in our land selections, and the other areas of corporate concern requiring financing. We have received offers of financial assistance from interested parties, but these offers require committing our land resources before we have even completed our land selection.

Due to unanticipated obstacles which may delay completion of our land selections it is still very difficult to estimate the length of time required for Goldbelt, Incorporated to realize any revenues to be derived from our land. It would therefore seem only just and proper that Congress make a supplemental appropriation of some type to provide Goldbelt, Incorporated and the other urban corporations with the funds necessary to sustain us until we are able to become self-sufficient from the revenues to be derived in the future from the lands selected. We feel 250,000 dollars for each corporation would be adequate to help us in completing our organizational process and land selections. Goldbelt, Incorporated is operating under a loan and will have expended at least 125,000 dollars in its first year of operation.

Any aid and assistance which you can render to Goldbelt, Incorporated and the other urban corporations will be greatly appreciated. Thank you in advance for your efforts on our behalf.

JOSEPH G. WILSON, *President, Goldbelt Incorporated.*

JUNEAU, ALASKA, *May 9, 1975.*

Senator TED STEVENS,
U.S. Senate,
Washington, D.C.

DEAR SIR: It is our understanding that the amendments to the Alaska Native Claims Settlement Act are being considered in the U.S. House of Representatives next week. On behalf of the 2,640 shareholders of Goldbelt, Incorporated and the 1,800 shareholders of Shee Atika, Incorporated. We hereby request your assistance in the introduction and passage of a bill which would grant 250,000 dollars to each of the Native corporations representing Juneau, Kenai, Kodiak, and Sitka. This bill was previously introduced as an amendment to a bill concerning native enrollment by Senator Stevens last year, but Congress adjourned before any action could be taken.

As you are aware, the Native corporations formed for the four-named cities are not defined, classified or identified as village corporations under the Alaska Native Claims Settlement Act and they therefore receive no funds under 43 U.S.C. Section 1605. This lack of funds has severely handicapped us in establishing our corporations, hiring consultants to assist us in our land selections, and the other areas of corporate concern requiring financing. We have received offers of financial assistance from interested parties, but these offers require committing our land resources before we have even completed our land selection.

Due to unanticipated obstacles which may delay completion of our land selections it is still very difficult to estimate the length of time required for Goldbelt, Incorporated and Shee Atika, Incorporated to realize any revenues to be derived from their land. It would therefore seem only just and proper that Congress make a supplemental appropriation of some type to provide Goldbelt, Incorporated, Shee Atika, Incorporated and the other urban corporations with the funds necessary to sustain us until we are able to become self-sufficient from the revenues to be derived in the future from the lands selected. We feel 250,000 dollars for each corporation would be adequate to help us in completing our organizational process and land selections. Both Goldbelt, Incorporated and Shee Atika, Incorporated are operating under a loan and will have expended at least 125,000 dollars for FY 1974–75.

JUNEAU, ALASKA, *May 15, 1975.*

Senator TED STEVENS,
U.S. Senate, Washington, D.C.

DEAR SIR: The following telegram was sent to Royston C. Hughes, Assistant Secretary, Department of the Interior. Any assistance you can give us on the problem as mentioned below would be appreciated.

On behalf of Goldbelt, Incorporated of Juneau I would like to inquire into the status of the waiver we had requested on the 50-mile radius regulations set forth for the four names cities under the Alaska Native Claims Settlement Act.

The waiver was requested to allow Goldbelt, Incorporated to coordinate and combine its final selection with that of Shee Atika, Incorporated of Sitka, with the object of forming a single, compact, contiguous and more efficiently manager block of private land adjacent to lands selected by Kootznoowoo, Incorporated. The extreme limit of Goldbelt's nomination is approximately sixty-two miles from Juneau, Alaska, exceeding the limit by only twelve miles.

On March 7 we had written to Curtis McVee, State diretcor of BLM in Alaska, and C. A. Yates, regional forester, Juneau, Alaska, as well as Curt Berklund of the Department of the Interior, requesting their assitance in obtaining a waiver of the 50-mile radius regulation. We received favorable response from the Forest Service and BLM in Anchorage, but we have not yet received a written response from the Department of the Interior granting a waiver.

It is our understanding that the Alaska Task Force can foresee no problem in the granting of a waiver. Because of the time problem involved in our land selection we would appreciate receiving a decision as soon as possible. We have made our nomination and indicated our priority selection at the public hearing held April 10. Before any recommendation can be made from BLM in Alaska a determination is required on the above regulation.

A second problem concerning our land selection is the proposed extension of the deadline for submitting written comments on the nomination of Goldbelt, Incorporated. The dealine was extended from April 28 to May 12 by BLM. We feel that with the time frame set for our selection we cannot afford another extension. All interested parties have had from 1½ to 2 months to study our nominations, and in our opinion this time has been sufficient. We understand Kootznoowoo, Incorporated requests more time to study our nomination. We first presented our total nomination to their board of directors March 11, 1975, and have met with them several times since. We feel they have had sufficient time to review our nomination and comment. Under the circumstances an extension of the May 12 deadline would be unnecessary and unwarranted.

Your assistance on the above matters will be appreciated.

JOSEPH G. WILSON, *President, Goldbelt, Inc.*

ANCHORAGE, ALASKA, *May 15, 1975.*

Senator TED STEVENS,
Washington, D.C.

DEAR SIR: As you know I am intimately familiar with the history of Alaska aboriginal claims in general and the development of the Alaska Native Claims Settlement Act in particular. During the consideration of the act I was deeply involved because of my responsibilities in the area of natural resources with the state attorney general's office. Following passage of the act I have continued to remain vitally interested in this subject not only as an Alaskan citizen and an attorney, but also as an officer who serves on several civic and professional boards in the state. I have continued to work to insure implementation of the act in the interest of all Alaskans. I am therefore very concerned about the ruling in Edwardsen vs. Morton regarding presettlement act trespass. During consideration of the act substantial sacrifices and contributions to this critically important settlement were made by this state and all its people in exchange for the assurance that there would be no more dispute or lawsuits based on aboriginal claims. Such claims and litigation whether for titles or trespasses were certain to be enormously costly, time consuming and socially disruptive. I have no doubt that a vital goal of the settlement act was to stop, absolutely and forever all such disputes and litigation. The Edwardsen ruling threatens to demoralize and polarize citizens of this state for years to come by reopening the claims which were thought to have been

settled. For these reasons, I strongly support your efforts to see that the settlement act accomplishes its critically important goal of eliminating any further disputes over aboriginal claims.

BOB HARTIG.

SECURITY TITLE & TRUST CO.
Anchorage, Alaska, May 15, 1975.

Senator TED STEVENS,
Washington, D.C.

DEAR SIR: On behalf of Security Title and Trust Company and other title companies with whom I have discussed the matter, I urgently request that you take any action necessary which would serve to resolve the doubts and uncertainties created by U.S. District Judge Gasch in the case of Edwardsen *v.* Morton 369 F. Supp. 1359. In my opinion, the decision by Judge Gasch is counter to the clear intent of Congress in passing the Alaska Native Claims Settlement Act. The Settlement Act was designed to extinguish all claims based upon aboriginal title. Almost all of the lands in the state were the subject matter of claims by Native groups. As I read Judge Gasch's opinion, it would support the filing of trespass actions covering the lands in Alaska if the lands had been occupied or utilized by the Native groups. The consequences of that ruling would be disastrous insofar as all land titles in Alaska are concerned. When Congress stated that it intended quote, to extinguish all claims based on aboriginal title, unquote, I assumed it meant to include claims based upon trespass based on aboriginal title. I would be pleased to assist you in any manner in resolving this issue. Thank you.

CLIFFORD GROH, *Chairman of the Board.*

SHEEATIKA INCORPORATED,
Sitka, Alaska, May 15, 1975.

Senator TED STEVENS,
U.S. Senate, Washington, D.C.

DEAR SIR: It is our understanding that S. 131 will be discussed tomorrow in regard to the late filers under the Alaska Native Claims Settlement Act. On behalf of the 1,800 share holders of Sheeatika Incorporated, we hereby request your assistance in the introduction of a provision to provide a funding base for the (4) named cities under Section 14(H)(3) of the act. This bill was previously introduced last year with no action taken by Congress prior to adjournment.

The Native corporations formed under 14(H)(3) are not defined nor classified under the ANCSA and therefore received no funds under 43 U.S.C. Section 1605. This lack of funds has severely handicapped us in establishing our corporation as well as hindered us in other areas of corporate concern requiring financing. It would therefore seem only just and proper that Congress authorize a supplemental appropriation to provide those corporations formed under Section 14(H)(3). The necessary funds to sustain us until we are able to become self-sufficient. We feel $250,000 for each corporation would be adequate to complete the organizational process and to finalize for land selection. Any assistance you can render, would be greatly appreciated by our stockholders. Thank you.

NELSON D. FRANK, *President.*

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil No. 2014–71

CHARLES EDWARDSEN, JR., ET AL., PLAINTIFFS,
v.
ROGERS C. B. MORTON, ET AL., DEFENDANTS

STIPULATION AND AGREEMENT

Whereas, plaintiffs filed their original complaint herein on October 5, 1971, seeking inter alia, an order requiring the defendants to take whatever action is

necessary to recover on plaintiffs' behalf compensation for certain alleged diminution of plaintiffs' rights relating to Arctic Slope lands; and

Whereas, by order of this Court entered April 19, 1973; 369 F. Supp. 1359, certain rights of the plaintiffs were recognized as being protected against diminution by third parties, and that defendants had a duty to provide such protection; and

Whereas, the plaintiffs thereafter filed with leave of Court their amended and supplemental complaint, asserting with greater particularity certain instances of diminution of such rights by third party trespasses, as follows:

"48. As a direct and foreseeable consequence of the foregoing acts of the Secretary of the Interior and his subordinates, plaintiffs' aboriginal lands were overrun by a massive influx of people and machinery.

49. Graveyards and consecrated areas sacred to plaintiffs and their ancestors were ravaged and destroyed.

50. Great quantities of valuable sand and gravel were taken, with extensive resultant physical and economic damage.

51. Water supplies were disturbed and wasted to plaintiffs' detriment.

52. The migratory and feeding patterns of fish and game were disturbed to the great detriment of plaintiffs who substantially rely on said fish and game for subsistence.

53. Whale migration patterns were disrupted with resultant loss to plaintiffs. In the spring of 1970, onshore and offshore blasting, conducted under licenses granted by the Department of the Interior, took place in the vicinity of Icy Cape and Wainwright Village. Such blasting foreseeably disrupted and did disrupt, the spring migratory route of whales in this area, depriving plaintiffs of their annual whale take. This loss deprived plaintiffs of food, fuel, tools, and cash income which have been vital to plaintiffs' survival on their ancestral and aboriginal lands.

54. Plaintiffs' hunting grounds, campsites, and buildings were disturbed and wasted and plaintiffs were precluded from use thereof.

55. Much valuable information about the location of valuable minerals was obtained.

56. Roads, airports, barracks, construction sites, and various support facilities were constructed for the use and benefit of persons other than a plaintiffs"; and

Whereas, the defendants have instituted some investigations into the matters alleged as actions of trespass, and have found that some of plaintiffs' allegations of such diminutions have support in fact; and

Whereas, plaintiffs and defendants are agreeable to attempting a resolution of some of the matters in dispute by agreement and stipulation, and do therefore agree and stipulate as follows:

1. *Plaintiffs* are the Eskimo individuals, villages, and organizations named in the amended and supplemental complaint.

2. *Defendants* are those officers of the United States Department of the Interior named in the amended and supplemental complaint.

3. The *Arctic Slope of Alaska* is that area of northern Alaska which comprises the present boundaries of the Arctic Slope Regional Corporation as established by the Secretary of the Interior pursuant to Section 7(a) of the Alaska Native Claims Settlement Act of 1971, Pub. L. 92–203.

4. *Eskimos* are those Native people who are U.S. citizens, who inhabit the Arctic Slope of Alaska, and who comprise a homogeneous and interrelated Native group and community.

5. *Inupiat Community of the Arctic Slope* is an organization of Eskimos, formed pursuant to the Indian Reorganization Act of June 18, 1934, 48 Stat. 984, and the Act of May 1, 1936, 49 Stat. 1250.

6. Recognizing that the gathering of evidence and the conduct of litigation hereinafter described cannot be successfully accomplished without their active and continuing cooperation and assistance, plaintiffs shall, to the fullest practical extent:

A. Cooperate with and assist defendants and their agents and employees in the conduct of the investigation hereinafter described in Paragraph 7(A);

B. Cooperate with and assist the Attorney General of the United States and his agents and employees in the conduct of any litigation instituted pursuant to this agreement and stipulation;

C. Provide Defendants with such information of Native use and occupancy and trespass thereto as is peculiarly within Plaintiffs' knowledge; and

D. Make a good faith effort to obtain, prior to final settlement or trial on the merits of any matter referred to the Attorney General as provided herein, valid and appropriate assignments of claims to the Inupiat Community of the Arctic Slope, from all individual Eskimos and Eskimo communities damaged as described in their amended and supplemental complaint.

7. Defendants shall:

A. Institute and conduct an intensive investigation on the Arctic Slope, and into the public records of the United States, the State of Alaska, and other sources, in a good faith effort to obtain credible evidence in support of litigation as hereafter described. Such investigation shall be commenced without delay and carried on without substantial interruption until completion; and

B. Recommend to the Attorney General of the United States the institution of ltigation for the recovery of damages in all those situations hereinafter described, for which sufficient credible evidence exists to establish Eskimo use or occupancy prior to December 18, 1971, and a prima facie claim of unconsented third party entry to such lands with one or more of the following consequences:

1. Damages to graveyards and consecrated areas;
2. Removal of sand and gravel, except as specified in Paragraph 12;
3. Damage to or substantial taking of water supplies;
4. Activities resulting in the disturbance detrimental to Eskimos of the migratory or feeding patterns of sea mammals, fish and game;
5. Damages to buildings, campsites, hunting and trapping grounds, cellars and caches, or other physical properties;
6. Killing of game animals resulting in significant detriment to Eskimos;
7. Acquisition of valuable information relating to surface and subsurface resources;
8. Extraction of oil and gas, except as specified in Paragraph 12;
9. Utilization of the surface for air fields, buildings, roads, living units, or other structures or drilling operations for substantial periods of time except as specified in Paragraph 12.

The parties hereto are not now aware of any other type of consequence which properly should be the subject of such a recommendation to the Attorney General, but, if either party should discover a type of consequence after the date hereof which such party believes should be the subject of such a recommendation, the parties hereto agree to discuss in good faith whether such type of consequence should be included within the enumeration of consequences in this Paragraph 7(B).

8. Lands "used or occupied" by Eskimos prior to December 18, 1971, includes lands traditionally used by them for hunting, fishing, trapping, whaling, trading, transportation, homes, campsites, burial grounds, religious activities, storage of food, clothing and equipment and the gathering of fuel, food, water and building materials.

9. All monetary proceeds of all litigation undertaken pursuant to this agreement shall be paid to Eskimos, as their interests may appear whether by assignment or otherwise at the time for distribution.

10. Plaintiffs shall be regularly advised of the status of all action taken by the United States, and defendants herein, to collect claims pursuant to Paragraph 7(B). Plaintiffs shall be consulted prior to any major decisions affecting their rights. As required by law, the conduct of any litigation shall be the right and responsibility of the Attorney General. Defendants shall recommend to the Attorney General that plaintiffs' intervention in any litigation brought pursuant to this agreement not be opposed by the United States unless the Attorney General or his delegate in good faith, is of the judgment that the prosecution of such litigation by the United States will be adversely affected by such intervention.

11. Plaintiffs' motion for a mandatory injunction in this case may be stayed so long as the parties are in good faith carrying out the provisions of this stipulation and agreement.

12. The parties hereto acknowledge and agree that the resolution of whether any, some, or all of the following actions shall be recommended to the Attorney General for commencement of litigation shall be deferred for future discussion by the plaintiffs and the defendants:

(a) The extraction of sand and gravel pursuant to a sale or free use permit issued or authorized by the Department of the Interior or any of its bureaus or offices.

(*b*) The use of any of the Arctic Slope lands or the resources thereof for any Federal purpose by any agency of the United States government or by any of its agents, contractors or subcontractors, including but not limited to: (1) the D.E.W. line; and (2) military airfields or other military installations.

HERBERT PITTLE,
Attorney.
O. YALE LEWIS, Jr.,
Attorney.

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

I appreciate the opportunity to comment on the three principal bills before the committee to amend the Alaska Native Claims Settlement Act. In my estimation the impact of the ANCSA has been far greater than I certainly imagined at the time we passed the legislation in 1971. I am pleased with the vigor and determination with which Alaska Native leaders have worked toward realization of the act's purposes in their respective regions. Although their progress has not been achieved without frustration, there is no question the act has signified a new beginning in the Alaska Native community. I would point out however, as others so aptly have in testimony before the House Interior Committee, that the act is not "cast in stone" and must yield to certain realities reflective of current conditions.

I would first like to direct my comments to S. 131, referred to as the Alaska Native Claims Act Omnibus Bill. Section 1 of this bill opens the Alaska Native Claims Settlement Act roll for one year from the date of enactment of this legislation to Natives who did not file an enrollment application prior to March 1973. While individuals added to regional corporation rolls would be entitled to the same stock distribution rights as those presently enrolled, the amendment would not change the land selection rights of the various corporations or the "eligibility" status of villages or the land selection eligibility of Native groups. I am in full support of the opportunity this measure affords those not successful in meeting the previously established deadline.

Sections 2, 3, and 4 of S. 131 reference the subject of payment to escrow accounts of amounts received by the federal government from uses and rights to land granted by the federal government in advance of final conveyance of such land to Native corporations. I am supportive of this adjustment to the act and certainly concur with the argument that the ultimate owners of such lands should receive appropriate compensation from the granting of such uses and rights as the federal government has found appropriate during the period in advance of conveyance.

Section 6 of the bill exempts Native regional corporations from the task of assessing the assets of a Native corporation until December 1976. The purpose is to allow corporations the time to properly determine the value of corporation lands. It has been suggested that due to the full realization of the time it will take for conveyance, it may be completely appropriate to extend this period for several more years. I respectfully request the committee to direct its attention to this question.

Section 7 amends the act by adding a new section 29 which contains language to clarify the fact that the intent of Congress in passing the original settlement act was clearly *not* to hold the act as a substitution of any kind for government programs and services Alaska Natives are entitled to as U.S. and Alaska citizens. I can not emphasize too strongly the importance of this language so as to make it absolutely clear to all branches and all levels of government that this was our precise intention. I have a very strong personal belief in regard to this matter and certainly hope it is shared by my colleagues.

Subsection (b) of section 29 of the bill contains language necessary to clarify the issue of whether distribution of funds to individual stockholders may be treated as income for purposes of determining eligibility to participate in the federal food stamp program. The language in Subsection (b) is, I believe sufficiently clear to establish the unique nature of cash distributions for the purposes of establishing income of household members for food stamp program participation. Without question this amendment is necessary.

The committee has before it two bills to extend the life of the Joint Federal-State Land Use Planning Commission established by section 17 of the ANCSA. I have introduced S. 1501 to accomplish this while my fellow Senator from Alaska has introduced S. 1469. The two bills are essentially different only in the date

they assign for termination of the planning commission. The value of continuing commission activities is not arguable in the opinion of major groups interested in the activities of the commission. Without question the comission has proven to be a valuable institution from the standpoint of the state administration, Alaska Natives, Alaska land interest groups, and the Department of Interior. The commission has established a stable record of achievement in dealing with issues and problems surrounding implementation of the Settlement Act.

With regard to establishing a date for termination of the commission as it is presently structured, I have purposely chosen December 1978 to coincide with the deadline established by ANCSA for treatment by Congress of the D–2 lands question. Beyond this date I would suggest the need for the presence in Alaska of a body similar in character to the present planning commission but with somewhat differing responsibilities. After December 1978 the role of the federal government as manager of a substantial land area divided into four major classifications, will continue to be of vital importance to Alaskans. The State government and Alaska Natives will comprise the other two major land owning groups. A key element of consideration of the D–2 matter should be establishment of a permanent planning body similar in character to the present commission.

With respect to S. 685, the bill to allow regional and village corporations formed under the ANCSA to merge, I will not attempt to elaborate on the need for such an amendment. Without question the need exists due to the fact that for certain villages in certain regions the provisions of the act will, based on a purely economic basis, not support the continued existence of certain village corporations as viable entities fully able to sustain themselves in a profitable position. I respectfully direct your attention to the coments of Mr. Willie Hensley testifying on behalf of the NANA regional corporation. I would only want to add support to the proposition that however the machinery to allow mergers to take place is established, it must be the result of careful attention to the question of preserving the prohibition against alienation contained in the Settlement Act. This is essential to continuing the integrity of the act for Alaska Natives through the twenty year period originally established in the act.

Aside from the three principal items of legislation before the committee, I would like to address three other areas deserving of the committee's consideration. The three items I will outline below have in common their intent to correct problems we have come to recognize during the past three and one-half years.

The first deals with the matter of section 14 (h) in a manner which can be considered reasonable, it must be granted the specific authority to the grant of lands from the Tongass National Forest. Absent such clear authority, 14 (h) selections will not be satisfied from existing village withdrawals or will necessarily conflict with D–2 lands identified for inclusion in a National Park.

The attention of the comittee is directed to the testimony of Mr. John Borbridge Jr., President of Sealaska Corporation. Mr. Borbridge treats this matter in some depth and suggests language to remedy the problem 14(h) poses for the Southeast Alaska Corporation. If it will assist the committee in dealing with this matter, I am prepared to introduce separate and specific legislation dealing with this problem.

Another matter of concern to me is the inequitable situation many of the people enrolled to the Klukwan Village Corporation are expected to soon find themselves facing as a result of an expected ruling by the Department of Interior. I do not wish to dwell on the legal specifics of their difficulty in this testimony except to say that when the individuals enrolled to the Klukwan Village Corporation voted not to take benefits under the act but rather decided to take fee simple title to their former reservation lands, they made the decision based on the belief that potential value to be derived from a mineral lease executed by the Chilkat Indian Village Corporation (an Indian Reorganization Act corporation) would pass to the Klukwan Village Corporation. Because it now appears this is not to be the case, approximately 150 members of the Klukwan corporation will receive no benefits under the Settlement act either actual or potential. In view of this, I would strongly support a legislative remedy, and urge Congress to grant relief and a measure of equity to these people. Again, I direct your attention to the testimony of Sealaska President, John Borbridge for a full discussion of this matter including suggested language to amend the act. I will be most pleased to introduce a separate bill covering this matter if that will assist the committee in any way.

Finally I would like to touch on two other problems under the act.

The first regards the financial status of the four "urban" corporations organized pursuant to the Settlement act: Juneau, Sitka, Kenai, and Kodiak. Each

of these corporations is actually a land development corporation rather than a village corporation in the normal sense. Each will eventually have conveyed to it 23,040 acres of land. This land will represent the single asset of the corporation. The difficulty is that each corporation must accomplish the requisite number of functions involved in selection and management of those lands in advance and following final conveyance, and this is a costly endeavor. In order that each of these corporations should not be forced into an unhealthy financial condition prior to the time it is reasonable to expect their land holdings to become an asset capable of sustaining corporate operations, I would recommend an amendment granting $250,000 to each corporation from the Alaska Native Fund for the purpose of sustaining each corporation during the next several years.

The seven reserve villages (Elim, Arctic Village, Klukwan, Venetie, Savoonga, Tetlin and Gambell) face much the same situation. Although I have made reference to the more specific problems of the Klukwan people earlier in this testimony, one may consider the reserve villages to face problems not unlike those of the four "urban" corporations. Rational land development and planning for each of these organizations is an expensive proposition, particularly in rural Alaska. Each has land as their principal asset. To assist each of these groups in realizing the fullest possible benefits from that land in the years to come, I feel it is altogether appropriate for the committee to consider an amendment granting to each $100,000 on a *one-time only* basis for the purposes of properly completing the land planning and development tasks necessary for each of these villages to realize the fullest possible benefit from their land.

Before concluding my testimony, I would like to briefly comment on the problems of the Cook Inlet Region in their efforts to complete their land selections. You will hear in greater detail from individuals working very closely with and on behalf of Cook Inlet Region Inc., in attempting to define a solution to their problem. Basically, the region has not been successful in achieving, either through the Department of Interior or the courts, a reasonable measure of equity. Discussions have been taking place for several weeks now in an attempt to define an acceptable solution to this problem. I am most impressed with the effort Cook Inlet has put forth. I have given my support for an agreement acceptable to the State of Alaska and the major municipalities in the region. I hope that soon members of the Alaska delegation and members of the committee will have the opportunity to lend our support to whatever kind of specific legislative remedy is determined to be appropriate to allow Cook Inlet region to realize the potential of an equitable land settlement for that region.

Thank you Mr. Chairman and members of the committee.

Senator HASKELL. The next witness is Royston C. Hughes, Assistant Secretary for Program Development and Budget of the Department of the Interior.

STATEMENT OF HON. ROYSTON C. HUGHES, ASSISTANT SECRETARY FOR PROGRAM DEVELOPMENT AND BUDGET, DEPARTMENT OF THE INTERIOR

Mr. HUGHES. Mr. Chairman and members of the committee, I have a prepared statement which I would like to read.

Senator HASKELL. I am looking forward to hearing your testimony.

Mr. HUGHES. I appreciate this opportunity to appear before this committee today to testify on four bills which would amend the Alaska Native Claims Settlement Act.

We support enactment of both S. 131 and S. 685, and we have recommended several amendments to these two bills which are contained in our report to the committee. We have no objection to the enactment of either S. 1469 or S. 1501.

I will discuss each of the four bills separately.

S. 131 authorizes the Secretary of the Interior to reopen, for 1 year after enactment, the roll of Alaska Natives eligible for benefits under the Alaska Native Claims Settlement Act for the purpose of

enrolling persons who would have been eligible except for the fact that they missed the March 30, 1973 deadline. That deadline was established by regulations issued pursuant to the ANCSA. S. 131 also provides for the issuance of regional corporation stock as well as for the distribution of payments to those Natives enrolled pursuant to this section that are equal to payments made to those Natives originally enrolled. The bill 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 supported reopening the roll of Alaska Natives eligible to receive benefits under the act, 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 the act in time to meet the filing deadline of March 30, 1973. Our estimate is that as many as two thousand 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 S. 131 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 by the roll certified by the Secretary of the Interior on December 18, 1973. That roll would, under the provisions 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.

Senator HASKELL. Let me interrupt you. You support those so far discussed. Now, Senator Stevens has suggested we defer action on these bills—until the very complicated *Edwardsen* decision be resolved legislatively.

What is your reaction to his statement?

Mr. HUGHES. We are aware of the enormous potential the *Edwardsen* decision has for the issue itself. The Department's review as to what opposition should be with respect to that case, is now underway.

We are concerned that the case itself might tend to turn over——

Senator HASKELL. I am not asking your position on the *Edwardsen* case. I am asking you if these bills you have talked about so far you have supported, that you think are desirable, that Senator Stevens asked the committee to hold off on these bills, that you and he think are both desirable until some legislative settlement that the *Edwardsen* case comes over. Do you share his view?

Mr. HUGHES. I personally do not share that view, Senator. But, I would like to defer until we, at the Department, can review it. It is a brand new issue for us.

We would like to hold up until the *Edwardsen* case can be resolved.

Section 2 of S. 131 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 the Alaska Native Claims Settlement Act 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. When the selection rights of the natives expire, the proceeds from lands withdrawn but not selected shall be deposited in the U.S. Treasury or paid out as required under law.

Section 2 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 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 2(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 2(b) would establish an unfavorable precedent.

We have recommended several amendments to section 2 in our report, primarily of a technical nature. Further, we have also recommended an additional subsection which would parallel section 26 of the Settlement Act. This new subsection would provide that section 2 of this bill would govern in any conflicts between such section and any other Federal law applicable to Alaska.

Sections 3 and 4 of S. 131 clarify certain accounting procedures related to the proceeds in the escrow account established by section 2(a) of the bill. A system is necessary to accurately relate revenues to specific tracts producing such revenues.

Section 3 relates to public easements reserved in any conveyance pursuant to subsection 17(b)(3) of the act. 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, section 3 would insure that proceeds derived from these reserved easements after conveyance had been issued, shall be paid to the grantee of such conveyance in accordance with such grantee's proportionate share. Without the certainty provided by section 3, it would be administratively prohibitive to distribute the income to the owners of the land covered by the easement reservation.

Section 4 will clarify accounting procedures under ANCSA, so that although most contracts, leases, permits, rights of way and easements

may be paid on lands withdrawn for 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 these activities.

Section 5 of S. 131 provides that no prior distributions from the Alaska Native Fund under the act shall be affected by this legislation. Upon certification of the amended final roll pursuant to this bill, the Secretary shall make the necessary adjustments in future distributions from the fund necessitated by the new final roll to accommodate such roll.

Such adjustments shall not take effect until the next regularly scheduled distribution period following certification of the amended final roll. Section 5 will allow the Secretary to make distributions from the Alaska Native Fund so that the regional corporations can continue to receive and invest funds in keeping with their plans and commitments. However, section 5 would also insure that the adjustments necessary to make the new enrollees whole will be made at the same time.

Section 6 of the bill would add a new section 28 to the Settlement Act. Section 28 would exempt until December 31, 1976 any corporation organized pursuant to the act from the provisions of the Investment Company Act of 1940. With regard to section 6 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 7 of S. 131 would add a new section 29 to the Settlement Act. New section 29 would provide that payments and grants 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 of the State of Alaska.

Senator HASKELL. I wonder if you could shorten this up. We can read the bill. I would like you to tell us where the Department supports this and where they don't.

Mr. HUGHES. In the section I have just read, we support the concept of the payment. Certainly, the food stamps have been one.

The Department of Agriculture has not been able to agree with this language, however, we think we have an agreement from it now.

To hit the high points of some of the other issues, we have no objections to the extension of the Federal-State land use planning commission contained in one of the bills.

We support the concept of allowing some of the smaller villages to merge as requested, by merely having some of the northern corporations at this time do so.

I think that basically those are the main issues.

Senator HASKELL. Basically, with the exception you have given, you are in support of the bills before the committee.

Mr. HUGHES. We have some amendments. One, on the interest issue. We do not think it is proper to pay interest on the escrow account.

Senator HASKELL. I think, then, as far as I am concerned, your statement is very clear, and states the Department of the Interior's position very well.

I appreciate it, but I think that as soon as possible, you should let the committee know whether or not you and the Department of the

Interior will join Senator Stevens in asking this committee to hold up action on these bills pending some kind of legislation introduced on the *Edwardsen* case.

That is the most important issue. If you could let us know, say, by the end of the next week, that would be just fine.

Senator Hansen.

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

Senator HASKELL. Thank you very much.

[The prepared statement of Mr. Hughes follows:]

STATEMENT OF ROYSTON C. HUGHES, ASSISTANT SECRETARY FOR PROGRAM DEVELOPMENT AND BUDGET, DEPARTMENT OF THE INTERIOR

Mr. Chairman and members of the committee, I appreciate the opportunity to appear before this Committee today to testify on four bills which would amend the Alaska Native Claims Settlement Act.

We support enactment of both S. 131 and S. 685, and we have recommended several amendments to these two bills which are contained in our report to the Committee. We have no objection to the enactment of either S. 1469 or S. 1501.

I will discuss each of the four bills separately.

S. 131 authorizes the Secretary of the Interior to reopen, for one year after enactment, the roll of Alaska Natives eligible for benefits under the Alaska Native Claims Settlement Act for the purpose of enrolling persons who would have been eligible except for the fact that they missed the March 30, 1973, deadline. That deadline was established by regulations issued pursuant to the ANCSA. S. 131 also provides for the issuance of regional corporation stock as well as for the distribution of payments to those Natives enrolled pursuant to this section that are equal to payments made to those Natives originally enrolled. The bill 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 supported reopening the roll of Alaska Natives eligible to receive benefits under the Act, 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 the Act 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 S. 131 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 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 2 of S. 131 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 the Alaska Native Claims Settlement Act 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. When the selection rights of the Natives expire, the proceeds from lands withdrawn but not selected shall be deposited in the U.S. Treasury or paid out as required under law. Section 2 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 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 2(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 2(b) would establish an unfavorable precedent.

We have recommended several amendments to section 2 in our report, primarily of a technical nature. Further, we have also recommended an additional subsection which would parallel section 26 of the Settlement Act. This new subsection would provide that section 2 of this bill would govern in any conflicts between such section and any other Federal law applicable to Alaska.

Sections 3 and 4 of S. 131 clarify certain accounting procedures related to the proceeds in the escrow account established by section 2(a) of the bill. A system is necessary to accurately relate revenues to specific tracts producing such revenues.

Section 3 relates to public easements reserved in any conveyance pursuant to subsection 17(b)(3) of the Act. 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, section 3 would insure that proceeds derived from these reserved easements after conveyance has been issued, shall be paid to the grantee of such conveyance in accordance with such grantee's proportionate share. Without the certainty provided by section 3, it would be administratively prohibitive to distribute the income to the owners of the land covered by the easement reservation.

Section 4 will clarify accounting procedures under ANCSA, so that although most contracts, leases, permits, rights-of-way and easements may be paid on lands withdrawn for 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 these activities.

Section 5 of S. 131 provides that no prior distributions from the Alaska Native Fund under the Act shall be affected by this legislation. Upon certification of the amended final roll pursuant to this bill, the Secretary shall make the necessary adjustments in future distributions from the Fund necessitated by the new final roll to accommodate such roll. Such adjustments shall not take effect until the next regularly scheduled distribution period following certification of the amended final roll.

Section 5 will allow the Secretary to make distributions from the Alaska Native Fund so that the regional corporations can continue to receive and invest funds in keeping with their plans and commitments. However, section 5 would also insure that the adjustments necessary to make the new enrollees whole will be made at the same time.

Section 6 of the bill would add a new section 28 to the Settlement Act. Section 28 would exempt until December 31, 1976, any corporation organized pursuant to the Act from the provisions of the Investment Company Act of 1940. With regard to section 6 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 7 of S. 131 would add a new section 29 to the Settlement Act. New section 29 would provide that payments and grants 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 of the State of Alaska.

Further, the new section would specifically exempt any benefits an Alaska Native might receive pursuant to the Settlement Act from consideration in determining the eligibility of any Native household to participate in the food stamp program under the Food Stamp Act of 1964.

We have recommended a new section 29 to the Settlement Act in lieu of that created by S. 131. Our new section 29 would exempt per capita payments distributed under the Settlement Act from consideration as income in determining the

eligibility of a Native to receive benefits under the Social Security Act, the Food Stamp Act of 1964, and the supplemental security income program for the aged, blind and disabled.

Under section 8, except as specifically provided in S. 131, the provisions of the Settlement Act are fully applicable to this legislation and this bill shall not alter or amend any such provisions. We have no objection to this section.

S. 685, the second bill under discussion, 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 Settlement Act. All mergers would be subject to the applicable provisions of the laws of the State of Alaska, as would any resulting corporations. S. 685 would also allow subsequent mergers or consolidations of merged corporations with each other, provided they are in the same region. Mergers voted by corporation shareholders either before or after passage of this bill would be authorized. This provision would allow a merger approved by corporation stockholders which was contingent upon enactment of this bill to be completed upon enactment. This authority is necessary because of ongoing efforts to merge village corporations, particularly in the NANA Region of Alaska.

This bill gives to the merged corporation all rights and benefits conferred by the Settlement Act upon the individual corporations, and also makes them subject to all the restrictions and obligations applied to the individual corporations by the Settlement Act. The bill specifically states that transfers of rights and titles made pursuant to the merger would not affect the tax exemptions granted by the Alaska Native Claims Settlement Act.

Under subsection 1(c) of the bill, the shareholders of any corporation participating in any merger of consolidation may exercise the rights accorded to dissenting shareholders in a merger of consolidation under Alaska law. In our judgment, Alaska law protects those shareholders who may choose to exercise their dissenters' rights under this bill.

Subsection 1(d) would allow the elimination of the right to dividends by non-village resident shareholders of a regional corporation 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.

Section 2 of the bill specifically provides that notwithstanding the provisions of ths 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 may be lessened by bringing together several of the smaller villages into one management unit. Also, it may be easier for the regional corporations to deal with one or two village corporations rather than ten or fifteen. Economies may be achieved which will permit more funds to be used for improvements for Native people rather than being paid out to large numbers of professional managers.

This bill, to specifically allow mergers or consolidations to take place, is needed 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 purposes of merger or consolidation. S. 685 will modify this restriction on alienation sufficiently to authorize mergers and consolidations.

In our judgment this bill offers the Alaska Natives an opportunity to bring about mergers and consolidations that may enable them to manage the benefits they are receiving under the Settlement Act. We recommend its enactment.

The final two bills, S. 1469 and S. 1501, would both extend the life of the Joint Federal-State Land Use Planning Commission, which was established by section 17 of the Settlement Act. S. 1469 would extend the life of the Commission to June 30, 1978. S. 1501 would extend the life of the Commission to December 31, 1978. Further, S. 1501 would require the Planning Commission to submit a final and comprehensive report, such as the one presently required under the Act, by the date of expiration under this bill.

We have no objection to the provisions of either bill.

This concludes my prepared statement. I will be happy to answer any questions that you might have.

Senator HASKELL. The next witness is Burton W. Silcock and David S. Jackman, both Cochairmen of the Federal-State Land Use Planning Commission for Alaska.

STATEMENT OF DAVID S. JACKMAN, CO-CHAIRMAN, FEDERAL-STATE LAND USE PLANNING COMMISSION FOR ALASKA AND BURTON W. SILCOCK, CO-CHAIRMAN, FEDERAL-STATE LAND USE PLANNING COMMISSION FOR ALASKA; ACCOMPANIED BY JOHN KATZ, COMMISSION COUNSEL

Mr. JACKMAN. I would like to offer the full text for inclusion in the record.

Senator HASKELL. It will be included in the record in full.

Mr. JACKMAN. I am David S. 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 Commission considered the proposed amendments to the Settlement Act at a meeting held during the week of April 30 through May 2, 1975.

As a consequence of this consideration, we have been authorized to express the views discussed below. I would like to discuss first Cook Inlet Settlement. The Commission has been involved, to some extent, since 1972, in seeking a satisfactory solution to the land selection problems which have continued to confront the Cook Inlet Regional Corporation and its villages.

These efforts have included two formal recommendations to the Secretary of the Interior concerning the deficiency withdrawals and its villages pursuant to section 11(a) through 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.

Senator HASKELL. What you intend to do is present to the Congress what you think is an equitable settlement?

Mr. JACKMAN. We have been offering technical assistance to the State in these negotiations. I think that these negotiations, as they are unfolding, will result in some amendments being placed before Congress for consideration.

At that time, the Commission would offer, in addition to commenting on those specific amendments, to offer to hold hearings and to assist in any way.

Senator HASKELL. How long would you guess it would be before there would be some meeting of the minds?

Mr. JACKMAN. It is my understanding that the parties are close to a meeting of the minds and the problems are finding appropriate mechanisms and working out actual agreements.

I am sure other people testify on this Cook Inlet problem. 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 selections 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. The Commission would like to express its strong support for the proposed amendment which would permit the merger or 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.

Senator HASKELL. I understand you endorse the idea of village corporation mergers. Suppose in 1977, two corporations decided to merge with two others. Do you approve of that?

Mr. JACKMAN. As long as it is conducted within a given region, I think that it is acceptable.

Senator HASKELL. Thank you.

Mr. JACKMAN. 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.

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

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 merged village corporation.

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. I would like to point out to the committee how the Commission has been active in implementing the Settlement Act and in land-use planning and in the provision for national interest, lands under section 17 of that act.

While it is impossible to specify with certainty what activities the Commission might undertake in the period beyond 1976, the emergng 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.

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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.

Senator HASKELL. What day would you recommend that we set? I am told that Senator Stevens and Senator Gravel have bills designating different dates.

What do you think would be desirable?

Mr. JACKMAN. Quite frankly, Mr. Chairman, we have no preference. We have never discussed to the full Commission, the dates. But, I think that it should go at least through 1978, which is the period for congressional action.

Senator HASKELL. That would be the minimum.

Mr. JACKMAN. Yes, that would be the minimum. 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 2 or 3 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.

Senator HASKELL. I appreciate your testimony. Some of these bills, it would appear to me—and obviously, I am not from Alaska—but would appear to have some sense of urgency about them, some more than others.

I have never heard, until this morning, of this *Edwardsen* case. Senator Stevens has suggested that we hold up on these bills until somebody gets us a suggested legislative solution for the *Edwardsen* case, and I wonder if you concur with that suggestion?

Mr. JACKMAN. Quite frankly, the *Edwardsen* issue is in the context of these amendments—it is a new one for all of us.

The Commission was unable to discuss or to deliberate it——

Senator HASKELL. Maybe this is the way for me to ask you this. Can these bills stand on their own feet and are they desirable even though we do not have a legislative solution for the *Edwardsen* case?

Mr. JACKMAN. I think that this is readily apparent. The fact that these bills have been developed, I think that almost any of the proposals can stand on their own feet—the escrow amendment, the merger amendment, the extension, any of those proposals individually are very important and significant amendments to the Settlement Act.

Senator HASKELL. Thank you. That is the only question I have. I do appreciate your testimony. Senator Hansen.

Senator HANSEN. To pursue that specific point, even further, and to try better to understand what Senator Stevens may have had in mind, and I regret I did not get to hear all of his testimony, Mr. Chairman, and may I say, Mr. Jackman, if you were to speculate on what Senator Stevens may have had in mind, does it seem logical that possibly he felt that if all of these bills were held up, it would hasten action on an issue he thinks has overriding implication to everything?

As I say, I missed part of this testimony. I am just speculating, but that he felt this issue was of such overriding interest, it had to be addressed and the quicker it could be addressed legislatively, the better it would be for everyone concerned. I thought that might be what he was saying in saying to hold all of them up.

Would you speculate on that?

Mr. JACKMAN. That is absolutely correct. All of the amendments have to be considered or should be considered together.

It is simply the changes that are needed. It is difficult, I think, for Congress to give the kind of attention on a piecemeal basis year in and year out.

This is what Senator Stevens was perhaps suggesting, that the *Edwardsen* issue is a key issue, as a practical matter, and it must be considered.

Senator HASKELL. Then, would it be your recommendation that we hold up on these bills until some legislation on *Edwardsen* appears?

Mr. JACKMAN. Mr. Chairman, with your indulgence, I would rather not speak for the Commission in any way. We have not been able to address this matter.

Personally, I think that all of the amendments that have been suggested all should be considered as a package—at the same time.

The *Edwardsen* issue that has been raised is a significant one, but the Commission has not had an opportunity to deliberate.

The *Edwardsen* proposal, in the light of the other proposals before Congress—with your permission, I would like to ask Cochairman Silcock if he has some comments.

Senator HASKELL. Mr. Silock, what is your reaction?

Mr. SILCOCK. I think that I would support what Mr. Jackman has said.

Senator HASKELL. Basically, what you would like to have us do is to hold up; is that right?

Mr. JACKMAN. I think to the extent the *Edwardsen* issue is a significant issue that has to be dealt with either in terms of a specific amendment or in terms of a decision that an amendment is inappropriate at this time, all of the Settlement Act amendments being talked about at this time, should be talked about concurrently.

The Commission has offered to the respective committee staffs our assistance in analyzing some of the technical aspects, not only of the amendments discussed here today, but of other cleanup amendments that may anticipate problems that could arise a year or two down the line.

In this context, I wonder if our counsel, John Katz, who is active in the deliberations leading up to the Settlement Act, would have some response.

Senator HASKELL. What I want to know is, if you recommend we proceed with a hearing on these bills or if we put them on ice?

Mr. JACKMAN. I have no recommendation on that, Mr. Chairman.

Senator HASKELL. Mr. Silcock?

Mr. SILCOCK. Again, I would support what David has said.

Senator HASKELL. No recommendations?

Mr. SILCOCK. No recommendations.

Senator HASKELL. Thank you very much for appearing.

[The prepared statement of Mr. Jackman and Mr. Silcock follows:]

STATEMENTS OF DAVID S. JACKMAN, STATE CO-CHAIRMAN AND BURTON W. SILCOCK, FEDERAL CO-CHAIRMAN, JOINT FEDERAL-STATE LAND USE PLANNING COMMISSION FOR ALASKA

Mr. Chairman and members of the committee; 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 Section 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 or 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 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 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 merged 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(d)(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 resources 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 currently being implemented by these entities. The Commission has also sought to provide techincal 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 owner-

ship 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 2 or 3 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 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 and questions regarding the subject matter of our testimony, we would be glad to answer them.

Senator HASKELL. Our next witness is Guy Martin, Commissioner of Natural Resources for the State of Alaska.

STATEMENT OF GUY MARTIN, COMMISSIONER OF NATURAL RESOURCES, STATE OF ALASKA; ACCOMPANIED BY MICHAEL T. SMITH, DIRECTOR, ALASKA DIVISION OF LANDS

Commissioner MARTIN. Thank you very much, Mr. Chairman, and I bring you greetings from the Governor and his apologies for not being here today.

It was one of the last legislative days and he felt that it was more important for him to be there. We appreciate the opportunity to testify on the legislation proposed to amend the Alaska Native Claims Settlement Act. Now 3½ 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 92d 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 efforts extend into the post land selection period.

The challenge for the next 5 years will be to work with the now established 3 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 some, we strongly urge that the life of the Commission be extended.

Senator HASKELL. I, for one, think that it would be just plain dumb not to extend it.

Commissioner MARTIN. Extending—perhaps this should be something like extending it as we go along, but an extension to 1979 seems to be clear to us.

On the matter of enrollment, Mr. Chairman, the State supports the purpose expressed in section 1 of S. 131. 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 section 1. 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 BIA 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 TA'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 NANA 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 if 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 NANA 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 20 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 NANA region exists and may be spreading. We do not believe the villages or regions should be caught in an economic straightjacket, 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.

Senator HASKELL. Do I read your statement correctly that you support a two-thirds vote?

Commissioner MARTIN. No. We want to advise the committee of the change in Alaska law from two-thirds to one-half.

We think the majority vote may be appropriate if it is found by the committee to be acceptable to the villagers and the regions involved.

We think that you ought to listen to that testimony and be sure that you have heard from both sides in making that decision, but we want you to know the State law was changed in that respect.

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 rights 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—we have a map which we will submit—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. Second, 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 5 townships of surface estate and 18 townships of subsurface estate to the Cook Inlet region within the Kenai National Moose Range.

What has actually happened—and these are difficult concepts without a map—it would make it unnecessary for the Natives to select in an area, and which they do not want to select, and in doing so, allow the State to select in those areas.

In return, the State would do something it is not required to do, which is to make its own land available to the Natives for selection, because we own the land where it is most appropriate for them to select.

We feel that this helps the State and it gives us land in an area where we believe public land management is desirable and it gives private land where it is most desirable and removes the Federal Government from the responsibility of having to come up with all of the land the Natives need and makes a management structure in the Lake Clark area.

The summaries, Mr. Chairman, we are quite enthusiastic about this agreement; the Cook Inlet Native Corporation, which we will testify on later, is also enthusiastic about it, and is working closely with the municipalities affected with the Department of the Interior and at this point, I think that we should say, the interested parties to this agreement will be working on this both here and in Alaska. We will be attempting to construct a final agreement for which we do not yet have an established form or mechanism. We do believe, however, it would require probably an outside agreement, and some action by this Committee and by Congress, which makes that agreement permissible under the Alaska Native Claims Settlement Act. We believe that if we can do this—and it is not an easy task—it will be one of the best things that could have occurred under the Land Claims Act.

It is difficult to give a timetable for this. We had hoped that it would be this week, but we are shooting for a time frame of a month to 5 weeks. We hope today to use this as a legislative history and to establish a record toward that end. 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 endeavor.

The final legal form for the agreement isn't 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 that 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 HASKELL. Mr. Martin, one thing runs through my head on this decision. The decision held that the Settlement Act resolved aboriginal title claims but not trespass claims. Suppose we take away the right of people to press these claims, but do not give them compensation?

Commissioner MARTIN. We believe that the Congress could not and did not intend—simply because it could not do it—reach constitutionally protected rights of action.

We believe it attempted to do every single thing that it could do within its constitutional power to extinguish the aboriginal land claims based upon those claims of title.

Senator HASKELL. I will not pursue it. It is a fascinating decision with a lot of interesting points, but this is not the time to raise it.

Commissioner MARTIN. I believe, Mr. Chairman, you are absolutely accurate. It is much too complex to be resolved legally in a hearing form.

We intend to pursue it because it is a serious question, and there are issues that will test all of us very substantially.

I would like today to indicate what we believe the impact of this decision will be on Alaska, and promise you we will be submitting material and stand ready to work with you on this issue, as it goes forward.

Senator Stevens' testimony focused on the legislative history related to the extinguishment provision and purpose of the Settlement 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 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 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 percent 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 the State of Alaska, Department of Natural Resources, Division of Lands.

This is the map we are dealing with. Claims that extend over approximately 90 percent of the State.

Senator HASKELL. Ninety percent of Alaska is a fair hunk of territory.

Commissioner MARTIN. These claims are no more than claims, but the claims indeed extend to that amount. Within the map, as you can see, the areas that are shaded and darker, those are areas where claims between Native groups exist—where there is a conflict over who has the right to claim.

Once this is resolved, the issue will be whether or not 90 percent 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 of thousands of cases, is the matter of the validity and location of aboriginal titles, such determinations do then 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 percent of Alaska's land or waters, thus committing, according to the *Gasch* decision, a special kind of trespass based on aboriginal title not on common law. The conflicts take innumerable configurations ranging from those between the Natives and the State, or municipalities, or private owners, to those simply between Natives.

Senator HASKELL. What about the statute of limitations?

Commissioner MARTIN. The statute of limitations is complex, but the statute of limitations runs in late 1977—I will submit a statement on this.

Senator HASKELL. Even though, in some cases the trespass occurred as early as 1915?

Commissioner MARTIN. Yes. The right to action occurred as of the Settlement Act.

Senator HANSEN. If I could take that one step further, does the statute of limitations in this restrict the right of a claimant to court action, in that no one having earlier registered a claim, cannot after that time register a claim?

Commissioner MARTIN. I would think not.

Senator HANSEN. So, any claim made prior to that—this overlapping of shaded areas on the map—the statute of limitations would not resolve that.

Is that what you are saying?

Commissioner MARTIN. I am not so certain of my answer, that I would want to say so. I do not think that you are limited by having had filed these claims. I offered only to indicate the nature and extent claims likely to be made. These are claims on file.

I do not think the actions are limited to the potential of those who filed them. The October 17, 1975 stipulation in the *Edwardson* 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 included utilization of the surface for airfields, 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 nonmilitary purposes. Included are the DEW 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 potential 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 could be sued for each entry it made itself, 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 meaningless 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 view 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.

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In the case of the State, there is at least the distressing possibility that, where an entry occurred on land patented or T.A.'d 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 any products extracted or processed on claimed land. For canneries, the value for the 1960–70 period would by $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 damage 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), and 2(b). Now, with the decisions 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 20 years of Alaskan history, and 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.

Senator HANSEN. If I may interrupt, Mr. Chairman, let me ask Mr. Martin, does the statute of limitations we are talking about here, impose a cutoff date in time by the end of 1977 if an action has not been commenced in a court as of then, any claim that would be applicable to be taken before a court, would be extinguished?

I think that most statutes of limitations impose a period of time following a certain action or a claim.

Senator HASKELL. I was going to ask him the same thing.

Commissioner MARTIN. I was going to ask you to rephrase that, Senator Hansen, and I will let my lawyer rephrase it.

Senator HASKELL. Normally, a statute of limitations starts running when you have an open and notorious action or something somebody should have known about. So, in 1915, if somebody went onto somebody's land and started digging out gravel, that is when the statute applies. That is not the case here?

Commissioner MARTIN. I do not think so, Mr. Chairman. I think that some of it has to do with some confusion of the application of Native law, of Indian law, to this question. I think it is a very complicated question, but where the United States is suing as trustee for

the Natives, there is a 6-year statute. These accrued as of the Settlement Act. There were some claims where the statute is running, but any claim prior to 1966 suit can be filed anytime before July 1977. Actions going back to statehood and beyond are still attainable. We will be glad to submit a memorandum that makes it clear.

But, it is our legal conclusion that at least until 1977, the statute of limitations on the vast majority of these claims does not run. And, our conclusion is, may not run at all. For the State, the practical impacts of such litigation are ominous, should Congress not now act to reconfirm its original intention.

The most grievous sound, 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 be dramatically slowed as the energies of the State, and all others involved, are diverted to the litigation of aboriginal title to the matters of trespass and establishment of damages.

There is little question that the staff and monetary resources of the State government 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.

Senator HASKELL. Is this case on appeal?

Commissioner MARTIN. Mr. Chairman, this case is not subject to final order—it is subject to motion for summary judgment by the Department of the Interior. When we refer to the *Gasch* or *Edwardsen* decision, we are talking about the memorandum that was issued for summary judgment.

At that time, the Interior Department was caught in some ambivalence as between its role as trustee for the Natives to begin the suits and its position as proponents of the principles themselves. The stipulation in the case which was entered in the record today by Senator Stevens, is the first manifestations of their actions after the order having been issued on summary judgment by Judge Gasch.

This stipulation sets out those items which the Department of the Interior will now begin to investigate as trespass and sets out the outlines of the actions which you will now prepare to bring pursuant to its investigations.

Senator HASKELL. No appeal?

Commissioner MARTIN. That is a legitimate question for this committee to ask the Department of the Interior. Never ask an Alaskan to explain the actions of the Department of the Interior.

We do feel, however, that we are caught in a difficult decision. Our concern, Mr. Chairman, is this. The State of Alaska believes that Con-

gress intended to exercise all of its powers, all of its constitutional powers to extinguish all claims of aboriginal title and claims based on them.

And, I quoted the language it did. We see in the Gasch Decision, two basis for his denial of summary judgment. One, that Congress essentially did not do this, that there was a loophole, a failure to extinguish to do this, and there is a constitutional protection for these rights. The constitutional aspect of the decision is treated very lightly in the decision. It amounts to no more than two to four paragraphs in a 40-page decision.

Senator HASKELL. Apparently, Judge Gasch did not think there was much congressional intent, reading from his quote here.

Commissioner MARTIN. I think that you can understand, Mr. Chairman, the State feels that it has something better than that in the Statehood Act.

We are not proposing, in the least, that Congress should or ever could impair the constitutionally protected rights of Alaskan Natives.

We are suggesting Congress intended to exercise every one of its legitimate constitutional powers to have complete extinguishment.

One of the difficulties Senator Stevens was having, in giving language or projecting a bill, is that as one who is here, he feels sure the language in the existing act is absolutely complete and appropriate to make that extinguishment and he is frustrated, as we are, by the decision by Judge Gasch, which indicates it was not complete and is now in the uncomfortable posture of having to come back and recast this.

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 of 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 which was, to the maximum extent which Congress might act, to extinguish all claims of aboriginal land title, and all claims based upon such aboriginal land title.

The costs of the litigation resulting from this decision will be varied, and extraordinarily high. To review, they will include the basic costs of the litigation of hundreds or thousands of cases, both the legal fees and the exhaustive research. Research both in the Government and private, to prove or contest aboriginal title, trespass and damages. The costs will include those occasioned by the vast diversion of Federal, State and private resources, both human and economic, into litigation of these cases. The costs will include the damages themselves, whether by settlement or adjudication, and there appears little limits on these costs in either the decision or the stipulation.

The threat of such damages costs alone will certainly inhibit an inestimable amount of productive activity in Alaska.

As high as these costs will be, and as devastating as will be their effect, the much higher penalty, in the view of the State, will be the social costs of reopening the land claim issue. 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 on this matter, and the other comments of the State on this important legislation.

Senator HASKELL. Thank you, Mr. Martin, very much indeed. I really had very little questions, but we are going to have a hearing on whatever bill is submitted in connection with the *Edwardsen* decision.

I am sure that there are all sorts of viewpoints on the subject. Would you join Senator Stevens in recommending we hold these other bills until the Edwardsen bill is a matter we hold hearing on?

Commissioner MARTIN. I would not hold this bill hostage to the resolution of the *Edwardsen* case, and the Cook Inlet agreement we have outlined.

We can resolve these in a time frame which is compatible with the resolution of this bill and the desire of the committee to move expeditiously and rapidly through this bill.

We can cooperate to resolve this matter in a time frame which will allow us to do everything, as once there is general agreement, if I understood the gentleman from the Land Use Planning Commission correctly, it is best to resolve all of these issues in one bill.

This is better, rather than to approach it piecemeal.

Senator HASKELL. You would advocate holding up on these bills.

Commissioner MARTIN. Only to the extent that it does not impair the ability of the committee to move forward with other legislation. I think we are up against a 5-, 6-, 7-week term to get the Cook Inlet Settlement together. I think that the committee could schedule hearings in that time—it is possible to resolve the *Edwardsen* case in that time frame.

I would not support, Mr. Chairman, any action which would hold this legislation up over a long period of time.

Senator HASKELL. I want to be sure I understand you. You would then suggest the committee should consider the legislation before it in the orderly processes of the committee. That is 4 weeks, or 6 weeks, or 3 weeks, or 5 weeks—you would want us to go ahead?

Commissioner MARTIN. Yes, sir. And, I would request as a part of that the Committee take cognizance of the *Edwardsen* matter——

Senator HASKELL. We cannot take cognizance until we have a bill and we have to have another hearing.

Commissioner MARTIN. I am asking, Mr. Chairman, that you take cognizance of both that and the Cook Inlet matter to the maximum extent possible.

If necessary, schedule hearings in your own time frame, if possible, so as to deal with these matters. We believe it to be far better for this matter to be resolved in the present.

Senator HASKELL. OK, in summary, if we can resolve the whole ball of wax in a reasonable length of time, if the *Edwardsen* issue—for some reason—drags on, you would like us to report out these bills.

Do I state it fairly?

Commissioner MARTIN. Yes, sir. We are prepared to promise, on the other side, we will cooperate in any hearing schedule, with regard to the Edwardsen matter, or the Cook Inlet matter, to testify and we are prepared to work diligently to finalize that.

Senator HASKELL. Thank you very much, Mr. Martin. I have no further questions. Thank you very much. Now, with the indulgence of Senator Fannin and Senator Hansen, since I won't be able to be here after lunch, I would be very interested in hearing now the other side of this *Edwardsen* case.

I gather this is Mr. Oliver Levitt, accompanied by Mr. Lewis. If you could come forward, I hate to skip over these other two.

But, I would be really interested in hearing the other side of Mr. *Edwardsen's* case.

Gentlemen, if you will proceed.

STATEMENT OF OLIVER LEVITT, TREASURER, ARCTIC SLOPE REGIONAL CORPORATION; ACCOMPANIED BY O. YALE LEWIS, ATTORNEY

Mr. LEVITT. My name is Oliver Levitt. I am treasurer for the Arctic Slope Regional Corporation and president of the North Slope Assembly and a member of the Indian community of the North Slope, an entity under the Indian Reorganization Act.

With me is Mr. Yale Lewis, one of our attorneys. Mr. Chairman, as already stated, we did not learn until a few days ago that this hearing would include a request for an amendment of extinguishment of Alaska Native trespass claims——

Senator HASKELL. And I should add, Mr. Levitt, that when a bill comes in asking for amendment, we will have another hearing.

Mr. LEVITT. We appreciate that very much, Mr. Chairman.

We do not have written statements so we would like to submit a written statement at a later date.

Senator HASKELL. That would be fine. Would 2 weeks be adequate?

Mr. LEWIS. Yes, Mr. Chairman.

Mr. LEVITT. Mr. Chairman, with your permission, the Alaska Native Claims Settlement Act of 1971 did extinguish claims against the United States by the Alaska Natives and where the Alaska Natives were given the 40 million acres and a compensation of funds that was occupied by Alaskan Natives in the State of Alaska.

The State of Alaska is attempting to enlarge the scope of the settlement act including extinguishment of trespass claims against private third parties which accrued prior to the passage of the Settlement Act.

The Arctic Slope Eskimos resisted to the very end congressional

extinguishment of our aboriginal land claims and we asked the President to veto the bill. However, we accepted the act and we have attempted to abide by it and we think other parties to that settlement should also abide by the act.

The State of Alaska is now saying Congress, under the pretense of clarifying amendments, should attempt to extinguish certain trespass claims of the Artic Slope Eskimos against certain oil companies who trespass on our aboriginal lands prior to the extinguishment of the aboriginal title in 1971.

The Federal courts have said the Settlement Act did extinguish land claims, did validate the State's selection of 26.5 million acres of our land at Prudhoe Bay, did immunize the $900 million paid to the State of Alaska by various oil companies for leases at Prudhoe Bay and did acquire titles to all lands in Alaska as far as Native land claims are concerned. However, the Federal court did say the Settlement Act did not extinguish our act to seek damages from those oil companies who invaded our lands before the Settlement Act.

The court also said a contrary holding would pose constitutional questions about the constitutionality of the settlement itself.

To get around the Federal court's ruling, the State of Alaska seeks congressional action to extinguish our claims. We think such an act would be unconstitutional, unfair to us, nothing more than a private relief bill for oil companies who unlawfully trespass on our lands and a cruel detriment to the implementation of the legal trust duties of the Secretary of the Interior to native Americans.

With the chairman's permission, our lawyer, Mr. Yale Lewis, will comment briefly on some comments I have raised.

Senator HASKELL. Go ahead, Mr. Lewis. We will have to leave when we hear five buzzes, because that means a vote is up right now.

STATEMENT OF O. YALE LEWIS, ATTORNEY, ARCTIC SLOPE REGIONAL CORPORATION

Mr. LEWIS. It might be helpful if I briefly state what Judge Gasch did and did not hold and then I could respond to some of the allegations of the consequences of the holding by the State of Alaska.

First of all, there are two long distinct types of Indian cases. One holds in the beginning, two hundred years ago, that Congress could extinguish claims of aboriginals without adequate compensation. That trend was established 200 years ago and has not been seriously challenged.

At the same time, Mr. Justice Marshall said 200 years ago that if a third party trespassed upon unextinguished aboriginal lands, the third party was liable to the aborigines for damage from trespass and subsequent cases held those claims cannot be extinguished without just compensation.

Judge Gasch interpreted the Settlement Act. He did not talk about the intent of Congress. He talked about what the act said. He said Congress did intend to, and did, extinguish aboriginal title. Judge Gasch said the land which was TA'd to the State of Alaska in Prudhoe Bay was safe, that the State of Alaska had it. Judge Gasch held the $900 million paid to the State of Alaska was safe. They do not have to pay it back to the Indians and the Settlement Act quieted title

to all State land in Alaska. There could never be any concern about aboriginal land claims.

He did hold, as we think he was required constitutionally to hold, that the Settlement Act did not, by its terms, extinguish trespass claims and if he had held the contrary, the act itself would have to have been reviewed for its constitutionality.

The language which Judge Gasch relied upon made it clear that Congress was excluding from the extinguishing provision all claims except claims for loss of Indian title land—that is in the settlement report. It is picked up again in the final report. The distinction is very important.

There was a great deal of discussion which Senator Stevens alluded to earlier about whether the Settlement Act extinguished fishing and hunting rights in addition to land rights. It was generally agreed it did. The discussion to which Senator Stevens referred was the discussion about whether the extinguishment clause also extinguished fishing and hunting claims as well as the land claims all in a prospective sense. That was accomplished by the Settlement Act.

There is nothing in the act or the report to suggest trespass claims against third parties were to be extinguished. The only language that does appear excludes, expressly, claims for trespass and other types of court actions. That is the statutory and judicial framework for this dispute.

Now the Arctic Slope Eskimos filed their claim in 1971. Judge Gasch entered his memorandum order in 1973, 2 years ago. That case has received some amount of publicity and has been scrutinized by the attorneys for the oil industry involved on the Arctic Slope and it has made its way to the Interior Department and the State of Alaska. That was 2 years ago. No other claims have been filed by anybody anywhere. Two years ago.

The stipulations referred to were entered into a year ago and received no publicity; no claims have been filed since then. So, the possibility of hundreds of thousands of claims is not realistic in fact. The subsequent attention that has come to this case—which we did not know about at all until Sunday night, I suspect arose as the result of an investigation by the Interior Department under stipulations on the Arctic Slope.

Judge Gasch said, first of all, that the Natives had to establish their own use and occupancy of the land. He did not say any land to which there was a claim of aboriginal title involved, but only lands on which the Natives could actually establish their use and occupancy which is a very difficult process. There are millions of loopholes along the way. It is a very difficult and time-consuming process. We know it can be done in the Arctic Slope because the Arctic Slope was pristine prior to the oil development. There were not hordes of Caucasians on the slope.

The extent to which this argument can be made in other places in Alaska, I don't know and won't comment on, but I do know, as an Indian lawyer, it is a very difficult claim to establish. It is not based on mere claims of aboriginal title but only where actual use and occupancy continues unbroken and so forth, so the notion of downtown Anchorage and Fairbanks is not justified in fact or legal theory.

Now, coming back to investigation on the Arctic Slope——

Senaotr HASKELL. Excuse me. We just have 7 minutes to vote. I hate to interrupt you. I am most interested in it, but I think what we had

better do is adjourn and if you will be here at 2 o'clock, we will continue.

I will, unfortunately, not be able to be here, but I will hear from you at a later hearing.

[Whereupon, at 12:30 p.m., the hearing was recessed to reconvene at 2 p.m., the same day.]

AFTERNOON SESSION

Senator HANSEN [presiding]. The hearing will come to order.

Mr. O. Yale Lewis and Mr. Levitt were at the witness stand. As I recall, Mr. Lewis, you had just started to make a statement. If you would like to pick up there, we will be very pleased to have you continue.

STATEMENT OF O. YALE LEWIS, ATTORNEY ARCTIC SLOPE REGIONAL CORPORATION—Resumed

Mr. LEWIS. Thank you very much, Senator Hansen. Before the break, I was in the process of trying to present to the committee the time-frame within which we are working. I had stated this action was filed in October 1971; that Judge Gasch's memorandum of order which has been introduced into the record by Senator Stevens was entered and filed in April 1973, 2 years ago; that the stipulations entered into the record were filed last summer.

To my knowledge, there have been no other actions filed by anybody anywhere relating to any of the matters covered in the testimony so far. That is relevant to the notion that somehow Judge Gasch's decision has opened an avalanche of litigation and hundreds of thousands of cases, as I believe it was described this morning, will be filed.

While I recognize that may be a theoretical possibility, that type of thing is always a theoretical possibility about any type of thing. That simply is not going to happen and the evidence so far substantiates the notion that this does not pose that type of litigation threat.

Also, and I am trying to limit my statement to the litigation provoked by Judge Gasch's decision more than 2 years ago. It is my understanding that the claim mentioned by Senator Stevens this morning and correct me, sir, if I am incorrect, did, in fact, go to judgment in the Court of Claims and the judgment was, in fact, entered on behalf of the plaintiffs in that case.

Also, I think not only is there no serious threat of a lot of litigation, I would not be surprised if there were no litigation, but I think it is important for this committee to understand who this lawsuit is between—there are not really many parties of interest in this. This is a dispute between the Arctic Eskimos and certain oil companies that came on to their lands prior to the Settlement Act, companies that took a calculated economic risk that by coming on the land, they would obtain an advantage over other companies. We don't quarrel with them for that particular part of their motivation. However, they did so knowing that they ran a risk that they might ultimately be held accountable for the consequences of that trespass to the Arctic Eskimos. That is what this dispute is about.

Judge Gasch's decision talked only about the decision on which Arctic Slope Eskimos could establish aboriginal title through use and

occupancy. It is true the decision would be persuasive in other cases that might be brought in the State of Alaska and in other situations. The holding in this case—the order in the last part of this opinion—relates to lands in which the Arctice Slope Eskimos have established in a court of law use and occupany. It does not refer to lands which might at one time have been under claim of aboriginal title. It refers to the 90 percent only insofar as to say there was a serious dispute the Arctic Slope Eskimos are limited to lands in which they can establish aboriginal title under use and occupancy prior to 1971.

The real parties in interest, I believe, are only those oil companies. The Arctic Slope people and myself as their attorney, have not contemplated in our wildest imagination these myriads of lawsuits against unknown people. The cause of action of trespass is a personal cause of action. Once somebody trespasses, the claim is against the individual and as they move on, the claim moves with them and is no longer related to the land where the trespass occurred. That is awfully important there. There is nothing stated in Judge Gasch's decision against anyone or any of the people the State of Alaska mentioned.

The notion that was advanced this morning by the State, if I understood it, it was that there is no statute of limitations against Indians. As an Indian lawyer, I wish that were true, but that is just inconceivable to me that that was seriously advanced. The statute of limitations is an obviously severe problem of the Arctic slope and to anybody in limitations who has caused a trespass claim. The statute of limitations on the trespass code in Alaska, as I understood it, is 6 years.

My remarks have been disjointed because I was attempting to respond to comments made this morning. I have no prepared statement.

Senator HANSEN. Mr. Chairman, if I could interrupt at this point to ask the witness, and as he likely knows, I am not a lawyer, but do I understand you to say——

Senator STONE [presiding]. Let me caution the witness. When Senator Hansen says he is not a lawyer, watch out.

Senator HANSEN. When you claim trespass or whatever damages might have occurred because of trespass, not staying with the land, but moving with the person who at the time of the commission of the trespass had some evidence of ownership or some claim to title or ownership, what would be the situation if trespass, let's assume for purposes of my edification that this area was under the exclusive control and jurisdiction of the Alaska natives and if we are to agree that was the situation and then an oil company comes in and trespasses and later on, as a consequence of its presence there, it were to be given or granted—maybe it would or would not be—but let's assume for further purposes of illustration, because of its presence there, it did have some preemptive rights over others, would that change the situation any with respect to successes in interest in the area?

Mr. LEWIS. No, sir. I think it is very clear that this lawsuit poses no threat at all to title or continued interest of development or successes in interest or that type of thing that I believe is comprehended within your question.

Senator HANSEN. Thank you, Mr. Chairman.

Senator STONE. Proceed.

Mr. LEWIS. The State of Alaska is not a defendant in this lawsuit. It won't be a defendant unless in trespass, the fact that a legislature

or anybody decreed something about land that did not involve physical trespass would not be a trespasser.

So, again, the notion that somehow the State of Alaska, merely by being the State of Alaska and having a tentative approval to land makes them a trespasser, is not founded in fact or in law in my opinion.

If the State of Alaska came and bulldozed a house, if they desecrated a graveyard, if they destroyed a campground or polluted the water supply, they would be liable, but they would be liable just as they are liable in workmen's compensation claims and liable under contract claims, that sort of thing.

If they have done the things I suggested, I think they should be liable in ordinary tort action in Alaska. I am not aware they have done any of those things. We have thus far made a pretty extensive investigation, and I am not aware that any of that type of trespassing into the Prudhoe Bay area which is the obvious area of concern. That is where the oil industry went. That is where the Natives have their strong claim to aboriginal title and that is where the dispute is.

There might be other areas. I would not want to stop Arctic Slope Eskimos from filing a claim of some type against the State of Alaska, but we have concentrated our interests in that area of Alaska, and I am not aware of any other claim.

The school system of Alaska is not in jeopardy. That has been suggested this morning. There is no such suggestion that the school system of Alaska is a potential defendant in this case.

Mr. Martin, in his testimony this morning, expressed the concern not that the large oil company or the large interests might be in danger, but that they would somehow pass it down to the workmen, the small people down the line.

As a lawyer, that is not well founded. It is not based on fact or law. I am sure people are nervous when there is a suit. Everybody that is involved is nervous, but in terms of real hard economic legal threat, it simply does not exist. All of the workmen on the job are simply not responsible for what the major does in that respect.

Senator HANSEN. If I could interrupt one more time at that point, Mr. Lewis. Let me ask this.

I assume each and every oil company present who is or has been on the North Slope in the past was there following the approval of a lease or an exploratory right or permit of some kind or another.

The question of trespass, I think, arises subsequent to the taking of steps, I would presume, the oil companies had taken assuming they were acting in full compliance of all applicable laws.

Does this change the situation as you view the problem? What effect might a reopening of these claims, as a consequence of the *Gasch* decision, have on their rights? I am trying to see where we can strike an even line.

Mr. LEWIS. It is a complicated question. I will answer it in three stages.

The first one, it is my understanding that during the negotiation between the State of Alaska and the oil industry for the lease-sales in Prudhoe Bay, there was obviously great concern on behalf of the State and the oil industry because aboriginal title had not then been extinguished.

The lawyers for each of the principals there, the State and principal oil companies, obviously considered this point and negotiated over it. It is my understanding—I don't have a copy of the leases—the State has not introduced one into the record today, but it is my understanding under the terms of that heavily negotiated lease, as it is understood by the terms, that the State of Alaska, if it should turn out they did not have an unfettered right to lease, the State would keep the money. The oil company again took a risk to bear the economic consequences of the uncertainty of what the State had to offer.

As a lawyer, I would assume that would carry with it all of the lesser types of consequences. I am familiar with contracts of the U.S. Government and the State of Washington and the city of Seattle, and I have never yet seen one that made the public body the guarantor of what the recipient or the buyer or the person leasing that property acquired—in other words, private interests always go in and take the consequences of some flaw in title. It is more a quit-claim transaction. I cannot imagine the State of Alaska having guaranteed the Federal title they got in that type of thing.

As a matter of experience, although I am sure the oil industry and the companies might attempt to shift liability from themselves back to the State of Alaska, I cannot imagine their being successful.

Now a second point that goes back to the principles of Indian law which, if the Senator would like, I can briefly summarize by mentioning one Supreme Court decision. The case is *United States Ex Rel Wallapai* v. *the Santa Fe Railroad* in which the United States exercised its fiduciary duty on behalf of an Indian group in this case against a railroad. The facts as I recall them arose under one of the land grant railroad acts through which Congress developed the West, granted to the Sante Fe Railroad, I assume the even and odd sections along the railroad right-of-way.

The railroad company then leased a developer the right to build railyards, that type of thing. After about 40 years, the Secretary of Interior signed the deed, the patent, and gave it to the Sante Fe Railroad. Thirty or forty years later, the United States filed for an accounting, just like what we are talking about here, for the rents that should have accrued and the trespasses done to an unextinguished aboriginal land. Aboriginal title was not involved. The Supreme Court made it clear they were only talking about the accounting for the trespass.

At that point the Supreme Court held that the railroad company went in and took an economic risk. They wanted to get a jump, in their own economic interest, on the process of extinguishing aboriginal title. They eventually got the land, but they had to account to the Indians for the trespasses that accrued between the time they went on the land under a Federal patent, under a specific act of Congress, from the time the aboriginal title was actually extinguished. That is a cause of action protected by the fifth amendment as distinguished from the prospective use of land which the Supreme Court has held could be extinguished without compensation.

Senator STONE. Let me help you. How much more time do you have? There are other witnesses and we have to finish this afternoon. Is that acceptable to the other members of the committee?

What is the name of the case which Judge Marshall decided then in which I believe you stated he held aboriginal claims against third parties for trespassing and such causes of action cannot be extinguished? If you don't have the answer, you can submit it for the record.

Mr. LEWIS. There is not a single case. The basic case is *Wooster* v. *Georgia*.

Senator HANSEN. If it would save time, we can get that.

Mr. LEWIS. There is a long line of cases that hold the distinction we are talking about this morning between third party trespass and a taking by the United States.

Senator STONE. Would the witness be willing to submit that list, with citations, to the Senator?

Mr. LEWIS. I would be pleased to.

Senator STONE. Would you proceed then and summarize?

Mr. LEWIS. I would like to respond to two further comments made this morning.

Senator Stevens, I believe, acknowledged that Congress cannot constitutionally extinguish protected property rights—property protected by the fifth amendment.

Senator STEVENS. Without compensation. I stated there was compensation in this instance.

Mr. LEWIS. Review of compensation is a judicial function. I believe Senator Stevens, and Mr. Martin on behalf of the State stated that they did not believe Congress intended to take constitutionally protected rights.

We agree with both of those statements. There is no doubt a trespass claim against third parties for trespass against unextinguished aboriginal land, in a property right protected by the fifth amendment.

The Supreme Court has recently addressed the notion of a cause of action being a property right. Most recently, in the *Penn Central Railroad* case.

Now, Judge Gasch has held that not what Congress intended, but the Settlement Act itself extinguished land titles. It did not extinguish a trespass claim against a third party. He further held, if he found a contrary intent in Congress, that would have raised serious constitutional questions of the constitutionality of the Settlement Act itself. We also agree with those positions. We believe they are statutorily compelled. This being so, the notion of going back to attempt to relegislate or to introduce a new bill to extinguish additional native claims under some notion of clarifying the Settlement Act seems to us to raise serious constitutional problems and has been said this morning far reaching consequences. That this would be done essentially to relieve a few large economic interests of economic consequences of their own calculated risk. This seems to us to be incomprehensible.

Thank you.

Senator STONE. Thank you.

[Subsequent to the hearing Mr. Lewis submitted the following prepared statement.]

STATEMENT OF O. YALE LEWIS, JR., ON BEHALF OF THE INUPIAT COMMUNITY OF THE ARCTIC SLOPE, THE ARCTIC SLOPE REGIONAL CORPORATION, AND THE ARCTIC SLOPE NATIVE ASSOCIATION

Testimony before this Subcommittee on May 16, 1975,* 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

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* Statements by the Honorable Ted Stevens, United States Senator for Alaska, and Mr. Guy Martin, Commissioner of Natural Resources, State of Alaska, before the Environmental and Land Resources Subcommittee of the Senate Interior and Insular Affairs Committee (May 16, 1975).

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.

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

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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. M'Intosh, 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 Ettor 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 7 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. For these reasons the State of Alaska acknowledges that the Settlement Act could not have extinguished constitutionally protected causes of

action, such as trespass claims:

> We believe that the Congress could not and did not intend -- simply because it could not do it -- reach constitutionally protected rights of action.

Oral Statement of Commissioner Guy Martin before Subcommittee on Environmental and Land Resources, Senate Committee on Interior and Insular Affairs, May 16, 1975.

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 tres-

pass 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 tort-feasors. 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 responsiblity 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. Mason, 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 aborginal 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

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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 beneficient 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.

Senator STONE. The next witness is Thomas Meacham, counsel for the Greater Anchorage Area Borough.

With the members of the committee's consent, the chairman would suggest it would be appropriate to have each witness testify for ten minutes and then we can get through. Otherwise, we might not be able to complete testimony today.

Senator HANSEN. If I could, although Senator Stevens has not asked me to do this and I am certain that Senator Fannin would agree with me, that subject to your approval, if Senator Stevens has questions he might wish to ask, that he might be permitted to do so.

Senator STONE. Certainly.

We will accept your entire written statement for the record, and if you could summarize the key points of your statement which will be included in the record.

STATEMENT OF THOMAS MEACHAM, COUNSEL TO THE GREATER ANCHORAGE AREA BOROUGH

Mr. MEACHAM. I did intend to summarize because you have time problems and because there have been developments subsequent to the writing of this statement.

I would like to quote the resolution passed by the Borough assembly on May 5, after being apprised of the Cook Inlet Region, Inc. to ask for a determination of their land selection problems. I think these problems have been alluded to earlier by Mr. Martin and I believe also Senator Stevens mentioned they had some land selection problems which, according to the strict letter of the Native Claims Act, left them with much less than was intended by Congress.

The resolution the borough adopted is as follows:

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 this resolution was considered and adopted, we were under the impression the Cook Inlet region was intending to propose legislation which would transfer title to about 10,000 acres of excess or identified Federal properties in the Anchorage Borough and specifically within the Bowl Area of the Anchorage Borough which is the most densely populated area of the borough.

It since has become evident to us that since that time legislation has not been proposed in the form of a specific written bill.

I believe Mr. Martin, on behalf of the State, indicated negotiations were underway between the State and the Cook Inlet Natives to resolve land selection problems generally for the Cook Inlet region.

The Anchorage Borough has also participated in these discussions and the borough assembly, in adopting these resolutions, gave very clear indication there were three areas of primary concern to the borough which the borough did not want to see pass out of public ownership into private ownership.

These areas are the Point Woronzof's FAA site which consists of about 550 acres, Point Campbell Military Reservation which consists of about 1,280 acres and Campbell Airstrip Tract with 1,365 acres. These are the last large Federal holdings within the Anchorage area which would be susceptible to continued public ownership.

I emphasize in my testimony the Anchorage Borough while it consists of 1,700 square miles, only has about 23 percent of that area below the altitude of 1,500 feet and outside military reservations. This percentage of land actually being usable for residential and park purposes and residential and industrial development; therefore, the retention of existing public space in the Anchorage area is critical to the future development of Anchorage, especially when you consider approximately 46 percent of the population live within the borough at the present time.

The borough, although consisting of 1,700 square miles, comprises three-tenths of one percent of the total area of the State, so there is quite a concentration of population there.

The borough is interested in planning for the long-term future of the entire borough.

Since the time my testimony was written and the date on which the borough's assembly took action to oppose the proposed legislation of the Cook Inlet Region, Inc., I have had discussions with Andy Johnson who is president of the Cook Inlet region, Inc. and they have indicated to me, he and his consultants, have indicated they are willing to forego a claim under the Native Claims Settlement Act, as it might be amended, to Point Woronzof, Point Campbell and the Campbell Airstrip, which means the acreage would be exempt from any claim the Cook Inlet Natives might make under legislative amendment to the Native Claims Settlement Act as it now stands.

Therefore, I have been quite encouraged by this and I feel within the next 2 or 3 weeks we can get something on paper regarding a settlement of the State's interests and the Cook Inlet region's interest and the borough's interest in time for the legislative markup and the bills here; that we would have a settlement compromise concerning Cook Inlet region's land situation which would be acceptable to all of the parties.

The topics will be on the borough assembly's agenda for this coming Monday. I will encourage the borough assembly to accept the overture made by Cook Inlet region to express the borough's support of their land section proposals in general and also to express support for their ability under section 3(e) of the act to obtain title to excess Federal lands in the Anchorage Bowl and the Anchorage Borough itself, but exempting Campbell airstrip tract in its entirety and the Point Woronzof and the Point Campbell Military Reservations.

Therefore, although we have not reached final agreement on this point, because I do not have the authority at the present time, and I believe also the State feels it is quite close, but it has not put anything on paper. I would ask that the indulgence of the committee be given and the parties in this proposed settlement afforded an opportunity of 1 to 3 weeks to get everything on paper, get all of our cards on the table and try to come up with a final solution to this land selection problem. I feel we are quite close. With the proper consideration by all governmental authorities and the board of directors of the Cook Inlet region, I think we can reach a solution to this.

Senator STONE. Senator Stevens.

Senator STEVENS. Thank you, Mr. Chairman.

I am familiar with the position that Mr. Meacham describes. I hope he and the borough recognize, even if all Alaska parties agree, it does

not mean that it is necessarily the way it is going to be with regard to the settlement.

As I understand it, it expands the concept of taking additional Federal lands to make up the lands that are in State and local ownership at the time, but I appreciate the position he stated. Mr. Chairman, this is another item we will be including in this bill being introduced, hopefully, some time next week.

I don't think, Mr. Meacham, we have 3 weeks. I think we have closer to a week to get this language done.

Mr. MEACHAM. We will definitely try to make it in a week.

I would also like to mention the interest of the borough in the resolution of the Edwardsen problem, and I would like to reserve, on behalf of the borough, the opportunity to respond to further hearings the committee may have regarding this problem.

I believe not only is it a problem of statewide magnitude, but each municipality in the State, almost without exception, has similar interests.

Senator STONE. Thank you, Senator Hansen.

Senator HANSEN. I have no questions.

[The prepared statement of Mr. Meacham and two letters received by the committee from the Greater Anchorage Area Borough follow:]

BEFORE THE SUBCOMMITTEE ON INDIAN AFFAIRS

Testimony by 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 in the approximate location of the tree-line at the latitude of Anchorage. The Anchorage Borough recognizes that this fact severly 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 comparision 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 acessible 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:

Point Woronzof FAA site	550 acres
Point Campbell FCC site	41 acres
Point Campbell Military Reservation	1,280 acres
Campbell Airstrip Tract (outside the two-mile radius)	1,365 acres
(total)	5,055 acres
Ft. Richardson Tract	46.5 acres
Fire Island	4,200 acres

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 porportion 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 our 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.

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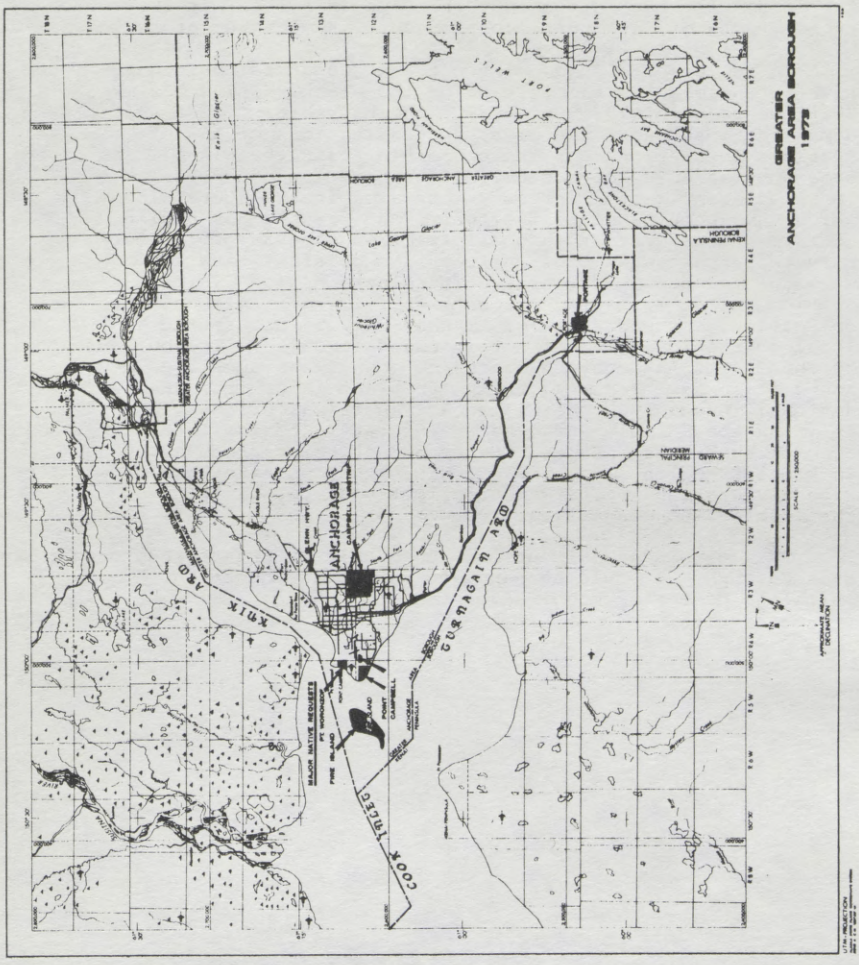
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GREATER ANCHORAGE AREA BOROUGH
3500 EAST TUDOR ROAD
ANCHORAGE, ALASKA 99507

May 7, 1975

The Honorable Henry Jackson, Chairman
Senate Interior Committee
United States Senate
Washington, D.C. 20510

Re: Federal legislation proposed by Cook Inlet Region, Inc.

Dear Chairman Jackson:

At its regular meeting of May 5, 1975, the Greater Anchorage Area Borough Assembly adopted the following resolution:

> The Greater Anchorage Area Borough Assembly opposes federal legislation being proposed by Cook Inlet Region, Inc. which would amend the Native Claims Settlement Act of 1971 insofar as such legislation may affect title to federal properties within the Greater Anchorage Area Borough.

This resolution was approved by a vote of the Assembly with knowledge of the alternative course of action available to it, after a public hearing at which numerous persons testified, and after full debate among the Assembly members.

The purpose of my letter is to formally notify you of the position adopted by the Anchorage Borough Assembly, the reasons behind such action as they became evident during the debate, and the options which appear open to the Borough Assembly and staff at this time. It was clear from the public testimony, and from the debate among the Assembly members which followed, that the concern of the Greater Anchorage Area Borough regarding the legislation being proposed by Cook Inlet Region, Inc. goes much farther than merely the preservation of the Campbell Airstrip Tract for public park and open space purposes. Foremost among the Borough's concerns, in addition to the Campbell Airstrip Tract, are the Point Woronzof FAA Site and the Point Campbell FCC Site and military reservation. The total acreage of all of these tracts is approximately 7300 acres.

Whether these properties remain in federal ownership, or become the property of the state or the Borough, they continue to be public properties, owned by and available to all of the public without limitation. Campbell Airstrip Tract, Point Woronzof, and Point Campbell have been intended and planned for public uses and for open-space purposes since 1959, if not earlier. As the population of the Borough increases dramatically beyond the present figure of 160,000, a growth factor which is inevitable, the land available in public ownership for intensive park, recreation and open-space uses becomes critical to the allocation and balance of land use in this community. There will be no more public lands within the Borough than there are at the present time; future years will bring only the choice between maintenance of existing public lands, or a reduction in those lands, such as Cook Inlet Region, Inc. now proposes.

Another concern voiced by the Borough Assembly members prior to the adoption of the above-quoted resolution was that a legislative bill embodying the land selections desired by Cook Inlet Region, Inc. was not available for Assembly consideration prior to their action. Instead, rough drafts of a proposed bill, containing sketchy land descriptions and obvious errors, offered the only information available to the Borough staff and Assembly at this time. It must be presumed that when a draft bill is formally introduced, the specific desires and priorities of Cook Inlet Region, Inc. will become evident. Particularly subject to this process is the Campbell Airstrip Tract, portions of which were included in the early, rough draft, but which may or may not be later amended out of the final draft. It is anticipated that as the legislative proposals of Cook Inlet Region, Inc. become more definitive, the Borough Assembly might again be able to consider this subject in light of its own priorities and its willingness to meet with our congressional delegation and with officials of the Native Regional Corporation. On this latter point, the Borough staff has indicated its desire to continue discussions of these matters with the Regional Corporation.

Based upon the action of the Borough Assembly on Monday night, I am planning to attend both the House and Senate Interior Subcommittee hearings on proposed amendments to the Alaska Native Claims Settlement Act in Washington during the

week of May 12-16. I will present the Greater Anchorage Area Borough's position regarding amendments to the Claims Act being proposed by Cook Inlet Region, Inc., insofar as they pertain to federal lands within the boundaries of the Borough.

Sincerely yours,

Thomas E. Meacham

THOMAS E. MEACHAM
Counsel to the Greater
Anchorage Area Borough

TEM/nlh

GREATER ANCHORAGE AREA BOROUGH
3500 EAST TUDOR ROAD
ANCHORAGE, ALASKA 99507

JUN 3 8 58 AM '75

May 30, 1975

SENATE INTERIOR COMMITTEE
RECEIVED
JUN 4 1975
WASHINGTON, D. C. 20510

The Honorable Henry Jackson, Chairman
Senate Interior Committee
United States Senate
Washington, D.C. 20510

Re: Federal legislation proposed by Cook Inlet Region, Inc.

Dear Senator Jackson:

I very much appreciated the opportunity to testify before sub-committees of the House and Senate Interior Committes regarding bills now being proposed which would amend the Alaska Native Claims Settlement Act of 1971 in several significant respects. My particular interest in these bills, and my testimony on behalf of the Greater Anchorage Area Borough, were directed toward proposed amendments to ANCSA which have not yet been embodied in a formally-introduced bill, but the subject of which the Alaska Delegation and committee members seemed very much aware. I am speaking of the efforts by Cook Inlet Region, Inc. to legislate a solution to land selection problems presented them by their geographic location and by the deficiency withdrawal areas set aside for them by the Secretary of the Interior.

In my testimony I emphasized that the Greater Anchorage Area Borough Assembly has formally opposed any legislative solution of Cook Inlet Region's land selection problems, insofar as such a solution might affect title to federal lands within the boundaries of the Greater Anchorage Area Borough. This opposition is based in large measure upon the fact that several parcels of land identified by Cook Inlet Region, Inc. for legislative transfer have long been designated, planned and managed for public park and open space uses for the benefit of the entire Anchorage Borough. To permit these parcels to pass into private ownership at this time, with the Borough growing in population and consuming its privately-owned undeveloped lands for residential uses, would be very short-sighted.

In my testimony at the hearings I indicated that Mr. Andy Johnson, formerly president of Cook Inlet Regional Corporation, had stated that the Corporation would be willing to forego any attempt to gain title to the Campbell Airstrip Tract, the Point Woronzof FAA Site and the Point Campbell Military Reservation and FCC Site, if the Corporation could obtain the Borough's concurrence or active support for selection by the Corporation of other federal lands within the Borough, including lands which may presently lie within Elmendorf Air Force Base and Fort Richardson. I indicated that I would convey this position to the Anchorage Borough Assembly for their consideration. At the same hearings, it appeared that the State of Alaska and Cook Inlet Region, Inc. were quite close to reaching an agreement regarding exchange and substitution of certain lands outside the Anchorage Borough, both to satisfy state's land management objectives and to offer more desirable land to the region than was originally set aside for selection by ANCSA. Since a negotiated solution seemed entirely possible, all parties were advised to submit the results of such negotiations for inclusion in the presently-pending bills amending ANCSA.

I am advising you by this letter that the Greater Anchorage Area Borough Assembly has not yet taken any further action regarding the proposals by Cook Inlet Region, Inc., or regarding its previously-adopted opposition to legislation transferring lands to the region. No additional action has been taken by the Borough Assembly concerning the concessions made by Mr. Johnson at the hearings in Washington because it is not yet clear that the Regional Corporation intends to accept any reduction in its total acreage entitlement under ANCSA, in return for a selection of better lands not selectable under ANCSA. I first became aware of the limited authority of Mr. Johnson to negotiate an agreement which might reduce the total acreage entitlement of the Corporation, during discussions in Washington. A news item appearing in the Anchorage Daily News of May 28, 1975 states that Mr. Johnson has been replaced as president of Cook Inlet Region, Inc. by the board at its recent meeting. Unless I receive contrary information, I would assume that one aspect of Mr. Johnson's replacement was the fact that the majority of the board was not willing to accept a negotiated agreement on the basis upon which Mr. Johnson had been dealing with the state and the Borough.

Therefore, the Borough has decided to take no further action at this time concerning the proposals of Cook Inlet Region, Inc. I am certain that the Borough stands ready to discuss this subject further with the Regional Corporation at its convenience. However, until the Borough receives some indication of the present status of the proposed agreement between the state, the Borough and the corporation, it is felt that no additional action by the Borough at this time would be appropriate.

If I may furnish any additional information to you regarding these matters, please do not hesitate to call or write me.

Very truly yours,

Thomas E. Meacham

THOMAS E. MEACHAM
Counsel to the Greater
Anchorage Area Borough

TEM/nlh

Senator STONE. The next witness is Roger Lang, the president of the Alaska Federation of Natives.

STATEMENT OF ROGER LANG, PRESIDENT, ALASKA FEDERATION OF NATIVES

Mr. LANG. I bring some good news, Mr. Chairman. I have been requested by Ray Christiansen who is on your list as chairman of the Calista Corp., to present his testimony only in writing. It has been given to the staff, and that will save you some time.

Senator STONE. Thank you. Please proceed.

Mr. LANG. I plan to summarize briefly the position of the Alaska Federation of Natives.

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.

The legislation has been introduced covering several items to which I have made four trips to Washington to testify on in one Committee or the other in the last year and a half.

The late filers concerns itself with Alaska Natives who are fully elegible for benefits under the act with the exception they missed a March 30 deadline for enrollment. The numbers have been anywhere from 1,000 to 2,000. This is one area in which all 12 regional corporations agree. If there was only one eligible Alaska Native who missed out for any circumstances, we would ask that you extend the enrollment to pick them.

I would say, for late filers, Mr. Chairman, they were in a fairly unique position. The March 30 deadline, which was 6 months prior to the close was put there so that appeals eligibility criteria could be reviewed by Interior. This was true of everyone with the exception of those that filed late.

There was no appeal for a late filer. It was either automatic rejection upon acceptance of the enrollment form or automatic rejection upon review by the Solicitor of the Bureau of Indian Affairs in Alaska.

We have special cases, Mr. Chairman. We have documented for a court case some significant exceptions to Alaska Natives who are eligible, for 1 reason or 100 or 200 reasons, never heard of the Alaska Native Claims Settlement Act. We ask that that person be endorsed.

Now, on the merger provision of the Act, there shall be much more detail and better testimony that I can proceed with.

I would like to say the review of all of the Regional Corporations has indicated acceptance in the Native community is 100 percent.

Now the escrow account that is necessary because of the matter of identification and selection is subject to severe deadlines. The ability of the U.S. Government to transfer that land in a timely fashion is not tied to a severe deadline, and it is a slow, cumbersome process. While that is going on, Alaska is growing, Alaska is developing and things are happening up there, and the necessity for an escrow account to handle the interim period between selection and escrow is necessary.

This morning, Interior testified they would rather the escrow account not bear interest. That again indicates, to us at least, a problem that Interior has in trying to identify when an Alaska Native becomes not an Alaska Native but a stockholder. I think they have

built a closet. They have put a ghost in it and now they tell us they cannot do that because there is a ghost in the closet. They presently administer over 450 trust accounts. Ours is the sole one without interest-bearing provisions. We ask that you examine that portion and let us know your feelings.

We endorse the extension of the life of the Federal State Land Use Planning Commission. They are a necessary part of this problem of transfer of land management, land planning, land classification laws. We don't agree with many of their conclusions, but they are the one entity in the State that travels extensively and takes testimony from our people. We appreciate their diligence, Mr. Chairman.

I have testified to everything on this bill in prior sessions of Congress, either before this committee or the House. We do have in our own testimony some technical amendments that we see are necessary, specifically as to the dates, to a look in the enrollment process, a strange happening on St. Lawrence Island, but that will come in my written testimony I have submitted to you.

We do endorse passage of all of these amendments. They are technical and cleanup in nature. None of them upset the actions or the operations or the intent of the act in any manner. We advocate their passage.

We do have several areas of personal concern as it relates to implementation. We are, at this moment, digesting a matter for criterion standards for easements on Native lands. We got the paper last Monday from Interior and if need be, we write you and let you know of our concerns in that matter.

There are other matters—The Cook Inlet matter is one of special concern to the regional corporations because they have severe selection and identification problems, some of which could have been helped had bureaucracies, had agencies not developed special interests within the agencies who ended up fighting themselves and, as a result, Cook Inlet was left out in the cold.

With that, Mr. Chairman, I would like to make this brief and say I do have written testimony for you. I would like for some other considerations, to ask for a 10-day period to submit additional testimony.

Senator STONE. The record will be for 2 weeks. Senator Stevens.

Senator STEVENS. Mr. Chairman, Mr. Lang is retiring as president of the AFN. He has done a creditable job and his statements, as I read them here, are certainly correct about the escrow account. That is a new development, and I will submit to the committee draft legislation to accomplish the objectives he has outlined with regard to that account and in regard to the other matters contained in his statement.

Senator STONE. Thank you, Senator.

Senator Hansen.

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

Senator STONE. Thank you very much, Mr. Lang.

[The prepared statements of Mr. Lang and Mr. Christiansen follow:]

MAY 1975

TESTIMONY OF THE

ALASKA FEDERATION OF NATIVES

TO THE

ALASKA NATIVE CLAIMS SETTLEMENT ACT

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 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 consumated 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 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 which 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 who's 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.

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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 proponets 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 who's 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.

ADDITIONAL STATEMENT OF
ROGER LANG, PRESIDENT
ALASKA FEDERATION OF NATIVES

I appreciate this opportunity to submit additional statements on two issues discussed by other witnesses at the hearings on amendments to the Alaska Native Claims Settlement Act.

Secretary Hughes in his testimony supported the creation of an escrow account for proceeds derived from lands selected by Native corporations. But the Secretary testified against the provisions in S.131 that authorize interest and reinvestment of the proceeds in the escrow account. According to the Secretary, there are "many other similar accounts" which do not earn interest and are not subject to reinvestment. The Secretary believes the proposed amendment would be "an unfavorable precedent." We believe the Secretary's views are factually incorrect.

We know of no other similar accounts carried on government books for the benefit of Indian groups that do not earn interest. We are submitting with this statement a 1972 "Memorandum on Interest in the Alaska Native Fund" that was prepared by our counsel in connection with proceedings which resulted in a GAO decision that the Alaska Native Fund was entitled to interest and reinvestment of the balance until

December, 1973. As that memorandum notes, there are over 450 Indian tribal accounts earning interest under 25 U.S.C. § 161a. Each of those accounts is also subject to the investment provisions of 25 U.S.C. § 162a. The only Indian account with a balance over $500 that is not presently earning interest is the Alaska Native Fund. The provisions of S.131 as introduced would not create a precedent; elimination of the interest and investment provisions would create a precedent since the resulting escrow fund would be treated differently from the hundreds of existing Indian funds. Not only would such discrimination be unprecedented, it would be unjust. The very purpose of establishing the escrow account is to recognize that proceeds from Native-selected lands belong to the Natives. It is unconscionable for the government to use those funds for its own purposes to obtain an interest-free loan. We are informed that if no interest is paid on the escrow account, the Treasury will, in effect, use the account to offset government obligations, thus "borrowing" Native money. The same rules that apply to other Indian funds should apply to the escrow account. Interest and investment authority should be enacted as an essential aspect of the escrow account.

The second point we would like to address is the Edwardsen issue raised by Senator Stevens and Mr. Martin. We believe they have injected an extraneous and dangerous issue.

The pending bills all deal with simple, uncontroversial amendments of a "technical" nature. The Edwardsen issue is neither simple nor uncontroversial. AFN fully supports the Arctic Slope and believes that Judge Gasch's decision in that case was correct both as a matter of law and of justice to the Native people. The lands we gave up in the Settlement were our lands until December 18, 1971. Non-Native intruders repeatedly trespassed on our lands. As Judge Gasch noted, Congress could not constitutionally deprive us of the right to sue those trepassers without just compensation. As this committee knows, AFN sought 60 million acres of land, $500 million and a 2 percent perpetual mineral royalty in exchange for our lands. Congress gave us less than we sought. But that settlement was only a settlement of our land rights; it was not a taking of our personal property as well.

The pending legislation deserves prompt action. As I noted in my testimony, I have appeared many times before Congress to testify in the matters included in S. 131, S. 685, S. 1469 and S. 1501. These bills contain provisions previously introduced, considered, and in some cases passed by the Senate Interior Committee. The Edwardsen issue was injected at the eleventh hour under the pretext that it arose recently--despite the fact that Judge Gasch's decision is over two years old.

We think an amendment to overturn the Edwardsen decision would be unwise as well as unconstitutional. But, more importantly, we agree with Mr. Martin's testimony that the pending legislation should not be held "hostage to the resolution of the Edwardsen case." (Tr. at 87). The Edwardsen issue is completely extraneous to the pending legislation. That issue is essentially a litigation between the oil industry and the Arctic Slope Eskimos. The other issues involve only Alaskans. The Edwardsen issue involves the courts and the Constitution. The other issues involve only Congress and statutory changes. The other issues require prompt legislation; Edwardsen does not. Edwardsen should be the subject of separate hearings and separate consideration. Of all the witnesses, only Senator Stevens suggested that the pending bills should be delayed indefinitely while the Edwardsen issue is analyzed and resolved. That suggestion should be rejected.

Thank you again for this opportunity to submit our views.

MEMORANDUM ON INTEREST ON
THE ALASKA NATIVE FUND

The Alaska Federation of Natives, by its counsel, respectfully submits this memorandum in support of their contention that 25 U.S.C. § 161a is applicable to the Alaska Native Fund established by the Alaska Native Claims Settlement Act, Public Law 92-203, and that consequently the Fund should be credited with interest of 4 per centum per annum.

I. THE ACT OF FEBRUARY 12, 1929, AS AMENDED.

The Act of February 12, 1929, 45 Stat. 1164, as amended, 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." 25 U.S.C. § 161a.

The statute expresses a broad Congressional policy of guaranteeing at least 4% interest on all monies held in trust by the government for the benefit of aboriginal Americans. The words "Indian tribes" are used in their

broad, generic sense to refer to all such aboriginal groupings and are not limited to particular ethnic groups or to a particular type of aboriginal social organization. This interpretation of the statute is demonstrated by the legislative history and the administrative practice in implementing the statute.

The 1929 statute was enacted at the request of the Department of the Interior. In the transmittal letter recommending enactment, that Department stated:

> "the Government is holding a large amount of money belonging to various tribes of Indians throughout the United States, no part of which is drawing any interest, and it is felt by this department that the Government, as guardian of the Indians, is not doing full justice to its wards by holding and using this money without compensation to them. It is conceded that there is no legal obligation to pay interest on these funds, but the fact that the Government has obligated itself to pay interest on other funds of similar origin would appear to constitute a moral obligation which is now only partially fulfilled." H. Rept. 2320, 70th Cong. 2nd Sess. (1929) at 1-2.

In recommending passage the House Committee stated that the purpose of the legislation was to authorize interest on the "considerable amount of Indian money deposited in the Treasury of the United States." Id. at 1. The committee

further stated that "as a matter of justice to the Indians, from the angles of guardianship and business, the Government should grant for the use of the money the compensation provided in the bill." Id. The legislative history contains no indication that Congress intended narrowly to restrict application of the bill to "tribes" as opposed to other types of Indian social organizations.

The Comptroller General, however, did not construe the 1929 act as broadly as Congress had intended. In a decision of May 31, 1929, 8 C. G. 625, he held that an account entitled "Indian money, proceeds of labor" was not entitled to the interest provided by the 1929 statute even though that specific fund had been listed in the House Report as one of one of the accounts covered by the proposed act. H. Rept. 2320 at 4. The Secretary of the Department of the Interior promptly replied with proposed additional legislation to overrule the Comptroller General's decision and reaffirm the original intent of Congress. Pointing specifically to the Comptroller General's decision the Secretary stated that the Department had the "proceeds of labor" account "particularly in mind" in urging passage of the 1929 Act. S. Rept. 540, 71st Cong. 2d Sess. (1930) at 2. He further stated that "the reasons which actuated [the 1929 Act] apply to [the proceeds

of labor account] as well as to other funds of the Indians." Id. The Congress promptly responded with an amendment specifically authorizing 4% interest on the "proceeds of labor account." That amendment is now codified at 25 U.S.C. § 161b. This legislative history indicates Congress' basic policy of providing interest on all trust accounts maintained for the benefit of aboriginal American people.

The administrative practice under § 161a demonstrates that the government has not limited its applicability solely to "Indian tribes" in any narrow sense. According to a January, 1971, Treasury report there are approximately 450 trust accounts maintained by the government to the credit of various aboriginal organizations.[1/] With but a single exception[2/] every one of those accounts is an interest-bearing account.

1/ Receipt, Appropriation and Other Fund Account Symbols and Titles, as of January 11, 1971, Dept. of the Treasury, Fiscal Service, Bureau of Accounts, Div. of Govt. Financial Operations. Accounts 14X7000 - 14X7498, pp. 111-149.

2/ The one account that does not have a corresponding interest account is 14X7230 "Proceeds of labor: Port Madison Indians, Washington", an account maintained under 25 U.S.C. § 155. According to the Bureau of Indian Affairs the principal balance in this account has never exceeded $500 and thus the account is ineligible for the interest provided by 25 U.S.C. § 161b.

Approximately 160 of these accounts are credited with interest under 25 U.S.C. § 161a.[3/]

The 160-odd accounts now bearing interest under § 161a can by no means all be characterized as accounts "to the credit of Indian tribes" if the word "tribe" is to be read literally. Thirty or more of those accounts are to the credit of Indian "Nations."[4/] Approximately 15 of the accounts are to the credit of Indian "Bands."[5/] Ten are to the credit of "Pueblos."[6/] Other accounts are credited to "Confederated

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3/ Approximately 180 accounts earn interest under 25 U.S.C. § 161b. The remaining accounts earn interest under various statutory provisions.

4/ e.g. 14X7535 - Judgment, Court of Claims, Creek Indian Nation; 14X7608 - Awards of Indians Claims Commission: Southern Paiute Nation; 14X7639 - Awards of Indians Claims Commission, Seminole Nation, Oklahoma; 14X7923 - Awards of Indians Claims Commission: Northern Paiute Nation and Bands Thereof, Docket 87.

5/ e.g. 14X7947 - Proceeds of Awards of Indians Claims Commission, Cherokee Band of Shawnee Indians of Oklahoma; 14X7676 - Awards of Indians Claims Commission: Prairie Band of Potawatomi Indians, Kansas; 14X7677 - Awards of Indians Claims Commission: Citizen Band of Potawatomi Indians, Oklahoma.

6/ e.g. 14X7506 - Picuris Pueblo Compensation Four Percent Fund; 14X7516 - Santa Clara Pueblo Compensation Four Percent Fund.

Tribes,"[7] "Affiliated Tribes,"[8] or groupings of tribes that are ethnically unrelated.[9] One of those interest-bearing funds is credited to the account of the "Tlingit and Haida Indians of Alaska."[10] That group is statutorily defined as "all those Indians of the whole or mixed blood of the Tlingit and Haida tribes who are residing in Russian America, now called the Territory of Alaska, in the region known and described as Southeastern Alaska, lying east of the one hundred and forty-first meridian." 49 Stat. 388. The Tlingits and Haidas are in fact two distinctly different ethnic groups that historically were enemy tribes. The

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7/ e.g. 14X7656 - Awards of Indians Claims Commission, Confederated Tribes of the Coleville Reservation, Washington, Docket 179; 14X7871 - Awards of Indians Claims Commission, Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana.

8/ e.g. 14X7550 - Awards of Indians Claims Commission, Three Affiliated Tribes of the Fort Berthold Reservation, Dockets Nos. 350-A, 350-E and 350-H.

9/ e.g. 14X7880 - Proceeds of Oil and Gas, South Half of Red River, Kiowa, Comanche and Apache Indians, Oklahoma.

10/ 14X7621 - Tlingit and Haida Indians of Alaska, Judgment Fund Court of Claims Docket No. 47900.

aboriginal groups that are the beneficiaries of these various accounts cannot properly be called "tribes." Rather they represent well-organized and distinct types of ethnic groupings. This wide variety of accounts carried under § 161a demonstrates that the words "Indian tribes" in that section have been broadly interpreted by the government and not used in any narrow, specific sense.

Moreover, certain of the accounts carrying interest under § 161a belong to aboriginal groups that do not reflect any recognized ethnic affiliation. Account number 14X7061 (and its companion interest account - 14X7561) is carried on the books of the Treasury under the title "Proceeds of Land, Indians of California Act Aug. 11, 1964." That account is credited with interest under § 161a. The account represents the proceeds of land sold by the Secretary of the Interior under the authority of P. L. 88-419, 78 Stat. 390, which directed the Secretary to sell land "held by the United States for the use of Indians of California . . . that was not occupied on January 1, 1964, by Indians under a formal or informal assignment." The so-called "Indians of California" are a fictional statutory creature of the Congress. That group is defined solely in geographical terms relying on the existing state boundaries of California. It does not represent

any underlying aboriginal grouping. For purposes of administration and settlement of claims, the "Indians of California" were created by the Congress.[11/] Similarly account no. 14X7380 (and the companion interest account - 14X7880) is carried to the credit of the Kiowa, Comanche and Apache Indians in Oklahoma. That account, consisting of oil and gas proceeds from the south half of the Red River, arose by virtue of the border determination in Oklahoma v. Texas, 258 U.S. 574 (1922). It is not based on ethnic categories.

11/ In fact the "Indians of California" have not yet been organized in any single group for distribution of those proceeds.

II. THE ALASKA NATIVE FUND IS WITHIN THE CATEGORY OF FUNDS ENTITLED TO INTEREST UNDER § 161a.

The Alaska Native Claims Settlement Act, Public Law 92-203, establishes the "Alaska Native Fund" in the United States Treasury. Id. § 6(a). That fund will ultimately be distributed among Regional Corporations organized pursuant to Section 7 of the Settlement Act. The Regional Corporations will primarily reflect the existing regional organization of the Alaska Native people. The Settlement Act itself recognizes the existence of twelve present Native associations, Section 7(a), and authorizes creation of a Regional Corporation for each of those twelve regions. An optional thirteenth corporation is provided for non-resident Natives. That corporation will only be created if a majority of the non-resident Natives elect to enroll in a separate corporation rather than enrolling back to their region of origin.

All benefits under the Act will ultimately go to individual Alaska Natives who will own stock in Regional and Village corporations. The Alaska Native Fund is partial compensation for the extinguishment of aboriginal title throughout the State of Alaska. In the past aboriginal groups

in the United States have been compensated for extinguishment of aboriginal title through proceedings in the Court of Claims, the Indian Claims Commission, and specific treaty negotiations. The Alaska Native Claims Settlement Act represents the first direct Congressional settlement of aboriginal land claims. In substance, however, the Alaska Native Fund is indistinguishable from any of the numerous judgment funds deposited in the Treasury to the credit of aboriginal groups.

The Native people of Alaska are comprised of three basic ethnic groupings -- Eskimos, Indians, and Aleuts. The ethnic divisions roughly correspond with certain geographic divisions, although overlapping is common. In a few areas the Natives are organized along "tribal" lines. However such organization is not the general rule. The Eskimos of Alaska are not tribal in nature -- neither are the Aleuts. While some of the Natives of Indian origin had a tribal structure, many others did not. The organization of Alaska Natives is along regional, rather than "tribal," lines. The existing regions, however, reflect aboriginal social organization. They evolved on the basis of several factors including:

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"1. Historic ties of the people among themselves.
2. Self-determination and the will of the people.
3. Language and dialect.
4. Religion.
5. Ethnic origin.
6. Type of subsistence living.
7. Economic potential for transition to a cash economy."

Statement of Donald R. Wright, President, Alaska Federation of Natives, Hearings before the Committee on Interior and Insular Affairs, U.S. Senate, 92d Cong. 1st Sess., on S. 35 and S. 835, Vol. 1, at 305.

The Alaska Native Fund is not excluded from § 161a because the recipients are "regional" organizations. The "Indians of California" are essentially a regional group rather than an "Indian tribe." Similarly, the Tlingit and Haida Indians of Alaska is a regional group governed by the Tlingit-Haida Central Council which manages a judgment fund now credited with interest under § 161a.[12/] That same Central Council will establish one of the twelve Regional Corporations under the Settlement Act.

The Alaska regional associations have previously been recognized by the Department of the Interior -- the agency primarily charged with interpreting and administering the laws relating to Indians -- as the analogue of "Indian

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12/ Account 14X7621. See 25 U.S.C. § 1211

tribes" in the lower 48 states. For example, the Indian Reorganization Act provides for formal organization and federal incorporation of "any Indian tribe, or tribes." 25 U.S.C. § 476. The Act is specifically made applicable to Alaska Natives by 25 U.S.C. § 473(a). Under that authority the Secretary of Interior has previously recognized Alaska regional associations and authorized their organization under the IRA. On June 28, 1971, while the Alaska Native Claims Settlement Act was pending before Congress, the Secretary approved the IRA constitution and by-laws of the Inupiat community of the Arctic Slope. That organization is essentially the same regional association as the Arctic Slope Native Association recognized in Sec. 7.(a)(1) of the Settlement Act. That association will in turn be succeeded by a regional corporation. The statutory language under which that regional association was organized is for all present purposes identical to the language involved in § 161a. This recognition of Alaska regional associations as "Indian tribes" under the IRA is a persuasive precedent for similar treatment of those organizations under § 161a.

The Alaska Native Fund is not excluded from § 161a because the direct recipients are Alaska corporations rather than "tribes." Under the act of August 1, 1967, Congress

divided an Indian Claims Commission award to the Confederated Bands of Ute Indians among the Uintah-Ouray Utes, the Southern Utes, and the Ute Mountain Tribes. The Uintah-Ouray share was credited to "the Ute Indian tribe of the Uintah and Ouray Reservation and the Ute Development Corporation." 81 Stat. 164. The Ute Development Corporation is a Utah Corporation established pursuant to Congressional statute to distribute the judgment proceeds to mixed-blood Utes. See Affiliated Ute Citizens v. United States, 406 U.S. ___, 40 U.S.L.W. 4448, 4450-52 (April 24, 1972)(No. 70-78). As such that corporation is indistinguishable from the Regional Corporations under the Settlement Act. The funds so divided by Congress and credited to the Uintah-Ouray Utes are carried on the books of the Treasury in account 14X7086. That account earned interest under § 161a. Similarly other trust accounts earning interest under § 161a are in fact owned and managed by corporate organizations. For example, account 14X7373 credited to the "Mescalaro Apache Tribe and Bands Thereof" is actually owned by the Apache Indian Reorganization Act Corporation. Account 14X7440 credited to the Hualapai Tribe is in fact owned by the Hualapai IRA Corporation. Both of these accounts are credited with interest under § 161a. In fact, according to the Bureau

of Indian Affairs, over 70% of the "tribal" trust accounts are owned and managed by IRA Corporations.

The organization of the Eastern Band of Cherokee Indians in North Carolina similarly demonstrates that corporate organizations can be considered "Indian tribes." The "Eastern Band of Cherokee Indians" is in fact a North Carolina Corporation. However, this fact has not prevented federal courts from consistently recognizing the essential nature of that organization as an "Indian tribe." In Haile v. Saunooke, 246 F.2d 293 (4th Cir. 1957), the court stated: "It is well settled that the Eastern Band of Cherokee Indians is an Indian Tribe within the meaning of the Constitution and laws of the United States." Id. at 294; see also United States v. Wright, 53 F.2d 300, 303 (4th Cir. 1931). The courts were specifically aware of the corporate nature of the tribe in making those decisions. Haile v. Saunooke, supra, at 295.

It is similarly irrelevant that certain stockholder beneficiaries of the Alaska Native Fund will be non-residents who are not members of any aboriginal Native village of group. No such requirement of group membership has been imposed in previous similar situations. For example, when

the Congress appropriated sums to pay judgments rendered on behalf of the Northern and Southern Paiute Nations, all of the beneficiaires were essentially "non-residents." At the time of that appropriation neither the Northern nor Southern Paiute Nations existed in any organized status. To the contrary, the descendents of the original Paiute Indians had dispersed throughout the United States and were in a totally unorganized state. In spite of these facts both judgment awards were credited with interest under § 161a. See accounts 14X7608 and 14X7923. And in numerous other situations, including the distribution of the Tlingit-Haida judgment, non-residents enrolled in the aboriginal groups solely because of parentage have been included as beneficiaries. In fact Congress, in providing for distribution of the Tlingit-Haida judgment fund, specifically directed that non-resident Natives be assured a fair representation in the governing Central Council. Act of August 19, 1965, 79 Stat. 543.

III. THE LEGISLATIVE HISTORY OF THE ALASKA NATIVE CLAIMS SETTLEMENT ACT IS CONSISTENT WITH THE APPLICATION OF § 161a.

The Alaska Native Claims Settlement Act as passed by Congress has three sources of funds for deposit in the Alaska Native Fund:

> (1) $462,500,000 from the general fund of the Treasury, which are authorized to be appropriated according to the following schedule: . . .
>
> (2) Four percent interest per annum, which is authorized to be appropriated, on any amount authorized to be appropriated by this paragraph that is not appropriated within six months after the fiscal year in which payable.
>
> (3) $500,000,000 pursuant to the revenue sharing provisions of section 9. Id. § 6(a).

The statute does not explicitly provide for interest on the Alaska Native Fund while it is on deposit in the Treasury.*/ The Settlement Act as passed by the Senate on November 1, 1971, did contain an explicit provision for interest at the rate of 4% on all funds held in the Treasury until payment to recipient corporations. Section 5(d) of H.R. 10367, 92d Cong. 1st Sess.,

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*/ It should be pointed out that once the initial roll of eligible natives is completed, the entire balance in the fund will be paid out to the Regional Corporations every three months. Only in the event a regional corporation has failed to organize by the time the roll is completed, will funds be withheld for a longer period of time. That will not happen since all of the 12 regions have already obtained secretarial approval of their articles of incorporation.

in the Senate of the United States (Nov. 2, 1971). The Senate-passed bill also provided for 4% interest on the delayed appropriations. Id. Section 5(c). The House-passed bill contained no interest provisions of any kind. See H.R. 10367, 92d Cong. 1st Sess. in the Senate of the United States (Oct. 21, 1971). The Act as finally passed specifically included the Senate provision for interest on delayed appropriations but did not include any language concerning interest on funds deposited in the Alaska Native Fund.

The omission of the explicit interest provisions in the final Act is of no substantive significance. Section 161a is a statute of general applicability. If § 161a by its own terms applies to the Alaska Native Fund, the interest provided under that statute would have been superseded by the specific interest provision in the Senate-passed bill. On the other hand, had Congress specifically exempted the Alaska Native Fund from the scope of § 161a, then the interest under the general statute would not have been available. Congress' silence on this subject simply leaves the question to existing law. As demonstrated above, existing law provides for interest.

The legislative history in fact indicates that Congress was aware that existing laws would affect disposition

of the Alaska Native Fund while on deposit in the Treasury. During consideration of the Conference Committee Report in the Senate on December 14, 1971, Senator Gravel asked Senator Bible -- the Floor Manager of the Conference Report -- whether interest would be paid on the Alaska Native Fund. Senator Bible noted that while the Act did not by its specific terms provide for such interest:

> "[i]t is the committee's intention that the Secretary of the Treasury shall use his existing statutory authority to invest and manage the Alaska Native fund pending enrollment and to credit any interest so earned to that fund. When the enrollment is completed, the total balance, including accrued interest will be paid to regional corporations in accordance with the bill." 117 Cong. Rec. at S21656 (Daily Ed. Dec. 14, 1971).

Senator Bible was, apparently, referring to the existing statutory provisions of 25 U.S.C. § 162a which specifically authorize investment and management of tribal trust funds by the Secretary of the Interior. The important point is that the Senate was aware of other existing laws affecting Indian tribal funds and the interest to be credited to those funds. Aware of those other laws, Congress did not seek to exempt the Alaska Native Fund from § 161a.

Application of § 161a to the Alaska Native Fund is in no way contrary to the provisions of the Settlement Act.

It is true that the Act specifies three sources of funds for deposit in the Treasury. None of the provisions deal with interest once those funds are so deposited. It is entirely consistent with the Act to credit 4% interest from date of deposit to funds derived from any of these three sources.

Unless interest is so provided, the Act by its terms could result in a glaring inconsistency. Section 6(a)(2) provides for 4% on appropriations delayed more than six months beyond the end of a fiscal year in which a particular appropriation is payable. However, Section 6(c) provides that the funds will not be disbursed until the Native roll is completed. Preparation of that roll could take as long as two years. Section 5(a). Had Congress failed to make the initial $12.5 million appropriation scheduled for fiscal 1972 and had that failure continued past December 31, 1972, interest at the rate of 4% would have begun accruing. If the Alaska Native Fund is in fact an interest-bearing account, the end result of the delay would have been a six months loss of interest to the Natives and a six months grace period for the Congress. On the other hand, if the Alaska Native Fund is not an interest-bearing account the effect of these two provisions would be to impose a penalty against the government for late appropriations and an extra benefit to the Natives. Moreover, a "gap" would

result since interest would stop once the appropriation was made, even though the funds were still not distributed.

Crediting the Alaska Native Fund with 4% interest from date of deposit will in no way complicate computation of the amounts to be deposited in that fund under the 2% royalty-sharing provisions of Section 9. Those provisions require payment by the United States and the State of Alaska of 2% royalties which "shall continue only until $500,000,000 have been paid into the Alaska Native Fund." (emphasis added.) Clearly that dollar figure applies to deposits of principal only and Congress never intended to credit the United States or the State of Alaska with interest on early deposits to reduce their financial obligations under that section.

IV. CONCLUSION

In considering how the laws in question should be interpreted and applied in this case, one should recall the long-established rule that ambiguities are to be construed in favor of the aboriginal people. This policy was first expressed by Chief Justice Marshall in Worcester v. Georgia, 6 Pet. (31 U.S.) 515, 582 (1832):

> "The language used in treaties with the Indians should never be construed to their prejudice. If words be made use of, which are susceptible of a more extended meaning than their plain import, as connected with the tenor of the treaty, they should be considered as used only in the latter sense."

That principle has consistently been applied by the courts and other agencies of the government in cases involving statutory as well as treaty questions. See e.g., Winters v. United States, 207 U.S. 564, 576-77 (1908); Choate v. Trapp, 224 U.S. 665, 675; United States v. Nice, 241 U.S. 591, 599 (1961); Alaska Pacific Fisheries v. United States, 248 U.S. 78, 89 (1918); Carpenter v. Shaw, 280 U.S. 363, 366-67 (1930); United States v. Santa Fe R.R. Co., 314 U.S. 339, 354 (1941); Choctaw Nation v. Oklahoma, 397 U.S. 620, 631 (1970). Here, as in other instances, the government

must give the Alaska Natives "the benefit of the doubt as to the questions of fact or the construction of treaties and statutes relating to their welfare." 34 Op. Atty. Gen. 439, 444 (1925). Application of that principle and the other considerations discussed in this memorandum compel the conclusion that 25 U.S.C. § 161a applies to the Alaska Native Fund and authorizes payment of interest of 4 per centum per annum on that fund.

In conclusion the real question in this case is one of fairness and justice to America's original inhabitants. The Alaska Native Claims Settlement Act was intended by Congress to be "a fair and just settlement of all claims by Natives and Native groups of Alaska based on aboriginal land claims." Id., Sec. 2.(a). As part of that settlement Congress authorized appropriation of funds to Native groups. Those funds -- both in law and in equity -- belong to the Alaska Natives. Interest on those funds also belongs to the Alaska Natives. It would defeat the fundamental purposes of the Settlement Act were the government to fail to pay that interest. While the Alaska Native Fund remains on deposit in the Treasury it represents a present economic

asset with an earned interest, whether real or implied. For the government to keep that interest for itself would in effect be to deprive the Alaska Natives of a substantial portion of the settlement they fought for and so rightly obtained.

Respectfully submitted,

PAUL, WEISS, RIFKIND, WHARTON & GARRISON

Ramsey Clark
Kenneth C. Bass, III

WYMAN, BAUTZER, ROTHMAN & KUCHEL

Edward Weinberg

ATTORNEYS FOR ALASKA FEDERATION OF NATIVES.

June 27, 1972
Washington, D. C.

Statement of Ray Christiansen, Chairman of the Board of Directors, Calista Corporation, before the Senate Committee on Interior and Insular Affairs regarding S.131, S.685 and S.1469, three bills to amend the Alaska Native Claims Settlement Act.

Mr. Chairman and members of the Committee:

I am Ray Christiansen, Chairman of the Board of Directors of the Calista Corporation.

Presently we have several comments regarding S.131 as it is presently drafted.

Section 2 of the bill relating to escrow accounts, ought to be changed in two respects.

First, section 2(a) should be modified to indicate clearly that only those proceeds derived from transactions with the Federal government be subject to the escrow provisions. As presently written, the provision could be misinterpreted to include proceeds received by Native Corporations.

Secondly, section 2(b) should be modified to impose a fixed minimum interest rate over which the Secretary of the Treasury may not exercise discretion.

Section 6 of the bill, (which odds a new section 28 to the Settlement Act which exempts Native Corporations from the Investment Company Act of 1940) should be modified to allow the exemption to exist until December 31, 1981.

The exemption proposed in the bill terminates on December 31, 1976. It is probable that the Native Corporations will not have received title to the lands nor will they have determined the value of those lands by December 31, 1976.

We generally concur with the remaining provisions of S.131, S.685, and S.1469. However, we desire to reserve the opportunity to submit additional comments within two weeks of the date of this hearing after we have conferred with other members of the Board of Directors.

Senator STONE. The next witness is Mr. Monroe Price, attorney, representing the Cook Inlet Region Corp.

STATEMENT OF MONROE PRICE, ATTORNEY, REPRESENTING COOK INLET REGION CORP.

Mr. PRICE. My name is Monroe Price. I am a law professor at UCLA, and I am counsel to the Cook Inlet Region Corporation.

I am submitting the testimony of Mr. Ralph A. Johnson who is the President of Cook Inlet Region Corp., and who apologizes for not being able to be here today, but there is a board meeting at the Cook Inlet region involving matters that are before the committee in these proposed amendments to the Alaska Native Claims Settlement Act.

Summarizing Mr. Johnson's testimony, I would like to, first of all, say I think this week has been a busy week in trying to determine solution to Cook Inlet's problem on which all of the Alaska groups and organizations agree we have been very much assisted by the office of Senator Stevens and Senator Gravel and Congressman Young.

We received an encouraging report from the Assembly of the Borough of Anchorage. The Joint Land Use Planning Commission has been instrumental in trying to assist the Cook Inlet region in trying to work out a solution to its problems.

As I think has been indicated to you and to the staff of the committee, Mr. Chairman, Cook Inlet region is in an area where there are tremendously conflicting land pressures.

Of the lands patented to the State of Alaska, most of it is located in Cook Inlet region. As a consequence, the recreation needs are very much concentrated in the Cook Inlet region.

Under the selections, under the withdrawals established by the Department of the Interior, there is no land left for Cook Inlet region that is below the timberline. If we are forced to make our selections in accordance with the Department of the Interior's withdrawals, we will have received only mountaintops and glaciers. I think this was not the intent of Congress. There ought to be an effort to resolve this issue.

I would say that Cook Inlet region has been forced to spend about 3½ years of its efforts trying to resolve these questions. As a consequence, the corporation has been precluded from undertaking the kinds of activities on behalf of its 6,000 shareholders that are truly important, if the act is to achieve its purpose. There are tremendously important things to do. There are great opportunities for Cook Inlet region and the State of Alaska working together under the Alaska Native Claims Settlement Act. I think we are very encouraged that there seems to be the possibility of a solution.

I think I would like to echo the statement of Mr. Meacham that we believe, within a week or 2 weeks, there will be a draft agreement, there will be a proposed legislative approach. The important step is working, I think, with the Department of Interior and we hope to have the cooperation of the committee and the Alaska delegation in that regard.

Time is against us. We have to make our selections by December 1975, and we feel very much the press of time and we ask for a week

or 10 days to conclude our arrangements and we will at that time be able to move with some speed.

I would say, in addition to the groups we have mentioned, we have been in close touch with the Sierra Club, the Wilderness Society and other groups interested in the environment and preservation of recreation areas. I believe I can state they are supportive of our approach and when we have concluded our arrangements, they will file statements. I am hopeful that will indicate this approach is satisfactory to them as well.

We are trying to develop an approach, and I do want to commend the State of Alaska and Guy Martin, the commissioner of natural resources, of thinking of what is in the best interest of all Alaskans.

How do we resolve congestion in areas that ought not to be congested? How do we clarify the situation in the Lake Clark area where the Natives have been forced to select, forced to congest, even though that is not their wish.

The State has been very creative, very helpful in working with us in trying to resolve these problems.

That concludes my statement.

[The prepared statement of Mr. Johnson follows:]

STATEMENT OF R. 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 vilage and region selections are supposed 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 further selections by the State. But that State had already selected most of the good land in the Cook Inlet Region, almost all of the flat, habitable land and land close to where our people lived. And in 1972, in settling a law suit with the State of Alaska, the Secretary gave to the State 30 more townships in 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 were located as ANCSA states, it has not been accomplished. In either case, I come before you asking your help.

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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 Tction 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 had 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.

Senator STEVENS. We are going to recess a week from today. If that bill is not in by a week from today, it will not be introduced for another 10 days, and I think we will miss an opportunity for a day of hearings.

I understand the committee indicated this morning that might be the case. I would urge us to get that language in by next Friday. We have to introduce that bill by next Friday.

Mr. PRICE. I hope there will be.

Senator STEVENS. If there isn't one, we will put one in so there will be a vehicle.

Senator HANSEN [presiding]. It may be, if Senator Stone is able to return, he may have further questions. I do not have, but in recessing the hearings right now, in order that Senator Stevens and I may go vote. We will resume as quickly as someone returns here, whoever first it may be.

[Recess.]

Senator STEVENS [presiding]. I am informed Senator Stone has been detained on official business and the other two members of the committee who have been present here today have been detained on the floor. To complete the record, I have been asked to ask the remaining witnesses if they would submit their statements and any comments they have at this time with the knowledge there will probably be another hearing on the matter at a later time.

It would seem advisable to complete the record on phase and particularly on the bills introduced to date.

That means, as I understand it, Mr. Borbridge, the President of the Sealaska Corporation, Mr. Willie Hensley and Jacob Wick—Is Mr. Treisman here? He is not here.

I leave it to the witnesses as to whether you would like to submit your statements at this time or reserve your time to present them at the next hearing.

Since this is the day for the hearing on the bills already introduced, you may complete the record on these bills and offer your comments on bills that may be introduced between now and the next hearing. I leave it to you—John—as to what you want to do.

Mr. ALLAN. If we submit these statements today, as written, would it be possible to testify at the next session?

Senator STEVENS. I am confident it will, depending on the subject matter of the next hearing, but I assume you will have comments on this next bill that will be prepared covering the statements by Roger Lang on the escrow account and other items in my statement on Sealaska, and I hope that will be the subject of the next day of hearings, but today the hearings are on the bills already introduced. Basically, there have been several suggestions made, but S. 131, S. 685 and S. 1469 and S. 1501 were the subject of today's hearings, technically.

Mr. BORBRIDGE. Senator, in view of your explanation, I would be pleased to submit my statement for the record.

Senator STEVENS. I appreciate that.

Mr. WEINBERG. I am Edward Weinberg, counsel for Koniak, Inc. I was going to give a statement, but I will submit it for the record.

Mr. HENSLEY. We have some documentation we would like to submit to the committee.

Senator STEVENS. I understand the record has been left open for 10 days, but in view of the circumstances, the other Senators will not be able to return today and we will have—I am sure we will have another day to pursue the total subject of the Alaska Native Claims Settlement Act before——

Mr. BAENAN. I have a prepared statement that relates to the investment company act exemption. I would also like to submit for your perusal, and not to be printed.

As you read my prepared testimony, I think it would be wise for somebody to have an opportunity to see what the SEC thought would be an intelligent presentation to the Natives so they could make a decision, so they can vote on the proxy material.

Also, we understand the Securities and Exchange Commission has to submit to this committee or to the House committee a submission of the SEC laws, or the village corporations formed under the act and we respectfully request five days from and after receipt of their comments to allow us to prepare and file comments. We ask this because we are the only regional corporation which has been subjected to their jurisdiction as it might relate to a merger.

We can assure you if they impose certain of their rules and regulations on us or other corporations as they did on us, there is a firm possibility that enactment of merger legislation would be deferred because we would be unable to ever get the matter to a vote.

Senator STEVENS. I don't believe I have the authority to commit the committee beyond 10 days. I believe we would be happy to have the matter submitted to the committee. In view of the fact the timing of that Commission is up to the SEC, there is no way the committee can act on those bills prior to that time.

I would suggest to you and other counsel, to Mr. Borbridge and Mr. Hensley, that you give these to me and my staff so we can include them in this omnibus bill we intend to introduce next Friday.

There are other attorneys in our office right now who are bringing things to our attention, since this hearing started. It appears obvious to me there must be an omnibus amendment to the act to take care of all of these matters, whether it includes my pet subject, but we hope to introduce an omnibus bill next Friday. I would welcome your suggestions.

Mr. BAENAN. We have submitted in our statements suggestions concerning the securities laws. If the SEC does not make its action in the 10 days, we have nothing to respond to and the committee won't have anything to——

Senator STEVENS. I think it is foolish to apply the SEC regulations to the regional corporations until the 20 years expires, but I hope you will submit those to me.

Mr. QUARLES. If for some reason the hearing record is closed and you still want to submit comments, rest assured the committee will take full cognizance of them whether or not they are printed in the record.

Mr. WEINBERG. Mr. Wick's testimony relates to a proposed amendment to your bill, S. 131, with a suggested draft.

Senator STEVENS. Very well. We will be happy to consider it. I made the suggestion this morning to delete subsection (c).

In any event, I will be happy to confer with you on it. Subject to the comments on the record being left open, I usurp the function of adjourning the hearing, subject to the call of the Chair.

[Whereupon, at 3:25 p.m., the hearing was adjourned, subject to the call of the Chair.]

[The statements were submitted for the record:]

Statement of John Borbridge, Jr.,
President, Sealaska Corporation
before the
Committee on Interior and Insular Affairs
of the
United States Senate
on
S.131
and other bills to amend the
Alaska Native Claim Settlement Act
May 16, 1975

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 the Chairman and the members of the Interior and Insular Affairs Committee for affording us the opportunity to comment on S.131 and the other bills before you today which would amend the Settlement Act in several particulars. We will propose additional amendments.

The Settlement Act is a very complex piece of legislation. It is a credit to the Chairman of this Committee and the other Senators and Congressmen who were its principal authors 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 did not result from its provisions but from administrative actions and constructions that sometimes have been patently incompatible with the plain language of the law, not to mention its spirit.

Section 1 of S.131 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. It is estimated that there are at least 2,000 Alaska Natives presently excluded from the benefits of the Act, who would be the beneficiaries of this provision. Many of these are minors who were not enrolled because their guardians failed to act. Many are people who 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 benefits retroactively. 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 2 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, together with interest, to the Government and the grantees in proportion to their respective interests in the lands as they eventuate.

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 2, 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 eventual 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 otherwise administered as Indian trust funds, in accordance with 25 U.S.C. 161a and 25 U.S.C. 162a, as the best interest of the Native beneficiaries should indicate.

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 Native's, 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 would have on the management of the Federal budget. This was recently held by the Court of Claims to have constituted a breach of trust.

In a provision of law intended for the benefit of Natives, there is no need, we respectfully submit, for the Congress to invite self-dealing by the Executive. This is precisely what the discretionary and trust-renouncing provisions of subsection (b) would do.

Section 3 would provide for the payment of proceeds from easements reserved pursuant to section 17(b)(3) to the grantees of the lands over or in which such easements are reserved. We support this provision and urge its enactment. However, its language is somewhat confusing. We suggest that the phrase "of such conveyance" be stricken and replaced by the words "of the lands over or in which the easements are reserved".

We take it that the intent of section 4 is to provide for the payment to the ultimate grantee of interim revenues realized from lands, other than withdrawn lands, that are conveyed to Native organizations or individuals pursuant to the Settlement Act. If this is the intent of the provision we endorse it and urge its enactment. However, the language of the provision is quite confusing and should be improved.

Section 5 is apparently intended to accommodate prior fund distributions and the new enrollments that would result from section 1. Section 5 speaks of an "amended final roll", a term which does not appear in section 1. Section 5 should be combined with section 1 and the terms and concepts of the two provisions harmonized.

Section 6 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 some operating experience.

We submit the period of the exemption is too short to serve its purpose. 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.

Section 7 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 relationship 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 person". 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.

S.685 would enable the merger or consolidation of regional and village corporations located in the same region. We endorse this bill in principle but would urge that it be amended to include Native group and community corporations organized under sections 14(h)(2) and (3) of the Settlement Act and to eliminate the provision that would give stockholders dissenting from a merger or consolidation 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 bill prepared by NANA Corporation and believe they meet with our concerns. We support enactment of the merger and consolidation provisions now proposed by NANA.

S.1469 and S.1501 would extend the life of the Joint Federal-State Land Use Planning Commission for Alaska. We are in favor of extending the life of the Commission.

Finally, we would propose three additional amendments of the Settlement Act.

The first would add a new sentence at the end of section 16(b) as follows:

> Such allocation as the Regional Corporation for the southeastern Alaska region shall receive under section 14(h)(8) shall be selected and conveyed from lands not selected by such Village Corporations that were withdrawn by subsection (a) of this section; provided, if such lands are not sufficient to satisfy the entitlement of such corporation under section 14(h)(8), it may select the deficiency from any other public lands.

This amendment would make clear that Sealaska Corporation is entitled to satisfy whatever rights are allocated to it pursuant to section 14(h)(8) of the Act from lands not selected by the Village Corporations that were withdrawn by section 16(a), notwithstanding that such lands are within the Tongass National Forest.

It is estimated that Sealaska will be allocated about 200,000 acres of land under section 14(h)(8).

Sealaska has no selection rights under the Act other than those provided by 14(h), the section that authorizes the grant of two million acres of land for miscellaneous purposes. And, regardless of the number of their stockholders, village corporations in the southeast region are limited to receiving 23,040 acres of land each. Thus, all of the Native corporations in southeastern Alaska are going to wind up owning not more than about 500,000 of the 27 million acres contained in the region.

There are only about 2 1/2 million acres of land in the southeastern region not presently included in the Tongass Forest and other

Federal reserves. Roughly half of these are now included in a withdrawal effected pursuant to section 17(d)(2) of the Settlement Act and slated to become part of the Wrangell-St. Elias National Park proposed by H.R. 6848, the Alaska National Public Lands Conservation bill. Incidently, this bill provides for the inclusion of over 28 million acres of land in Alaska in six new national forests and nine additions to the Chugach National Forest. The remainder of the approximately 2 1/2 million acres not included in existing reserves is essentially mountain tops.

If Sealaska's rights under section 14(h)(8) are to have any value they will have to be satisfied out of lands in the Tongass Forest or out of lands scheduled for inclusion in the Wrangell-St. Elias National Park. If it is precluded from obtaining lands in either of these categories, then Sealaska's rights under section 14(h)(8) will have been drained of all substance.

We would greatly prefer to satisfy our 14(h)(8) rights out of lands in the areas that were withdrawn by section 16(a) for the ten villages in the southeastern region. Basically we are desirous of selecting lands for timber values.

Not only do the areas that were withdrawn by section 16(a) contain intrinsically better timber lands than the area slated for inclusion in the Wrangell-St. Elias National Park, but lands conveyed to Sealaska in the former areas could be combined with lands conveyed to the village corporations to form better management and economic units.

Because, under section 7(i) of the Settlement Act, we are required to share with the other 11 Alaska Native regional corporations 70% of all revenues received from timber resources on lands conveyed to Sealaska, it is in the best interest of all Alaska Natives that Sealaska

be able to select and receive good timber lands. At a meeting held in Washington, D.C. on February 25, 1975, the board of directors of the Alaska Federation of Natives endorsed the proposition that 14(h)(8) rights should be satisfiable from lands in village withdrawal areas located in national forests.

We had thought, under section 2653.3(b) of 43 C.F.R., the regulation issued by the Department of the Interior to implement section 14(h)(8), that Sealaska not only would be permitted, but required, to satisfy its 14(h)(8) rights first from lands that were withdrawn by section 16 of the Act. Section 2653.3(b) provides:

> After December 18, 1975, selection of the lands allocated pursuant to [section 14(h)(8)], shall be made from any lands previously withdrawn under sections 11 and 16 of the act which are not otherwise appropriated. If the public lands withdrawn within the region pursuant to section 11 or 16 of the act, and not otherwise appropriated, are insufficient for the selection of the full entitlement of the regional corporations pursuant to [section 14(h)(8)], then three times the amount of the entitlement which cannot be satisfied from lands previously withdrawn pursuant to sections 11 and 16 of the act will be withdrawn pursuant to section 14(h) of the act.

In the context of the regulation we interpreted the words "not otherwise appropriated" to mean "not previously selected" pursuant to the Settlement Act by Native corporations. Some time ago, we received word informally from the Forest Service that it disputed our interpretation and would contest our right to satisfy our 14(h)(8) allocation from lands in our village withdrawal areas. To the Forest Service, the words "not otherwise appropriated" mean, among other things, not previously included in a national forest.

We asked the Department of the Interior how it interpreted and would undertake to implement the regulation but it declined for the time being to take a position or render an opinion.

Before the withdrawals effected by section 16(a) terminated pursuant to section 22(h)(2) of the Act, Interior did permit us to designate lands in the village areas for selection under 14(h)(8), if it should be determined that such rights could be satisfied from lands in such areas. It indicated it would determine this critical threshold question incident to adjudicating whatever selections we might eventually attempt to make under section 14(h)(8).

With the only other even marginally desirable land remaining in Southeast Alaska scheduled for inclusion in a new national park, you can understand why we feel this typically dynamic and forthright treatment of our problem by the Department of the Interior has left us between Scylla and Charybdis.

If our 14(h)(8) rights are not to be dashed on the rock or drowned in the whirlpool, they must be rescued by Congress.

We urgently solicit adoption of the amendment we have proposed.

The second amendment we would propose is designed to solve a local problem of great importance to the Natives enrolled to the Village of Klukwan.

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.

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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, during which the Village Corporation organized for 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.

The third amendment we would propose is in line with a recommendation made by Senator Stevens to this Committee last year. It relates to the corporations organized by the Natives of Sitka, Kenai, Juneau and Kodiak pursuant to section 14(h)(3) of the Act.

These corporations are entitled to select and receive 23,040 acres of land each but, unlike the village corporations, the Act made no provision to provide them with any funds. Their only assets are the lands that will be granted to them and they will have no source of revenues until such lands are conveyed and made productive of income.

In the meantime, they have incurred and will continue to incur expenses in connection with organizing and operating the corporations, making land selections, and planning land use. They are understandably reluctant to borrow on the security of their land expectancies and potential lenders are understandably reluctant to advance them funds on any other basis.

After they receive their lands, these corporations don't want to be in the position of having to make them productive at once by the first available means to satisfy creditors. They want to have an opportunity to plan and to carefully consider all development alternatives.

Accordingly, we recommend the Act be amended to provide for a grant to each of these corporations of $250,000 from the Alaska Native Fund to assist them in meeting their expenses until they have received their lands and had an adequate opportunity to make them productive.

Thank you.

STATEMENT OF WILLIE HENSLEY,
A MEMBER OF THE BOARD OF DIRECTORS OF NANA
REGIONAL CORPORATION, INC., BEFORE THE
SENATE COMMITTEE ON INTERIOR AND INSULAR
AFFAIRS REGARDING S. 685, A BILL TO AUTHORIZE
CERTAIN CORPORATIONS FORMED UNDER THE ALASKA
NATIVE CLAIMS SETTLEMENT ACT TO
MERGE OR CONSOLIDATE

INTRODUCTION

Mr. Chairman, Members of the Committee:

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 S. 685, a bill to authorize certain corporations formed under the Alaska Native Claims Settlement Act to merge or consolidate. The bill covers both mergers among the village corporations of a region, as well as their merger with the regional corporation of the region. Only corporations formed for the same region may merge under the bill.

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 the bill 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, in support of S. 685.

NEED FOR LEGISLATION AUTHORIZING MERGERS

Enactment of S. 685, 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 or 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 restriction 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 farthermost 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 KOTZ 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 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 the 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 S. 685

S. 685 would authorize such mergers or consolidations. Subsection 1(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 subsection 1(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 S.685, showing the exact wording of this proposed amendment, as well as a few other amendments which we wish to propose to the bill.

The second amendment to subsection 1(a) is to add a proviso to state that dissenters' appraisal rights will not be available in mergers under this bill. Subsection 1(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. We propose that the following language be added at the end of subsection 1(a):

> : 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 Act.

As currently written, the bill, in subsection 1(c), provides just the opposite of this, namely that dissenters' rights may be exercised. However we propose that subsection 1(c) be replaced by the proviso. NANA, as well as other regional corporations, believe 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 so as to insure the survival of the weaker of the corporations 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 1(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 1(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 1(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 1(b) of the bill 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,

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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 1(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 1(b) also makes the bill 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 striken, but on the off-chance 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 1(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.

As noted, we propose that subsection 1(c) of the bill, permitting the exercise of dissenters' appraisal rights, be deleted. Subsection 1(d) of the bill (which would be redesignated as 1(c)) 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 1(d) 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 1 (d) 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 shares 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 1(d) 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 1(d) 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, section 2 of S. 685 insures that no corporation will be able to merge under this bill unless that corporation's shareholders have approved the merger or consolidation.

APPENDIX 1

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.

President

Fred I. Angasan
Secretary

APPENDIX 2

Village Corporation Finances

EDITOR'S NOTE: On December 19, 1973 12 Native regional corporations received approximately $130,000,000.00, 45 per cent of which is to be paid to village corporations and non-village shareholders. Before receiving their money, however, village corporations are required to prepare and submit plans and budgets to their regional corporations for approval. Until such financial plans have been approved, regional corporations are authorized to withhold payment and to invest the money on behalf of village corporations. The following article is the first of a three-part series which discusses the subject of village finances. In it Lee Gorsuch, a consultant to the Alaska Native Foundation, presents some basic considerations for village corporations as they begin to prepare their plans and budgets.

By LEE GORSUCH

While some village corporations are anxiously awaiting receipt of their money, many and perhaps most are uncertain of their financial responsibilities and what they are to do next. Because each village corporation has a serious legal obligation to represent the best interest of its shareholders, it must approach its responsibility of preparing financial plans and budgets with considerable caution and an understanding that the decisions will have a direct impact on each individual shareholder.

To oversimplify a very complicated issue, the basic question facing each village corporation is whether it should spend or invest money it receives from regional corporations and how. Village corporations can spend money in one of two ways. One is to make payments, referred to as dividends, directly to its shareholders and the other is to use money in a non-economic manner, i.e., the money used does not contribute to an increase in the value of the corporation's assets; such as might be the case in hiring idle staff or buying unused equipment.

By investment one generally means putting money to a use which will return even more money, i.e., earning a profit. Hiring village corporation staff, for example, could be viewed either as a non-productive expense or as an investment. If the staff hired brings in more money or otherwise increases the corporation's assets, by selecting better lands as an example, the money used for salaries, travel, and other administrative support was invested. If not, it was spent.

WHAT IS THE VILLAGE CORPORATION?

Fundamental to financial planning is an understanding of the structure of the village corporation. Basically it is a legal person or entity owned by its shareholders and subject to Alaska laws which govern such corporations. Shareholders of the village corporation were identified by the BIA during enrollment process. Once enrolled a fundamental relationship between each individual Native and his corporation is established, namely that of a shareholder.

Normally individuals acquire stock by buying it. Its value is determined by the price paid for it. In the case of Native corporations, the value of a shareholder's stock is more difficult to determine since it was not purchased for cash nor can it be sold until 1991. Clearly, however, each individual Alaska Native has paid a precious price for his stock, since under the Alaska Native Claims Settlement Act he has relinquished his aboriginal land rights. Most individuals will benefit from the Settlement Act only as shareholders of their corporations. If their corporations make good use of their land and money they will benefit and the price they paid for their stock may seem worthwhile. If, on the other hand, the corporations make poor use of their land and money the shareholders will not benefit and may rightly feel cheated.

After December 18, 1991, village and regional stock can be sold. If shareholders decide to sell their stock, the price a willing buyer will pay will determine its value. His decisions will be directly influenced by the plans and budgets village corporations are now about to prepare.

ASSETS, LIABILITIES, AND SHAREHOLDER'S EQUITY

Every corporation has assets and liabilities and in all instances, assets equal liabilities. Assets are the valuable things owned by a business and are generally acquired at a measurable cost. In the case of village corporations, the land selected and money received will be among its most valuable assets, though their cost is impossible to measure.

Liabilities are claims against the assets, i.e., the persons or institutions to whom the corporation owes some financial obligation. In addition to obvious obligations such as bank loans, the village corporation also has a financial obligation to its owners, the shareholders. As mentioned above the shareholders have paid a price for the village corporation's stock and have a claim against its assets. This liability to shareholders is commonly referred to as shareholder's equity or capital. Consequently, a corporation's assets are equal to its liabilities plus its shareholder's equity.

Initially village corporations will have as their primary assets the land and money received from regional corporations. Since the expenses incurred during their formation are limited they have few liabilities. Consequently, the difference between the value of the village corporation's land and money from its liabilities is equal to the capital of the corporation or its shareholder's equity. If we could set a cash value on the village corporation's land and money and subtract from that its liabilities we would have the shareholder's equity or the

number of dollars shareholders have invested in the corporation. This equity should increase over time not decrease.

All business corporations have a legal obligation to protect its shareholder's equity and have the goal of trying to increase it. Since assets always equal liabilities plus stock equity, it follows that if the assets of the corporation remain the same but its liabilities increase, the shareholder's equity decreases. Conversely if the value of the corporation's assets remain the same but its liabilities decrease, its shareholder's equity increases. If an increase in the corporation's liabilities bring about an even greater increase in the value of its assets, stockholders' equity increases also.

Increasing the value of assets over liabilities is what makes profits and it's the purpose of financial planning to determine how the corporation's assets and liabilities can be used to generate profits. Since profits are used to pay dividends to shareholders or to increase their equity it is through profits that shareholders will benefit from their corporations.

MANAGING ASSETS AND LIABILITIES

All village corporations regardless of size have similar responsibilities under the Act: to incorporate, to organize, to make land selections, to prepare plans and budgets, etc. Each job requires some expense which increases the corporation's liabilities. Because each village corporation has similar responsibilities, their expense will also tend to be similar. Since small village corporations receive less money than larger corporations, even though their expenses tend to be similar, they face severe financial planning problems.

The following table tabulates village corporations by size of enrollment and certification status. It shows that 62 per cent of all village corporations fall within the category of a small village corporation. Such corporations have, on the average, an enrollment of slightly less than 100 shareholders and never more than 199. The medium-sized village corporation range in number of shareholders from 200-599 and represents approximately one-third of all the village corporations. Only 10 village corporations have enrollments over 600.

To illustrate the hardship small village corporation's face can perhaps be best illustrated by preparing a modest budget:

Personnel		
Director	$18,000	
Sec/Bookkeeper	8,000	
		$26,000
Fringe Benefits @ 15%		4,000
Contract		
Legal Counsel	$ 7,000	
Accounting/Audit	3,000	
Financial Advice	5,000	
		$15,000
Travel and Related		$ 5,000
Office Expenses		
50 per cent of personnel		$15,000
Miscellaneous Supplies, Materials, Fees		$ 5,000
TOTAL		$70,000

Even this modest budget comes to a total cost of $70,000.00. If these expenses do not increase the value of the corporations' assets by enabling them to select better land or to get a better return on their investments, it will have a disastrous impact on the corporations, particularly the small ones.

Such an impact is displayed in the following table. In it the village corporation receipts are based on actual projections of payments from the Alaska Native Fund to a village corporation with 100 shareholders. Reading from the second column, the village corporation's first receipts, due this fiscal year, 1974, are approximately $81,693. Receipts are projected for each fiscal year until the village corporation's share of the Alaska Native Fund has been fully paid out. The table contains two basic models, the first being an investment model, wherein the capital of the corporation is never spent (or the shareholder's equity is never decreased), and the second is a spending model in which the shareholder's equity is drastically decreased.

The Number and Size of Village Corporations As Shown by Enrollment

	Village Corporation Enrollments	No. Village Certified Corporation	No. Village Corporation Certification Pending	Total No. Village Corporation	Percent of Total
	0- 24	-0-	9	9	4.0
Small	25- 99	39	23	62	27.7
	100-199	62	6	68	30.4
	Subtotal	101	38	139	62.1
Medium	200-399	55	4	59	26.3
	400-599	16	-0-	16	7.1
	Sub-Total	71	4	75	33.4
Large	600 or more	10	-0-	10	4.5
	Total(s)	182	42	224	100.0

Village Finances . . .

Fiscal Year	MODEL A Village Corp. Receipts (100 shareholders)	MODEL A Accumulated Native Fund Receipts	MODEL A Interest on Accumulated Receipts @ 8%	MODEL A Annual Expenses	MODEL B Accumulated Native Fund Receipts	MODEL B Interest on Accumulated Receipts @ 8%
1972	-0-	-0-	-0-	-0-	-0-	-0-
1973	-0-	-0-	-0-	-0-	-0-	-0-
1974	81,693	81,693	6,535	70,000	11,693	935
1975	41,840	124,533	9,963	70,000	[11,693]	-0-
1976	42,594	167,127	13,370	70,000	[42,873]	-0-
1977	27,487	194,614	15,569	70,000	[85,386]	-0-
1978	38,346	232,960	18,637	70,000	[136,749]	-0-
1979	73,733	306,693	24,535	70,000	[133,016]	-0-
1980	86,318	393,011	31,440	70,000	[116,698]	-0-
1981	95,568	488,579	39,086	70,000	[91,130]	-0-
1982	104,872	593,451	47,476	70,000	[56,258]	-0-
1983	26,621	620,072	49,606	70,000	[99,637]	-0-
Total(s)	620,072	620,072	256,217	700,000	[99,637]	935

Under Model A expenses incurred (and not shown) are offset by at least an equal increase in the value of the village corporation's assets. The only money which can be spent is the interest monies earned on the accumulated receipts. Each year as additional monies are received, they are added to the prior receipts and are thus cumulated. Each year the cumulated receipts earn money at a projected interest rate of eight per cent. Under this model, the total village corporation receipts would, by fiscal year 1983, be $620,072, all of which will have been protected and invested. By fiscal year 1983, the cumulated receipts could earn about $50,000 interest each year thereafter.

Model B presents a totally different situation. It shows the dramatic impact a $70,000-a-year budget has on a small village corporation if the expenses do not contribute to an offsetting increase in the value of the village corporation's assets. Within two years from this July, the village corporation would already be in debt by $15,467.00 and would never earn, but rather would have to pay, interest on its outstanding debt. By fiscal year 1983 the village corporation would have incurred a total debt of $99,000 and have seriously jeopardized the shareholder's equity. This plan would obviously require the village corporation to move toward the development or sale of its land resources in order to recover from its debt.

The numbers in the above table apply only to a village corporation with 100 shareholders. However, the practical effects are comparable to the average medium-sized village corporations as well. It is only the large village corporation, with enrollments in excess of 600, which can afford the luxury of even a modest village corporation spending plan as shown above.

LESSONS FOR FINANCIAL PLANNING

Three important considerations can be taken from the above illustration. The first is that no village corporation will be in a position to incur expenses which are not considered investments unless it plans to use its profits from the development or sale of its land. Hence it must be determined that village corporation staff expenses will in fact contribute to better land selections or management and thereby increase each shareholder's equity.

The second consideration is that the shareholder's equity may be increased by making the best use of all expenses, productive or non-productive. Small and medium-sized village corporations in particular may want to give serious consideration to alternative approaches for minimizing their expenses. Several village corporations have entered into management agreements with regional corporations. Others have similar agreements with neighboring villages, and some are discussing the possibility of merging several village corporations into one.

Finally, village financial plans and budgets should include precise statements of what activities are planned, what specifically is to be accomplished, and how these accomplishments will improve the shareholder's equity.

Preparing financial plans and budgets is likely to be a very sobering experience. It would be easy to prepare a budget which simply authorizes staff and consultants to be hired and office equipment purchased without regard for the impact such expenses will have on the corporation's shareholders. Responsible directors will insist, at a minimum, that all financial plans and budgets conform to the basic considerations above.

APPENDIX 3

S. 685

A BILL

To authorize certain corporations under the Alaska Native Claims Settlement Act to merge or consolidate, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) notwithstanding any provision of the Alaska Native Claims Settlement Act (85 Stat. 688), 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 corporation or 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 Act.

(b) Any corporations resulting from said 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 said

region pursuant to section 7(d), ~~or~~ 8(a), 14(h)(2) or 14(h)(3) of the Alaska Native Claims 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 Alaska Native Claims 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, as are applicable to the corporations and shareholders which participated in said mergers or consolidations or as would have been applicable if the mergers or consolidations and transfers of rights and titles thereto had not taken place.

~~(e) Notwithstanding the provisions of section 7(h)(1) or 8(e) of the Alaska Native Claims Settlement Act, the stockholders of any corporation participating in any such mergers or consolidations may exercise the rights accorded under~~

~~Alaska law to dissenting shareholders in a merger or consolidation.~~

~~(d)~~ (c) Notwithstanding the provisions of section 7(j) or (m) of the Alaska Native Claims 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 said class to receive dividends pursuant to said 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.

SEC. 2. Notwithstanding any other provision of this Act or of any other law, no such corporation referred to in the first section of this Act may so merge or consolidate unless that corporation's shareholders have approved such merger or consolidation of that corporation with any other such corporation or corporations.

STATEMENT OF JACOB WICK, PRESIDENT, KONIAG, INC. BEFORE THE SENATE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS
May 16, 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 S.131 to correct a situation involving inconsistent holdings by the Department of the Interior as to residence on April 1, 1970. The problem has arisin 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 Kokiak 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.

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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. H o w e v e r, 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.

STATEMENT OF RICHARD A. BAENEN,
COUNSEL TO NANA REGIONAL CORPORATION, INC.,
BEFORE THE SENATE COMMITTEE ON INTERIOR AND
INSULAR AFFAIRS REGARDING S. 131, A BILL TO
ENROLL CERTAIN ALASKA NATIVES FOR BENEFITS
UNDER THE ALASKA NATIVE CLAIMS SETTLEMENT ACT,
AND FOR OTHER PURPOSES.

INTRODUCTION

Mr. Chairman, Members of the Committee:

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 Committee 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 6 of S. 131 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 S. 685. 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 of stock 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 S. 685, which authorizes 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 scatterd 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 r u g 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

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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, and we respectfully ask that we be given additional time to submit to the Committee a more definite statement of what we view as the best possible solution to this difficult problem. We understand that the SEC intends to present to the Committee a report of its views on the matters relating to its jurisdiction,

and we ask that we be given five additional days following receipt of the SEC's report to respond thereto and to present NANA's proposed solution to the matters I have here raised. 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.

STATEMENT TO THE SENATE COMMITTEE
ON INTERIOR AND INSULAR AFFAIRS

BY 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. In particular I wish to address my remarks to proposed legislation which would create a 13th regional corporation for non-resident Alaskan Natives. 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 establishing a 13th Regional Corporation. The Aleut 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. Numerous non-resident natives received no notification of any process for changing or amending their original enrollment application. In fact, Interior never published a regulation indicating that amendments 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.

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 sometime in the future, if a 13th corporation is created by Congress.

The argument that a new 13th region should not be forced to compete with the existing 12, as might be the case if an option in or out 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. An immediate option in or out will ensure the departure of any dissidents while simultaneously guaranteeing accumulation of new, enthusiastic 13th shareholders - those who opt in. Any proposed legislation to create a 13th region should permit such an option.

Indeed Judge Gasch's decision judicially creating a 13th region directly noted the need to allow a new choice for natives as to whether they wished to belong to the 13th. Legislation must also give natives an immediate and final choice on this issue in view of the admitted mistakes and confusion in the election process.

Finally, we urge that language be included providing that enrollment of non-residents into the 13th region will not affect (1) 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.

APPENDIX

Additional Material Supplied for the Record

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

OFFICE OF THE
GENERAL COUNSEL

MAY 15 1975

Honorable Henry Jackson, Chairman
Senate Committee on Interior and
Insular Affairs
Room 3106
Dirksen Senate Office Building
Washington, D.C. 20510

Dear Mr. Chairman:

It has come to our attention that your committee is presently considering a bill, S. 131, to amend the Alaska Native Claims Settlement Act of 1971 ("Settlement Act"). The Commission was recently asked to comment on similar legislation being considered by the House of Representatives because of the effect it would have on the securities laws, the Investment Company Act of 1940 in particular, and on those Settlement Act corporations which are investment companies.

I enclose herewith for the information of your committee a copy of a letter dated May 13, 1975 which Chairman Garrett furnished to Chairman Meeds of the Subcommittee on Indian Affairs of the House Committee on Interior and Insular Affairs. The views expressed in Chairman Garrett's letter are those of the Commission and do not necessarily reflect the views of the Administration. However, our views have been submitted to the Office of Management and Budget, and we will inform you of any advice we receive from OMB concerning the relationship of our views to the program of the Administration.

Please do not hesitate to inform us if we can be of further assistance.

Sincerely,

Walter P. North

Walter P. North
Senior Assistant
General Counsel

Enclosure

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

OFFICE OF
THE CHAIRMAN

MAY 13 1975

Honorable Lloyd Meeds, Chairman
Subcommittee on Indian Affairs
House Committee on Interior
and Insular Affairs
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

It has come to our attention that your Committee is now considering H.R. 6644, 1/ a bill to amend the Alaska Native Claims Settlement Act of 1971.2/ The staff of the Commission has recently conferred with representatives of the Department of the Interior and the Office of Management and Budget, and, as a result of that conference, we wish to offer comments with respect to two sections of the proposed bill, Sections 103 and 107, which involve the securities laws, the Investment Company Act of 1940 ("1940 Act") in particular.

Section 103 would add a new provision to the Settlement Act giving the corporations organized pursuant thereto ("ANCSA Corporations") a temporary exemption from the 1940 Act until December 31, 1976. In introducing this bill to the House, Congressman Young indicated that without such an exemption, certain ANCSA Corporations investing some of their funds "in commercial bank time deposits or certificates of deposit" might "risk being classified as investment companies." He further indicated that such an exemption would "provide necessary breathing room to the SEC and the Native corporations to permit resolution of long-range problems."3/

As I indicated in my letter to you of February 1, 1975, commenting upon an identical provision in H.R. 12355,4/ I

1/ 94th Cong., 1st Sess. (1975), 121 Cong. Rec. H-3596 (daily ed., May 1, 1975).

2/ 85 Stat. 688.

3/ Supra n. 1, at 3596, 3597.

4/ 93rd Cong., 2nd Sess. (1974); 120 Cong. Rec. H-299 (daily ed., January 29, 1974).

believe it would be unwise to exempt the ANCSA Corporations from all provisions of the 1940 Act. The Commission's position was then, and continues to be, that certain provisions of the Act should be applied to ANCSA Corporations falling within the 1940 Act's definition of investment company in order to protect the substantial pools of liquid capital which these companies hold in trust for the benefit of numerous unsophisticated Alaska native shareholders.

ANCSA Corporations are not restricted by the Settlement Act, the securities laws, or Alaska law to investing in bank time deposits or certificates of deposit; and, in fact, it is our understanding that certain of them are investing in other types of securities. In any event, the application of the 1940 Act to a corporation investing in certificates of deposit and other securities of a relatively non-speculative character is more than a technical complication. Numerous so-called money market funds registered under the 1940 Act voluntarily restrict their investments to certificates of deposit, government securities, and like investments; and certain of the protections afforded shareholders of such funds by the 1940 Act would be appropriate for an ANCSA Corporation with similar voluntary investment restrictions.

As you are probably aware, in accordance with my earlier letter to you, the Commission acted promptly last year to exempt the ANCSA Corporations from all but the most essential provisions of the 1940 Act by adopting temporary Rule 6c-2(T).5/ The Commission has received a number of comments on the proposed rule, and, having analyzed these, the Commission's staff has recently submitted a revised version of the proposed rule to the Commission. The Commission intends promptly to consider the staff recommendations and either to adopt a permanent exemptive rule or ask for further public comments on a revised proposal. As presently proposed by the staff, Rule 6c-2 would add the proxy, reporting and record-keeping requirements of the Act to the group of provisions from which ANCSA

5/ Rule 6c-2(T) exempts ANCSA Corporations registering pursuant to Section 8(a) of the Act from all provisions of the 1940 Act except Sections 9, 17, 36, and 37 (Investment Company Act Release No. 8251, February 26, 1974, attached).

Corporations registering under the rule would not be exempt. It should be emphasized that both the temporary rule and the proposed permanent rule affect only those ANCSA Corporations which choose to register with the Commission pursuant to Section 8(a) of the 1940 Act.

We should also point out that, if the Congress exempts the ANCSA Corporations from the 1940 Act, a number of the companies would continue to be subject to the Securities Exchange Act of 1934 ("Exchange Act") as companies having 500 or more shareholders and more than $1,000,000 in assets. Such companies would have to comply with the registration, reporting, and proxy solicitation provisions of the Exchange Act. We believe that these provisions provide significant protections to the shareholders of the ANCSA Corporations and that such shareholders should not be given any less protection under the Exchange Act than Congress has given to shareholders of other, more conventional corporations. However, we believe it would be most unfortunate if the ANCSA Corporations were exempted during the time they are investment companies from a statute specifically designed to regulate investment companies and be subject only to the requirements of a statute which is designed basically to inform the Commission and the investing public as to securities of publicly traded companies.

Section 107 of the bill would authorize the ANCSA Corporations to merge or consolidate under Alaska law. First, assuming that Section 103 is not adopted, we do not think this provision standing alone would exempt merger transactions from the Commission's jurisdiction under Section 17 of the 1940 Act, which relates to the transactions between affiliates.

Second, if the bill were changed to exempt such mergers from the 1940 Act, we do not feel that such a change would serve the interests of ANCSA shareholders. Any mergers of ANCSA Corporations which constitute transactions of affiliated persons or companies within the meaning of Section 17 should remain subject, in our view, to the standards of fairness imposed by that section. Commission review of these mergers is especially important because of the difficulty of ascertaining the value of ANCSA Corporation assets for purposes of an exchange of shares or an acquisition of assets.

We have gained some familiarity recently with at least one proposed merger involving ANCSA Corporations, that proposed by the NANA Regional Corporation and a number of its village corporations. As we understand it, that merger would involve the exchange of rights now vested in natives belonging to the various corporations. Such vested rights, although difficult to value at this time, would presumptively differ from one corporation to another; yet, subsequent to the exchange, the affected natives would all have equal rights. We are troubled that such a shift in vested rights among investors who now have the protections of the 1940 Act might, if the proposed bill were adopted, take place without any consideration of its fairness. Our view in this regard is buttressed by our understanding that there is no provision of Alaska Corporation law which provides protections comparable to those afforded by Section 17.

Thank you for the opportunity of commenting on H.R. 6644. We trust that our comments will be of assistance to you and we stand ready to provide you with whatever further assistance you may desire.

Sincerely,

Ray Garrett, Jr.
Chairman

Enclosure

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

Honorable Henry M. Jackson
Chairman, Committee on Interior
and Insular Affairs
United States Senate
3106 Dirksen Office Building
Washington, D. C. 20510

Re: S.685

Dear Mr. Chairman:

Your Committee now has before it S.685 a bill to authorize certain corporations under the Alaska Native Claims Settlement Act to merge or consolidate and to permit the exercise of dissenters' rights by shareholders of such corporations. Before final action is taken by the Committee on Interior and Insular Affairs, the Securities and Exchange Commission would like to make the following information available to you since it may affect your final decision as to the form this legislation should take.

Enclosed with this letter is a copy of a recent registration statement filed with this Commission by the NANA Regional Corporation. The filing relates to shares of NANA Regional Corporation which may be issued to the shareholders of the village corporations in the NANA region in the event such shareholders approve a proposed plan of merger of the type contemplated by the pending legislation.

In addition, you may also be interested in the enclosed copy of the letter of comment dated March 18, 1975 sent by the staff of this Commission's Division of Corporation Finance to the counsel for NANA Regional Corporation. The letter discusses, among other things, additional disclosures which the staff feels should be considered by NANA in connection with meeting its obligation to adequately inform the individual shareholders of the effect of the proposed merger upon his present rights under the Alaska Native Claims Settlement Act in such areas as surface rights to lands and the distribution of funds to village corporations as well as the uncertainties which surround the establishment of a fair valuation in connection with the exercise of dissenters' rights.

The Company presently proposes that after suitable revisions this material will be mailed to shareholders on or before April 1, 1975 for meetings to be held April 21, 1975 and thereafter.

We hope that this material may be of assistance to you and should you desire, I would be pleased to meet with the appropriate staff member. Should you have any questions, please call me at 755-4370.

Sincerely,

Neal S. McCoy

Neal S. McCoy
Associate Director

Enclosures

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

DIVISION OF
INVESTMENT MANAGEMENT
REGULATION

Steven P. Quarles, Esq.
Special Counsel
Senate Committee on Interior and Insular Affairs
Room 3106
Dirksen Senate Office Building
Washington, D.C., 20510

Dear Mr. Quarles:

Please find enclosed herewith a copy of a letter recently sent by Chairman Garrett to the Honorable Lloyd Meeds, Chairman of the House Subcommitte on Indian Affairs, in connection with H.R. 6644. I am furnishing you with a copy of this letter because of your interest in comparable legislation on the Senate side, S. 1824. If you have any questions with respect to this matter, please do not hesitate to contact me. I can be reached at 755-7533.

Sincerely,

Peter Kiernan

Peter Kiernan
Assistant Director

Enc.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

OFFICE OF
THE CHAIRMAN

JUL 28 1975

Honorable Lloyd Meeds, Chairman
Subcommittee on Indian Affairs
House Committee on Interior and Insular Affairs
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This responds to your letter of June 3, 1975 concerning comments made to you by Mr. Richard Baenen, Counsel to the NANA Regional Corporation, Inc., as to the Commission's handling of certain Alaska Native Claims Settlement Act corporations ("ANCSA Corporations") and H.R. 6644.

Many of the points raised in Mr. Baenen's letter to you of May 29 and in his testimony before your Subcommittee during the recent hearings on H.R. 6644 were treated in the Commission's earlier letter of comment to you with respect to that legislation, which you have been kind enough to make a part of the record. I asked the staff, therefore, to prepare the enclosed report responding to Mr. Baenen's principal complaints with the Commission's actions but omitting so far as was possible unnecessary repetition of our earlier comments on that bill. The report seems to fairly set forth our side of this matter, and I hope that it adequately responds to your request for comments.

I would like, however, to address myself to an important point made in your letter to me and to the steps the Commission is considering with respect to our future regulation of the ANCSA Corporations. You state that you "feel that the SEC has utterly failed to perceive the difference between the nature and purpose of the Native corporations and the nature and purpose of the purely commercial enterprises which the SEC was established to regulate."

As a general proposition, the securities laws provide appropriate relief from their provisions for certain non-commercial corporations. To cite one example, Section 3(c)(10) of the Investment Company Act of 1940 (the "Act") excludes from the definition of "investment company" ... "(a)ny company organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, or reformatory purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual" (emphasis added).

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It does not appear, however, that the ANCSA Corporations can meet this test of existing exclusively for non-profit purposes. The legislative history of the Alaska Native Claims Settlement Act of 1970 ("Settlement Act") indicates that they were established for the express purpose of generating earnings and other benefits which would inure to their shareholders, and they are structured to operate much like normal commercial corporations. A similar analysis of the other relevant securities laws leads to a like conclusion with respect to their coverage of ANCSA Corporations. Thus, to the extent that certain ANCSA Corporations meet the definition of investment company contained in the Act and are subject to the provisions of other securities laws, they would seem to require - and to deserve - the same basic protections afforded shareholders of other companies subject to our jurisdiction.

It seems worth noting that this result may have been anticipated by the Congress at the time the Settlement Act was being drafted. The extent to which the Commission would be given jurisdiction over such companies was in fact considered at that time, and it was apparently determined not to suggest legislatively the parameters of such jurisdiction, leaving it to the Commission itself to grant any necessary exemptive relief. 1/

We are, of course, mindful of the legislative origin and purpose of these corporations, but in many ways their problems under the securities laws are quite similar to those of a substantial number of other companies which were established in accordance with federal legislation to support obviously worthwhile causes and which have been and continue to be regulated under the Act by the Commission. I think in this regard of the many small business investment companies registered under the Act, including minority enterprise small business investment companies.

The Commission's position in this matter is a difficult one. We are on the one hand statutorily charged with protecting the substantial assets of large numbers of ANCSA shareholders whose lack of financial sophistication makes them a tempting target for the types of fraud and overreaching which our securities laws were designed to prevent. We are, on the other hand, acutely aware that these shareholders are members of a native society whose values and concerns have little relationship to the financial world with which our regulations were designed to deal and that, if we attempt to force

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1/ See Alaska Native Claims Settlement Act of 1970, S. 1830 (Rep. No. 91-925), 91st Cong., 2d. Sess., June 11, 1970. See also, S. Rep. No. 91-925, 91st Cong. 2d. Sess., June 11, 1970; cf. 85 Stat. 688 (1971).

those regulations upon that society rather than tailor them to it, we may not achieve the protections we seek but may rather create substantial unnecessary bureaucratic burdens.

To the extent that the ANCSA Corporations have special needs requiring special relief from the securities laws, we attempted in Rule 6c-2(T) under the Act to provide such relief where we concluded that to do so was in accord with the public interest and other standards which circumscribe our authority. Should Congress ultimately determine that they wish to assume this function by legislatively exempting ANCSA Corporations from the securities laws, as advocated by Mr. Baenen, that is, of course, their prerogative.

More immediately, we are continuing our efforts to find a means to provide for all the possible relief from the securities laws which will be helpful to the ANCSA Corporations and in the interest of their shareholders, and I have informed the staff of the Commission's Division of Investment Management Regulation that I consider this to be a matter of the highest priority. As you will note in the attached staff report, the staff of the Division hopes to shortly present to the Commission for its consideration a revised version of Rule 6c-2, the previously proposed permanent version of Rule 6c-2(T) under the Act.

In its present draft stage, the proposed revision would substantially expand the relief available to the ANCSA Corporations from the affiliated transaction restrictions of Section 17 of the Act, which Mr. Baenen cites as one of the major problems with regulation under the securities laws, but would call for something more in the way of financial reporting and compliance with the proxy rules than is currently required by Rule 6c-2(T). Even when and if such a revised rule is adopted, however, the Commission's search for a better form of protection for the ANCSA shareholders will not be ended. We intend to monitor insofar as is possible the effects of our regulation on these companies, primarily by asking that their representatives keep us informed of their problems with our regulatory program; and we are considering the possibility of sending representatives to Alaska for first-hand talks with ANCSA officers and directors.

In a legislative context, as you well know, the Commission has in the past opposed what we have regarded as precipitous proposals for totally exempting ANCSA Corporations from the securities laws without some kind of investigation into the ultimate effects of such exemption. I am sure that the Commission would be interested in assisting your Subcommittee, however, if it chose to hold hearings focusing in real depth on the needs of ANCSA shareholders for the protections of the securities laws as compared with the burdens imposed by such laws.

Thank you for the opportunity of responding to Mr. Baenen's letter and for your own opinion as to this matter. Please let me know if we can be of any further assistance.

Sincerely,

Ray Garrett, Jr.

Ray Garrett, Jr.
Chairman

REPORT OF THE DIVISION OF INVESTMENT MANAGEMENT REGULATION IN RESPONSE TO A LETTER OF JUNE 3, 1975, FROM MR. RICHARD BAENEN, COUNSEL TO NANA REGIONAL CORPORATION TO THE HONORABLE LLOYD MEEDS.

Mr. Baenen has raised a number of issues as to the appropriateness of the Commission's actions with respect to certain of the corporations established pursuant to the Alaska Native Claims Settlement Act ("ANCSA Corporations" and "Settlement Act," respectively). His major contentions - wit the exception of those relating to H.R.6644 on which the Commission has alreac commented - and the staff responses thereto, 1/ are as follows:

(1) Contention: The Commission consistently ignored the special circumstances surrounding the ANCSA Corporations and their stockholders in its dealings with the NANA Regional Corporation, Inc. ("NANA"), a registered investment company, and the resulting "protection" caused a waste of substantial amounts of NANA's money received under the Settlement Act.

Staff Response: The Division's April 4, 1975 letter, confirming a March 27, 1975 telephone conversation, stated that the shareholder meeting to vote on the proposed merger could be held if Congress passed legislation providing the proposed merger a specific exemption from the Investment Company Act of 1940 ("Act"). Even now, if such legislation is passed, NANA will be able to use some of the allegedly wasted monies to continue the procedures necessary to effectuate the merger. 2/

In any event, a recitation of the history of this no-action letter may clarify the fact that the staff has acted out of concern for the welfare of the affected ANCSA shareholders rather than out of ignorance of their special circumstances. On February 26, 1975, the Division advised NANA's counsel of its no-action position on the applicability of Section 17 of the Act to the proposed merger of NANA and eleven village corporations. 3/ On March 10, 1975, this Division wrote a second letter, not withdrawing the prior letter as

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1/ The Division of Corporation Finance has been consulted in the preparation of this report.

2/ While Mr. Baenen stated on page 3 of his May 29, 1975 letter that "(t)he intended 'protection' of Section 17 therefore resulted in wasting close to $200,000 of NANA's money...", at no point does he explain the source of this figure. On page 254 of Mr. Baenen's testimony, he does list expenses totaling $63,000; there is no accounting for the remainder of the alleged "waste".

3/ A no-action letter is merely a staff statement, without force of law, that it would not recommend that the Commission take any enforcement action if the parties proceed in a certain manner. This is a highly discretionary process, and there is no requirement that the staff take no-action positions in any circumstances. The validity of a particular no-action position always depends on the facts being exactly as presented without any significant deviations or omissions.

Mr. Baenen incorrectly suggested on page 253 of his testimony; this second letter was merely a supplement intended to make it clear that the first letter should not be interpreted as passing on the fairness of the proposed merger, as it was only an expression of the staff's decision to defer to Congress on the question of such fairness.

The Division's third letter of March 27, 1975, advising counsel that the no-action position was withdrawn, was sent after counsel had informed staff members that they had discovered what appeared to be two separate violations of Section 17's self-dealing prohibitions. The staff had also had an opportunity by that time to consider the effect of certain applicable provisions of Alaska state law which would have fixed the rights of shareholders dissenting from the merger at the time of the meeting in April, 1975, even though the merger would not occur until some months later after Congress had passed the necessary legislation. It appeared that in the months between the shareholders meeting approving the merger and the merger itself additional information would become available which would assist the shareholders in deciding whether to approve the merger and/or perfect their dissenters' rights. Finally, the registration documents filed by NANA provided the staff with important new information which tended to show that the terms of the merger were somewhat arbitrary because of the lack of any accurate valuations of the assets being merged.

Based on all of these factors together the Division decided to withdraw its earlier no-action position. This merely reflected the staff's determination that, in view of the important developments noted, we would not undertake to refrain from proposing that the Commission take enforcement action with respect to such meeting and merger. We believed, and continue to believe, that it would have been contrary to the statutory function of the Commission for the staff to have maintained its no-action position with respect to these matters in view of these developments.

(2) Contention: The Commission more generally ignores the special circumstances surrounding ANCSA 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.

Staff Response: The Commission's formal letter of comment on H.R. 6644 cited in Mr. Meeds' letter was directed primarily to Section 103 of that bill, which would temporarily exempt ANCSA Corporations from all provisions of the Act, and would appear to be responsive to Mr. Baenen's comment with respect to the application of the Act to such corporations.

With respect to other relevant securities laws, the staff believes that the protections and benefits contemplated by the Securities Exchange Act of 1934 ("Exchange Act") should continue to be made available to holders of stock in the ANCSA Corporations which meet the criteria established by such Act.

The applicable provisions of the Exchange Act were designed primarily to provide investors with certain material information upon which an informed investment decision could be made in the acquisition or disposition of a security, execution of a proxy, or otherwise. For example, such laws require disclosure of the principal provisions of material transactions which disclosures may assist shareholders in pursuing any rights which they may have under the applicable state laws and require that certain material information be provided to the shareholders who would be entitled to vote upon proposals made by management for shareholder action. Accordingly, the staff does not believe that the absence of a trading market eliminates the necessity to inform shareholders of material financial and business information regarding their corporation. Nevertheless, the staff is now giving active consideration, in the context of its reviews of proposed Rule 6c-2 under the Act, to whether ANCSA Corporations should be required to submit Exchange Act reports under all the same circumstances and in the same detail as other corporations subject to that statute.

(3) Contention: Serious problems may exist for years to come in ever receiving a determination by the Commission that the terms of any Section 17 transaction are fair and equitable and that such transactions are not likely to take place without such determinations, driving smaller ANCSA Corporations into bankruptcy. Problems encountered with Kotzebue application cited as an example.

Staff Response: The key standards which guide the Commission in determining whether or not a Section 17 application can be granted are whether the transaction which is the subject of such application is "reasonable and fair" and devoid of "overreaching on the part of any person concerned" (Section 17(b) of the Act) or whether the participation by the registered ANCSA Corporation in such transaction is "on a basis different from or less advantageous than that of other participants" (Rule 17d-1). The Commission would be unable to grant an application under Section 17 in two instances - where it is clear that these standards are not being met or where the applicant has not carried its burden of eliciting sufficient facts for the Commission to judge whether the standards are met or not. We believe that this is entirely appropriate absent some other protective mechanism. It would seem to be a dereliction of the Commission's regulatory responsibilities to ANCSA Corporations that are investment companies if we were to approve a Section 17 transaction where an ANCSA Corporation was being treated unreasonably or unfairly or was being overreached or was participating on a basis less advantageous than that of other participants or where an ANCSA applicant had not presented the Commission with sufficient facts for it to judge whether or not this was the case.

We have no reason to believe, however, as is implied by Mr. Baenen's letter, that the Commission will be able to grant no Section 17 application filed in the next several years. For this to be true, one would have to assume that all such transactions would either involve some basic unfairness to an ANCSA Corporation or relate to subject matters where the applicants would be unwilling or unable to provide the Commission with sufficient facts for it to make an

informed judgement. Furthermore, in response to the comments received on proposed Rule 6c-2, and in light of its experience thus far with the ANCSA Corporations, the staff is now drafting, and hopes very shortly to present to the Commission, a revised version of that rule which will exempt from coverage by Section 17 certain transactions involving ANCSA Corporations which do not appear to present the dangers with which the section was designed to deal. As we now envision the rule, these might include transactions which do not involve large amounts of money and which have been passed upon by an appropriate group of directors who have no direct financial stake other than as ANCSA shareholders.

In its review of the Kotzebue application, the staff has, of course, been primarily concerned with the question of fairness of the proposed purchase price, which is $275,000. Staff members also felt that before they could approve an application for exemption of a transaction in which an investment company would be expending this amount, plus an estimated $1,100,000 in renovating expenses, in total more than half of its net worth, to procure office space for itself, the applicants should be required to make some demonstration that the investment company would need the space.

(4) Contention: The Commission's letter of comment on H.R. 6644 appears to understate the number of corporations to whom the Act would apply in asserting that only corporations which "choose" to register under the Act would be affected. This obviously is not truly a matter of choice since, if a corporation comes within the definition of an investment company, a failure to register would constitute a violation of the Act.

Staff Response: In stating that "both the temporary and the proposed permanent rule (Rule 6c-2) affect only those ANCSA Corporations which choose to register with the Commission" (emphasis added), the Commission's letter did not speculate as to the number of ANCSA Corporations affected by the Act as opposed to the cited rules. Whether in fact a particular corporation falls within the definition of investment company contained in the Act and would be required to register is dependent upon what investment strategy is followed by that corporation. It would appear that neither the Commission nor any other governmental body has sufficient information at present to determine how many ANCSA Corporations come within such definition. There are currently 32 such corporations which have registered as investment companies.

(5) Contention: For years to come the Commission will take the position that the land held by ANCSA Corporations may be given only minimal value, or no value at all, in determining whether they are investment companies. This will lead to a conclusion that most ANCSA Corporations are investment companies.

Staff Response: It is true that the present uncertainties as to the value of the land involved in the proposed merger of companies in the NANA region, when coupled with the fact that the merger would

involve the exchange of substantially disproportionate rights now vested in natives belonging to the various corporations, would make it very difficult for the Commission to make the finding of fairness required by Section 17 of the Act without further evidence of the value of such land or some modification of Rule 6c-2 as discussed above.

However, somewhat different considerations would be relevant and appropriate in connection with determining whether an ANCSA Corporation which held title to substantial amounts of land and at the same time invested in securities would be an investment company within the meaning of the Act.

In this connection, Section 2(a)(41) of the Act provides in effect that, in the context of determining the status of a company under the Act, "value" of assets (other than securities for which market quotations are readily available) means "fair value...as determined in good faith by the board of directors" (emphasis added).

If a value determination were made by the board of directors in good faith, unless some contrary evidence were available, the staff would generally not object to that valuation being used in any proceeding to determine the status of an ANCSA Corporation under the Act. Thus, it is very likely that on the transfer to an ANCSA Corporation, which may now be heavily invested in securities, of the substantial interests in land to which it is entitled, it could, within a relatively short time, no longer be subject to the Act.

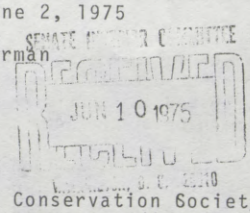
Kodiak - Aleutian Chapter
ALASKA CONSERVATION SOCIETY

. . . to secure the wise use, protection and preservation of all natural resources of Alaska . . .

Post Office Box 1691
Kodiak, Alaska 99615

JUN 9 1975

June 2, 1975



Honorable Henry M. Jackson, Chairman
Interior Committee, U.S. Senate
New Senate Office Building
Washington, D.C. 20510

Dear Mr. Chairman:

The Kodiak Chapter of the Alaska Conservation Society would like to reiterate to you our concerns regarding the certification of Woody Island as a Native Village under ANCSA requirements. The village certification situation in the Kodiak area has been serious enough to warrant an FBI investigation. The FBI is aware of the justifications used to certify Woody Island--we believe these justifications can easily be shown to be fraudulent.

We urge that you act to assure that the Justice Department and the U.S. Attorney take appropriate action based on the FBI investigation and any further investigation they may feel is necessary--to do otherwise we would consider to be dereliction of their specified duties to the people of the United States.

Sincerely,

Daniel H. Farrar, DDS

Daniel H. Farrar, D.D.S.
President

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June 24, 1975

SENATE INTERIOR COMMITTEE
RECEIVED
JUN 30 1975
JUN 27 1975
WASHINGTON, D.C. 20510

BARRY W. JACKSON
DANIEL T. SALURI

Honorable Henry M. Jackson
Chairman
Committee on Interior and Insular Affairs
United States Senate
Washington, D.C. 200510

SUBJECT: Merger of ANCSA Corporations

Dear Senator Jackson:

The Board of Directors of Bering Straits Native Corporation has reviewed S. 685, a bill to authorize certain corporations under the Alaska Native Claims Settlement Act to merge or consolidate, and for other purposes.

The Board of Directors has no objection to the concept of merger or consolidation of Native corporations, and such legislation is probably desirable as means to permit small Native village corporations to combine their assets and management talent into larger business entities. As you know, the average Native village corporation has very limited cash flow, and there is a serious danger that the cash assets of a village corporation will be dissipated in administrative overhead. I am sure you will be receiving adequate testimony on the need for legislation like S. 685.

However, the Board of Directors is deeply concerned with the provision in Section 1(c) of S. 685 which, as we understand it, effectively allows dissenting shareholders in a merger or consolidation to require the surviving corporation to value their shares and pay off the dissenting shareholders in cash. Because of the economic circumstances of most Alaska Natives, a "buy-out right" will place a very great temptation before Native corporate shareholders. The cash value of the shares of a Native may be on the order of $10,000 to $100,000. For a family of two adults and five children, the cash realizable from dissenting to a merger may be on the order of $70,000 to $700,000. To ask a family with an annual cash income of perhaps $7,000 to resist such a temptation is to ask the impossible.

The proposed provision will effectively circumvent the twenty-year restriction on alienation clause of ANCSA and is likely to lead to dissipation of assets. By the twenty-year clause Congress intended to preserve substantial assets in Native ownership for at least a twenty year period in part so that the shareholders might know the value of their shares. Hopefully the shareholders would share in economic development, resulting both from ANCSA and general development in the State of Alaska, to the point that there would not, after 1991, be a great economic incentive on the part of shareholders to sell their stock.

One of the truly unusual features of ANCSA is that it neither tries to turn Natives into Yeoman farmers (as in the 1800's) nor into worker-consumers (as in current approaches), but into owners. Not investors, but owners in common of land, a continuation of tribal land ownership, with cash assets sufficient to avoid being "land poor."

While the Natives have a deep attachment for and appreciation of the land and their relationship to it, we still need the twenty year period to build a sophisticated ownership and stewardship ethic, one which will prevent sale of stock by shareholders except in extremities, and perhaps not even then. Ideally a Native shareholder should not part with his interest in the "family land," any more than would a Southern farmer.

Moreover, we anticipated that the restraint on alienation provision would give greater assurance that assets conveyed by way of stock, to Alaska Natives under the closed roll provisions of ANCSA, would permit shareholders to convey shares to children and grandchildren, thereby permitting those born after December 18, 1971, to participate in the Alaska Native Claims Settlement. As a result of the buy-out right which would be granted by S. 685, we foresee that a class of persons (born after 1971) will, in the course of time, be created who may claim, with some justification, that their parents or ancestors, by exercising buy-out rights, deprived them of the opportunity of ownership in Native corporations. This is likely to create serious problems not only for the children and descendants referred to, but also for the management of Native corporations, the Secretary, and the Congress.

The buy-out provision also creates another problem. Because the value of the lands conveyed under ANCSA far exceeds the

value of the cash assets of the corporations, and because the corporations have, as of this point, received only a small percentage of the cash to which they are ultimately entitled, should 5% or 10% of the shareholders of merging or consolidating corporations elect to exercise their buy-out rights, the merged or consolidated corporations may be seriously strapped for cash to pay off such dissenting shareholders; and their future business activities may be severely constrained because of this loss of working capital.

For the reasons stated, the Board of Directors of Bering Straits Native Corporation is opposed to buy-out rights being given to dissenting shareholders in any merger legislation. And we suggest that the rights of individual shareholders can be adequately protected in a merger or consolidation of Alaska Native corporations by (a) the requirement under State law that the shareholder resolution of merger or consolidation be adopted by a two-thirds vote of shareholders, and (b) by establishing a mechanism to provide review of the fairness of any proposed merger or consolidation.

In the case of merger of village corporations inter se the reviewing agency might be the Board of Directors of the appropriate regional corporation. If the regional corporation is involved in the merger or consolidation, the reviewing agency might be a Court or the S.E.C. (However, we are concerned that the review procedure, especially if performed by the S.E.C., not be too involved or cumbersome.)

Respectfully submitted,

Barry W. Jackson
General Counsel,
Bering Straits Native Corporation

cc: Senator Gravel
Senator Stevens
Representative Haley
Representative Young
Representative Meeds
A.F.N.

BWJ:bss

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BARRY W. JACKSON
DANIEL T. SALURI

JUL 21 7 50 AM '75

July 17, 1975

JUL 22 1975

Honorable Henry M. Jackson, Chairman
Committee on Interior and Insular Affairs
United States Senate
Washington, D. C. 20510

SUBJECT: Merger of ANCSA Corporations under S.1824

Dear Senator Jackson:

In 1972 I was retained by the Alaska Federation of Natives to draft proposed State legislation to meet problems which I (or others) foresaw in the implementation of ANCSA. In the course of this effort I drafted language and commentary on mergers, consolidations, sale of assets, and dissolution, a copy of which is enclosed.

The enclosed drafted language was not submitted to the Legislature, as there was no consensus among the counsel for the Native regional groups. As I recall, the concerns expressed at that time were: a) apprehension on the part of some at encouraging State legislative jurisdiction in this area (although extensive State legislation on other ANCSA subjects was submitted and adopted, substantially as submitted, by the 1972 Legislature); and b) concern that the problems had not ripened to the point that we could judge if the proposed language was adequate or was good policy.

The enclosed language is submitted to you for the assistance of your staff in pointing up technical and policy problems which should perhaps now be faced. The language is not recommended for inclusion in haec verba or in substance by Bering Straits Native Corporation, but is merely provided as a service to your staff and to build a sound legislative record in this case.

I might note that the 1972 draft language dealt with a number of other problems which are now surfacing. However, it would not be

appropriate to submit this work product to you except at the direction of the Alaska Federation of Natives.

Very truly yours,

Barry W. Jackson
General Counsel,
Bering Straits Native Corporation

cc w/enc Senator Gravel
Senator Stevens
Representative Haley
Representative Young
Representative Meeds
A.F.N.

BWJ: bam

ENCLOSURE: UNSUBMITTED PROPOSED
STATE LEGISLATION, 1972

Sec. 10.05.406. MERGER AND CONSOLIDATION OF P.L. 92-203 CORPORATIONS. (a) No corporation organized under P.L. 92-203 may merge with any other corporation. This does not prevent consolidation of regional corporations pursuant to their regions being merged under sec. 7(b) of the federal Act.

(b) No corporation organized under P.L. 92-203 may consolidate with a corporation not organized under that Act or with a corporation not within its region as determined under that Act, except as provided in (f) of this section.

(c) A subsidiary corporation of a corporation organized under P.L. 92-203 may merge or consolidate with a corporation not organized under P.L. 92-203 in the manner provided in this chapter, or other applicable law, as appropriate.

(d) Within a region, two or more business corporations listed in sec. 5(a)(3)-(6)* of this chapter may consolidate under this chapter, subject to the approval of the appropriate regional corporation. Within a region, upon a request made within two years of the effective date of this Act by representative and responsible leaders of the respective villages, two or more villages may consolidate to form a single corporation before and incident to incorporation, subject to the approval by the board of directors of the appropriate regional corporation of the plan of consolidation determined by the leaders and approved by a three-fourths majority of the voting members

* These were Village Corporations, Reservation Village Corporations, Juneau Class Corporations, and Native Group Corporations.

would be intended primarily to carry out congressional policy on alienability and insuring preservation of Native control, during the 20-year period, of the Native corporation. Since a subsidiary can have no voting rights in the parent corporation (because of probable implied restrictions in the federal Act on issuance of additional stock of the parent Native corporation) the prohibition of mergers and consolidations need not and does not extend to subsidiaries.

D. Dissolution and Sale of Assets

As both the sale of all or substantially all of the assets and the dissolution of the corporation by shareholder action, procedures authorized generally for corporations, would necessarily or by implication violate the federal policy of (a) inalienability of stock, and (b) preservation of Native control of the corporations and assets for 20 years, these procedures may not be available for that period. The proposed legislation resolves this question.

As a practical matter, it will be difficult to dissolve the corporations so long as (a) there are revenues being received from the Alaska Native Fund (which are distributed to nearly all of the corporations), (b) there are revenues from subsurface or regional timber resources (which are also distributed to nearly all of the corporations), and (c) there is a need for administration of lands held by a corporation. While interests in land are alienable by a corporation, it is unclear to what extent the right to future revenues of the Alaska Native Fund or from subsurface and regional timber resources may be alienable; however, it is clear that any such alienation presents difficult administrative problems.

In view of the impracticability of dissolution it is important that other devices to carry out the public policy of alienability of property (expressed in the law in another context as the Rule against Perpetuities) be provided. These include consolidations, mergers, sale of assets, issuance

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of additional stock, all of which may be necessarily limited or prohibited for a period, as well as alienability of real property interests.

The perpetuity of the revenue sharing rights in regional assets may present a problem of public policy, but it cannot be solved in state legislation at this time.

III. DETAILED ANALYSIS OF THE BILL

AS 10.05.406. Merger and Consolidation of P.L. 92-203 Corporations

The merger and consolidation clauses of the Alaska Business Corporation Act present two clear examples of conflicts with the federal Act which cannot be solved except by state legislation in one case and a recognition that in the second case, mergers, no solution is possible.

There is no way to provide for merger of corporations organized pursuant to the federal Act because in theory the surviving corporation issues its stock to the shareholders of the corporation which does not survive in return for their transfer of their shares to the surviving corporation. Such a transfer obviously violates the federal rule on inalienability of stock.

Consolidation has much the same result as merger but in theory the shares of stock in each of the consolidated corporations continues to exist in the consolidated corporation although the number of shares represented by a certificate and, of course, the name of the corporation as well as rights and preferences of the stock may be changed pursuant to the plan of consolidation.

However, without either state legislation or federal legislation consolidation of corporations formed pursuant to the federal Act would be in practice impossible. Some persons have suggested an over-simple solution, passing a one-line state Act saying that in the event of any conflict between state law and federal law the federal law will govern. The consolidation problem is a good example of why such an approach would not work. Under secs. 417 - 429 of the Alaska Business Corporation Act a dissenting share-

holder to a proposed consolidation has a right to offer his shares to the corporation and receive cash from the corporation. Under the federal provision that stock cannot be sold or transferred for 20 years, the dissenting shareholder could not sell his stock to the corporation. If it be suggested that secs. 417 - 429 must give way to the federal policy and that the dissenting shareholder does not have a buy out right, such a dissenting shareholder would point to sec. 7(h)(1) of the federal Act, that stock issued by the regional corporation to him vests in him "all rights of a stockholder in a business corporation organized under the laws of the State of Alaska," one of which is his right as a dissenting shareholder to sell his stock to the corporation. The only way to read the federal Act in this situation is that consolidations may not be accomplished unless there is unanimous approval of the shareholders of all corporations concerned, yet the Conference Committee saw a clear value in merger and consolidation of Native corporations and even provided an extraordinary authority to merge regions before the regional corporations had been organized.

Sec. 406 provides a solution to this dilemma in a manner consistent with federal law and policy as well as with state policy. Prior state policy on merger and consolidation of Native corporations is found in AS 38.30.290.*

For technical reasons, mergers are prohibited outright. Non-Native corporations may not consolidate with Native corporations as such would violate the federal policy on preservation of Native control for 20 years. This federal policy, however, would not prevent merger or consolidation of a subsidiary corporation of a Native corporation with any other non-Native corporation and this is permitted by specific language. Since dissenting shareholders' rights must be eliminated for 20 years, alternate means of protection of minority

* Repealed.

shareholders must be provided. The section increases the vote necessary from two-thirds of the shareholders to three-quarters and in the case of village level consolidations requires approval by the regional corporation after notice and hearing. As to consolidation of large corporations, in addition to the three-fourths vote required it is believed that the federal government, principally under the Securities and Exchange Commission, would have regulatory powers to insure fairness. Consolidation across regional boundaries is prohibited unless the regions have merged or the regional corporation concerned have consolidated, which appears to be consistent with federal policy.

AS 10.05.439. Sale of Assets of P.L. 92-203 Corporations

This section, which prohibits sale of all or substantially all assets of a corporation, resolves the question of what to do with the right of a dissenting shareholder by prohibiting the action involved, sale of assets, in contrast to the rule on consolidation. This rule appears to be consistent with the federal policy that corporations and their assets, including their land, should be preserved from possible loss of Native control for at least 20 years, as well as with the federal requirement of inalienability of the stock.

AS 10.05.478. Dissolution of P.L. 92-203 Corporations

This section prohibits dissolution of a corporation by shareholder action for 20 years upon the theory that dissolution of the corporation and distribution of its assets to the shareholders violates the federal policy against alienation of the stock and the federal policy that control of the corporation and the assets should remain in Native hands for at least 20 years.

C. Mergers and Consolidations

Although the statement of the Conference Committee clearly recognizes the desirability of mergers to reduce administrative costs and improve general corporate efficiency, P. 42 of the Conference Report, the federal Act only provides for merger of regions by the Secretary upon application within one year, sec. 7(b). However, since 1) the corporations are to incorporate under state law, 2) state corporate law normally provides for mergers and consolidations, and 3) there is no prohibition of such, the several Native corporations could merge or consolidate under state law, but for the existence of inalienable stock. This precludes (a) merger of a Native corporation into another corporation, since the Native corporation stock must be transferred, and new stock issued by the surviving corporation, and (b) merger or consolidation if one shareholder dissents and demands to "buy out" as he would have a right to do under general law.

As mergers and consolidations are desirable (subject to the permanent federal limitation of not less than seven regional corporations, which is justified as an anti-trust policy) special provisions, applicable during the period of inalienability, are necessary, or the general law must be amended. It is anticipated that many village corporations will want to consolidate as they incorporate in order to avoid incorporating unnecessary corporate structures, but this may require amendment of the federal Act.

Instead of formal consolidation villages and regions can use the jointly owned subsidiary as an alternative. It should also be noted that while a merger or consolidation with non-Native corporations may be improper under the federal Act, this does not prevent the use of subsidiary corporations to reach similar results. The federal prohibition, if there is one,

of each village, and as set out in the articles of incorporation.

(e) A corporation listed in sec. 5(a)(3)-(6) and organized under this chapter may consolidate under this chapter with the regional corporation for its own region.

(f) Two or more regional corporations, except the one for the 13th region, may consolidate, under this chapter.

(g) The exchange of stock certificates for stock certificates in the consolidated corporation is not a transfer, and the stock as represented by the new certificate continues to be subject to any restrictions on alienability required by this Act or the federal Act. However, the number of shares and the relative rights of the shares represented by the new certificates may be adjusted or modified pursuant to the plan of consolidation.

(h) The board of directors of a regional corporation shall give all interested persons public notice and an opportunity to be heard before acting upon a proposed consolidation under (d) of this section. In voting under sec. 390 of this chapter, three-fourths majority ** is required instead of the two-thirds majority set out in that section. Secs. 417 - 429* of this chapter are not applicable to consolidations authorized under this section.

(i) The provisions of (a)-(h) of this section apply until December 18, 1991. After that date, the general provisions of this chapter, regarding mergers and consolidations, apply. Whether as a result of merger or consolidation, so long as the federal Act so requires, the number of regions and of regional corporations (not counting the 13th regional corporation) may not be less than seven.

Sec. 10.05.439. SALE OF ASSETS OF P.L. 92-203 CORPORATIONS. Until December 18, 1991, no corporation organized under P.L. 92-203 may

* Right of dissenting shareholder to "buy out"

** of shareholders

sell all or substantially all of its assets, but may do so after that date under secs. 435 - 462 of this chapter.

Sec. 10.05.478. DISSOLUTION OF P.L. 92-203 CORPORATIONS. No corporation organized under P.L. 92-203 may dissolve before December 18, 1991, but the superior court may grant other appropriate relief under the circumstances.

BRISTOL BAY NATIVE CORPORATION

P.O. BOX 237
DILLINGHAM, ALASKA 99576
PHONE (907) 842-3070
May 30, 1975

SENATE INTERIOR COMMITTEE
RECEIVED
JUN 4 1975
WASHINGTON, D. C. 20510

Honorable Henry M. Jackson
United States Senate
Russell Senate Office Building
Washington, D.C. 20510

Dear Scoop:

Section 7(i) of the Alaska Native Claims Settlement Act--the section providing for a split of mineral and timber revenues among the Native Regional Corporations--is putting a tremendous burden on the Act's continued operation. During the past year, legal and accounting fees directly related to problems of 7(i) interpretation and application consumed almost a quarter of the entire cash flow of all twelve Regional Corporations--so we judge from annual reports and our own experience--and the hassles have only just begun. The ANCSA threatens to become another link in the long chain of Indian Treaties, another cruel hoax.

We understand that Congress has been reluctant to deal with this provision of the ANCSA because of the provision's controversiality. This reluctance is not proper. The controversy exists mainly because of the lacunae in the original Congressional expression, and Congress is the appropriate agency to clear up the lacunae. Moreover, there are broad areas of agreement among all but one or two of the Regional Corporations, and Congress could speak to the areas of agreement even if it choose not to deal with the remaining issues. Finally, the real problem with 7(i) is not so much the differing interpretations of its application to particular agreements as it is the lack of a process, short of twelve-sided federal litigation, for resolving those differences. Even if Congress choose not to speak to any of the substantive problems in 7(i), it could establish a process for resolving differences.

Attached to this letter is a version of 7(i) incorporating three very small clarifying revisions in terminology. Ten or more regional corporations would agree with each of the revisions, and we are certain that all the revisions represent the true intent of Congress. Yet adoption by Congress would obviate the necessity for massive multi-district litigation currently underway.

Also attached to this letter is a proposal for a section 7(i)(2), which would obviate the need for most if not all future litigation.

Unless the Congress take such action now, we are fairly certain that some future Congress will be asked to eliminate the section from the Act entirely, amid circumstances of general recrimination by Regional Corporations sadly reduced.

Sincerely,

BRISTOL BAY NATIVE CORPORATION

Harvey Samuelsen
President

HS:ms

ATTACHMENT 1

7 (i) Seventy percentum of all revenues received by each Regional Corporation from the timber resources and subsurface estate ~~patented~~ conveyed to it pursuant to the Act shall be divided annually by the Regional Corporations organized pursuant to this section according to the number of ~~Natives~~ stockholders enrolled in each ~~region~~ Regional Corporation pursuant to Section 5. The provisions of this subsection shall not apply to the thirteenth Regional Corporation if organized pursuant to subsection (c) hereof.

ATTACHMENT 2

7(i)(1) Seventy per centum....

(2) According to the number of stockholders enrolled in each Regional Corporation pursuant to Section 5, each Regional Corporation shall contribute to the expenses of operation of a Committee consisting of at least three members, at least one of whom shall be an attorney and one of whom shall be an accountant. The Committee shall review all revenue-producing agreements entered by Regional Corporations and affected with timber resources or subsurface estate, and for each such agreement it shall determine the divisions required pursuant to paragraph (1) of this subsection. Any Regional Corporation aggrieved by any determination of the Committee shall submit the grievance to binding arbitration pursuant to the rules and regulations of the American Arbitration Association; provided however, that Regional Corporations contemplating agreements affected with timber resources or subsurface estate may, subject to a schedule of fees to be established by the Committee, submit such agreements to the Committee for confidential review and advice on the divisions such agreement will require.

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JUN 25 1975

June 23, 1975

Honorable Henry M. Jackson
Chairman, Committee on Interior and
Insular Affairs
United States Senate
Washington, D.C.

Re: Proposed Amendments to the Alaska Native Claims Settlement Act

Dear Senator Jackson:

I have received a copy of a letter to you, dated May 30, 1975, from Harvey Samuelsen, President, Bristol Bay Native Corporation, suggesting three amendments to section 7(i) of the Alaska Native Claims Settlement Act. On behalf of Doyon, Ltd., and for the reasons hereinafter set forth, I am writing to request that two of Mr. Samuelsen's proposals be rejected, and that the third proposal be held in abeyance pending further consideration of the subject by all the Alaska Native regional corporations.

(1) Mr. Samuelsen's first amendment would change the word "patented" in section 7(i) of the Act to "conveyed". Although no explanation for this suggested change is given by its sponsor, Mr. Samuelsen apparently is concerned about the fact that, because of anticipated delays in the making of legal surveys, most Native corporations initially will receive and for many years will continue to possess only interim conveyances, rather than formal patents, and that at least one regional corporation is adopting the position that, as a matter of law, the resource revenue

sharing mandated by section 7(i) does not take effect until after issuance of a patent.

The real issue posed by the present language of section 7(i), however, is whether the required sharing of income is applicable to revenues derived from the timber and subsurface resources on withdrawn lands which are subject to Native selection, but before either conveyance or patenting, and Mr. Samuelsen's proposal does not solve that problem. The precise question, on the other hand, now is pending before two Federal District Courts in Doyon, Limited v. Nana Regional Corp., Inc., Civil Action No. 74-1531 (D., D.C.) and The Aleut Corporation, et al. v. Arctic Slope Regional Corporation, et al., Civil Action No. A75-53 (D., Alaska). In this regard, I submit that legislation is not an appropriate method for resolving issues already presented to the courts, and that legislation which seeks to extinguish vested rights will only cause greater confusion in the implementation of ANCSA.

(2) Mr. Samuelsen's second amendment would substitute the class of "stockholders enrolled in each Regional Corporation" for the term "Natives enrolled in each region" which currently appears in the Act for purposes of calculating section 7(i) distributions. The proper population base for determining the respective shares of each regional corporation in section 7(i) resource revenues, however, also is before the courts in the two above-named cases and, additionally, in Doyon, Ltd. v. Morton, Civil Action No. A75-89, now pending before the United States District Court for Alaska. Again I submit that an ex post facto change in ANCSA by Congress would not be an appropriate method for resolving a question which already has been presented to the courts, and that legislation which seeks to extinguish an otherwise vested right could only lead to more litigation and thus greater discord in the implementation of the Act.

(3) Mr. Samuelsen's third amendment would create a special committee for policing resource revenue sharing under section 7(i) of ANCSA. Doyon agrees that the existing situation is wasteful and that some mechanism must be established to administer this provision of the Act in orderly fashion. Whether the necessary administrative mechanism can best be set up through legislation, through voluntary agreement among the parties or through court appointment of a special master, however, remains to be seen. Until the affected regional corporations have an opportunity thoroughly to discuss these alternatives, I suggest that Mr. Samuelsen's proposal be held in abeyance.

With kind regards,

Sincerely yours,

Arthur Lazarus, Jr.

cc: Hon. Mike Gravel
Hon. Ted Stevens

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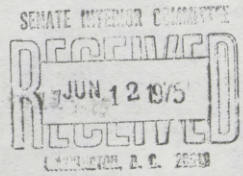
June 4, 1975



Senator Henry Jackson
U. S. Senate
Washington, D. C. 20510

Dear Senator Jackson:

At recent Senate and House hearings, certain amendments to the Alaska Native Claims Settlement Act were discussed. Towards the end of those hearings, Senator Stevens suggested that he would be willing to introduce Omnibus legislation addressing itself to a variety of different problems, and invited interested parties to submit suggested amendments.

This office represents Eklutna, Inc., which is a Village Corporation incorporated pursuant to ANCSA. This village is located approximately 20 miles from Anchorage, and in many ways can said to be on the northern fringe of greater Anchorage. The village is the last remaining true Native village in Upper Cook Inlet.

By reason of having fairly aggressive leadership, the village of Eklutna has been in the front ranks in terms of implementing ANCSA. As a result, it has probably encountered on a personal basis most, if not all, problems experienced by any Native corporation in Alaska.

Enclosed find eight pages of suggested amendments which were prepared and submitted to Senator Stevens as he had suggested. At the time of their submission, the moment for their inclusion in Senator Stevens draft Omnibus Bill had passed; and thus, his staff suggested we circulate these suggestions among several other leading Senators and Congressmen in order that they receive attention during the hearings on the Omnibus Bill which would transpire in the future.

Most, if not all of the suggested amendments, speak directly to issues in pending or threatened litigation. Indeed, these questions add up to legal problems which would destroy Eklutna's budget and reduce its income to the point where the Act would almost be worthless to it. In some senses, it is almost as desirable that these questions simply be answered, as it is desirable that they be answered in some particular way.

Certain other of the suggested amendments are of a relatively minor housekeeping nature, which would serve to prevent undue technical debates.

The enclosed proposed amendments are numbered. The following paragraphs are numbered the same way, so that if you wish to refer to comments about a proposed amendment, you just need to look at that paragraph of this letter numbered the same as the number of the amendment proposed.

1. At the time the Claims Act was passed, the Alaska Statutes had a Title 29 called "Municipal Corporations", and a Title 7 called "Boroughs". Thus, the Section 4, paragraph (i) definition referring to Municipal Corporations raises a slight ambiguity as to Boroughs, which were not encompassed within that Title of the Alaska Statutes denoted Municipal Corporations, but which were generally conceded to be Municipal Corporations.

2. Implementing the Claims Act in the area of granting tracts to occupants is particularly difficult. It is probably true that the Natives themselves best understand how much land "sort of belongs" to the individual occupant. The way of life of the particular village is something almost unique to it, and it better than anyone else really understands how much of a tract really belongs to an individual or should belong to an individual.

Evolving rules of fairness and equity to all occupants, and conveying out lands to the occupants, is a time consuming and hazardous task. There are as many possible lawsuits as there are occupants. It is therefore desirable that the decision of the corporation should be strictly approved absent some fraudulent problems.

3. The Act requires the villages to select lands in their proximity to the village. This is, of course, generally desirable. However, there can arise situations in which there are State-selected lands which the village simply does not want. We see little utility in compelling the village to select lands it does not want, ousting the State of possession of lands it does want.

4. Here we simply suggest that if the immediately preceding amendment or something of that sort is passed for the benefit of the villages, then there should be a similar provision for regional corporations.

5. The Act provides that villages are entitled to select all but the smallest practicable tract actually used in connection with Federal installations. This language is found in the definition of lands available for selection in the definitions section of the Act. In the event the Federal Government should determine lands to be surplus at some point hereafter, it will in fact mean that those lands were not part of the smallest practicable tracts which should have been reserved from the selection in the first place. But for the use or proposed use, which has ceased or never occurred, the lands would already have been selected. Thus, it would seem that it was a mistake that the lands were not available for selection at the earlier time the Village had to make its selections.

6. As interpreted by the Bureau of Land Management, the withdrawal language "contiguous to or corners on" is interpreted most strictly. As you may or may not know, townships are theoretically six miles wide at the bottom, 6 miles tall north and south, and 6 miles wide at the top. However, since north-south lines tend to converge as you go north, the bottom of a township may well be 6 miles, but the top certainly is not. Since over long distances this process would result in townships becoming very narrow, the Federal survey system provides that at the lines between every four townships the bottom of townships are widened to 6 miles again. At these "standard parallels" or "correction lines", the townships north of the line are wider east and west than the townships south of the line, and the north-south lines which form the east and west boundaries of townships north of the line are offset from the same lines of townships south of the line, along the standard parallel, by distances between a few feet to several thousand feet, depending on how far one

is from the survey system's meridian. In Eklutna's case, there is such a standard parallel between Township 16 North and Township 17 North, Seward Meridian. The result is that the Southwest corner of Township 17 North, Range 3 East, is a few feet away from the Northeast corner of Township 16 North, Range 2 East. According to the Bureau of Land Management, these two townships are not contiguous, and do not corner on each other. A look at the map of Village withdrawals in Alaska indicates that this problem is not unique to Eklutna, and that many village withdrawals are oddly shaped. If one looks at the language of the Congressional reports at the time of the passage of the Claims Settlement Act, it appears clear that the Congressional intent was that at least 25 townships would be withdrawn for the benefit of each Native village. This doubtless was based on an assumption that a village located sufficiently far inland would have a core township, and two concentric "rings" of townships around it. We suggest that the Act be amended in essence to direct the Bureau of Land Management to give that interpretation to the Act. Thus, the relationship of being contiguous to or cornering on another township could be determined by the township numbering system. By definition, Township 17 North, Range 3 East, would corner upon Township 16 North, Range 2 East. This particular aspect of the Claims Settlement Act is in an administrative appeal brought by Eklutna, Inc. by reason of the exclusion of a township from its Village withdrawal area that Eklutna feels should have been included.

7. This proposed amendment is somewhat more complicated. The general thought behind the amendment is that if as a result of the Omnibus Act, special legislation is passed making certain lands not heretofore available for Native selection newly available for such selection, then Village corporations should have as to those lands the rights that they would have had, had the lands been available to them at the time of the passage of ANCSA. In particular, this amendment addresses itself to a situation which might arise with respect to Eklutna, in that Cook Inlet Region, Inc. has requested legislation making certain tracts available to it which are small Federal withdrawals. Some of these have already been selected by Eklutna, on the theory that its view of "smallest practicable tracts" makes these lands available. It would be ironic if the special legislation should oust Eklutna from its selections at the same time that Congress was (in effect) saying that the lands newly made available should have been made available by the executive branch theretofor.

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8. Older Federal public land law provides that in all patents issued in Alaska there shall be reserved easements for telegraph, telephone, railroads, ditches, and canals. The Native Claims Settlement Act provides in Section 17 for an elaborate system of identification and reservation of easements. Indeed, this process has provoked its own class of problems. In the meantime, the Bureau of Land Management has issued a patent to Eklutna which reserves the standard easements of telegraph, telephone, railroad, ditches and canals. Eklutna has appealed these patents, saying that these particular public land laws affecting homesteads taken up in Alaska, do not effect lands granted in recognition of aboriginal rights. This argument may or may not prevail. In any event, the Alaska Railroad bisects the Eklutna Village withdrawal areas. A blanket reservation for railroads in the Eklutna withdrawal area, which in the not too distant future may turn out to be part of Greater Anchorage, clouds the title to the heart of the village lands. It is not beyond the bounds of reason that the Alaska Railroad might assert the right to establish additional lines, freight yards, warehouses, or whatever, pursuant to this reservation. We feel that the needs of the railroad in light of the "smallest practicable tract" requirements of the Act, and in light of the easement reserving process of the Act, can be fully met under the ANCSA procedures. We do not feel that title to all of Eklutna land should be clouded by these blanket easements having nothing to do with the realities of the present day, and little to do with the actual needs of the railroad.

9. This particular amendment is critical. Eklutna, Inc. has received documents of title reserving rights of way for roads from point A to point B, which roads are not described on a map, and which roads are not described with particularity as to their location on the grounds. Thus, title to all of the land between point A and point B is clouded. If these easements are to be withheld, then at least one should be able to figure out where they are.

10. The use of the terms "surface" and "sub-surface estate" in ANCSA has prompted a considerable volume of controversy, through a lack of definition. One of the principal areas in which the issue surfaces, concerns potential development of gravel pits. Practitioners are not agreed on the question whether gravel deposits are part of the surface or sub-surface estate. Similar questions could present themselves with regard to topsoil, sand, quarrystone, rock

and other materials which are generally in large part buried, but yet which often times do form the surface itself. Another area of dispute would concern ground water and strip-mineable coal. It is clear that the removal of sand, gravel, quarrystone or rocks generally prohibits other uses of the surface. It is equally true that deep mining does not, generally speaking, need to disturb the surface of the earth to anywhere near the same extent.

It appears to be the common understanding in this area that sand, gravel, quarrystone and rock belong to the owner of the land, even if the mineral estate has been reserved by the State or the United States. It also appears to be understood that the waters are subject to appropriation by the owner of the fee simple in the land, even if the mineral estate belongs to some other person. The problem lies in the fact that the term "sub-surface estate" is not related by the Claims Settlement Act to understandings of mineral reservation. The Act in its use of language is open to the interpretation that sub-surface is equivalent to the mineral estate, but it is also open to the interpretation that sub-surface means every molecule of the earth which is not that molecule on the very top of the ground. There may well have to be protracted litigation to define these terms, and litigation of such significance and expense as to decimate the benefits of the Acts. The amendment proposed by Eklutna in this numbered amendment and in the next following amendment numbered "11" sets forth a presumption that materials above 100 feet below the surface are part of the surface estate, and below 100 feet from the surface are part of the sub-surface estate, and then goes on to specify that certain named resources are by definition part of the surface or sub-surface estate. Eklutna believes that the language it has suggested in fact is a compromise, in that coal, metaliferous minerals, and petroleum (at whatever depth located) are stated to be part of the sub-surface estate, whereas those materials commonly excavated by the owner of the land, and the waters, are said to be part of the surface estate. We find that this proposition would bring the Native Claims Settlement Act into conformity with common understandings as to whom one should contact in order to gain access to a particular resource. As such, the Act would be in conformity with people's general commercial understandings, and would introduce the least confusion into decision-making by the village and those with which it deals.

11. The definition of sub-surface estate contained in this proposed amendment is the other side of the coin of the previous paragraph.

12. The existing language of the Claims Settlement Act provides that the consent of the village must be obtained if the regional corporation wishes to remove minerals from the sub-surface estate within the boundaries of the village. However, the term "boundaries of the village" is not defined by the Act. As in the case of Eklutna, serious problems of interpretation arise. Possible definitions of "boundaries of the village" include all lands owned by the village wherever they may be, lands within the former reserve, lands vaguely in the vicinity of the improved village, or lands on which the improvements made by the occupants can be found. The definition being suggested by Eklutna is a definition which would have all lands owned by the village selected from within the village withdrawal area, considered to be within the boundaries of the village, and all lands owned by the village which were selected from noncontiguous deficiency lands considered to be outside the boundaries of the village. This language likewise is a compromise. It is certainly arguable that the Congress intended at the outset that the village should have a right to consent to the removal of minerals from within its lands wherever located, by reason of the fact that exploitation of certain minerals, such as coal, could effectively destroy the use of the surface. A test which looks to the location of improvements which are arguably part of the village itself is fraught with difficulties in determining the actual extent of the lands said to be occupies.

The proposed amendment also addresses itself to to additional questions. There has arisen a threat of litigation not only over the definition of the boundaries of the village, but also over the question whether the village corporation has a right to withhold consent until it receives consideration, or to withhold consent altogether by reason of the incompatibility of the proposed development with the contemplated use of the surface estate. In our view, the suggested amendment concerning consideration for loss of use of the surface estate and compatibility with land use plans, merely states the proper interpretation of the existing statutes. Otherwise, consent is an empty formality. Unfortunately, not everyone agrees with us, and litigation does threaten.

Finally, the amendment addresses itself to whether the consent runs with the land, or dies in the hands of the village corporation. Consider, for example, the problem we face in telling an Eklutna grantee whether or not the Cook Inlet Region has an absolute right to tear up his property and remove minerals. We are not in a position to offer anyone a warranty of quiet enjoyment. In our view, it would be appropriate for the right to consent to follow the land into the hands of the grantee.

13. This amendment is offered to bring the Claims Settlement Act into a logical relationship with the actualities of municipal life in Alaska. The present provision of ANCSA makes considerable sense, but only when viewed in the context of a remote village which is not located within the boundaries of any municipality at the present time. It also makes considerable sense where the population of a particular village is nearly identical to the membership in the village corporation. Where the Act does not make particular sense is in an area such as that in which Eklutna finds itself. Eklutna is physically located within the boundaries of the Greater Anchorage Area Borough. The only city of any significance within the Greater Anchorage Area Borough is the City of Anchorage itself. There is a possibility that there might be incorporated a city to be known as Chugiak-Eagle River, which city might or might not encompass some or all of the lands of Eklutna. It is, however, unlikely in the extreme that there would ever be incorporated a municipality which had Eklutna as its population center. It is highly unlikely that the administrative offices of a municipality would ever be located at Eklutna, and it is indeed unlikely that Eklutna would ever be located in any municipality other than the Greater Anchorage Area Borough. The existence of Eklutna will not impose upon the Greater Anchorage Area Borough a requirement for public lands of any such magnitude as the minimum of 1,280 acres states in Section 14 of the Act. Further, the Act in talking of the conveyance for municipal purposes speaks of such public requirements as streets. The requirement of 14(c)(3) as it presently reads would be that Eklutna would be obliged to do all of its land use planning, subdividing, platting and street grid planning from now until the end of time, for all of its lands, in order to determine which lands it wishes to convey to the Borough for such purposes. Unlike the remote village, then, Eklutna is not presently a municipal corporation, nor is it likely to become a municipal corporation, and Eklutna is

encompassed in a municipality which is overwhelmingly Caucasian; Eklutna has as shareholders a number of people slightly in excess of 100, while the Greater Anchorage Area Borough has a population in excess of 140,000. Further, the statute laws of Alaska require development of land to be associated with a plat, and require that the platting authority, a public body, make proper provision in the plat for public needs. Thus, insofar as streets are concerned, Eklutna will be obliged to dedicate to public use any and all streets made necessary by future development of its lands. The subdivision regulations call for the dedication of school sites, and call for the preservation of space for parks and other purposes. In short, the requirement of the Claims Settlement Act for municipal conveyances in essence duplicates the platting laws of Alaska; except that the platting laws of Alaska permit the process to occur as the land is developed, rather than requiring it to be summarily executed at the present time. This amendment, then, serves to relieve Eklutna and other villages similarly situated from a relatively onerous and unnecessary process of identification and conveyance of lands necessary for public uses. Finally, it should be pointed out that the minimum requirement of 1,280 acres, for comparison purposes, is larger than the Eklutna reserve which existed at the time of the passage of the Claims Settlement Act. The requirement would be disproportionately large, considering the fact that Eklutna is not able to select anywhere near its entitlement of acreage from within its withdrawal area, by reason of the existence of Fort Richardson and of patented lands.

14. In connection with the requirement that the village corporation dedicate lands for airport purposes, an ambiguity has arisen concerning the meaning of the term "related services". Eklutna certainly has no objection to conveying to the State the site of the existing airport at Birchwood, Alaska, together with such other lands as may be reasonably necessary for air traffic control and eventual other services of the government-provided variety, such as fire protection. Eklutna is certainly prepared to convey, with proper reversionary clauses, such lands as are said to be necessary for approach and departure. However, there is commonly associated with airports in Alaska a variety of other services, such as aircraft tiedown, fueling, and repair services, air taxi operators, and indeed, some warehousing and other commercial activities of private enterprises. The indications are that in this particular location there

may be a problem resulting in litigation, where the view of the village corporation is that only those lands necessary for government operations have to be conveyed, as opposed to the potential attitute on the part of the State that all lands that would ever find use in conjunction with the airport, whether or not that use would be by the government, should be conveyed to the State. That interpretation, in our view, nearly guarantees that income producing activities of the land will be denied to the village corporation and made exclusively available to the State. Such an interpretation exascerbates the cash plight of the village corporations.

15. Eklutna presently is experiencing a bureaucratic delay in the issuance of patents and interim conveyances to its land, associated with pending appeals on other lands. The Bureau of Land Management has taken the position that where there is a pending appeal on "Tract A", which appeal is relevant to the detrmination of the terms and conditions of the conveyance of "Tract B", that "Tract B" will not be conveyed until a final resolution of the appeal on "Tract A". Eklutna feels that it would be appropriate to have legislative relief from this situation, in order that disputes concerning particular issues not have ramifications far beyong those necessary.

16. One of the more critical problems facing the village of Eklutna, and doubtless many other villages in Alaska, is the fact that it is becoming the owner of substantial acreage located within the boundaries of a jurisdiction that imposes a real property tax. Even though the tax does not become applicable until some twenty years hence, the village corporation is faced with the problem of coming up with income-producing uses of the land that they hope in the future will return not only a margin for themselves but also for purposes of paying taxation on the remaining thousands of acres. The directors of the village corporation find themselves under considerable pressure to do something quickly to avoid disaster in the future. They find that their ability to do rational land use planning is being impaired, and that they are being coerced to contemplate uses for the land which may not at all be best either for the village plan or for the land itself. Thus, Eklutna finds itself in the process of being compelled to select lands in Chugach State Park and to find ways to develop these lands, or to develop other lands to an appropriately greater extent. Many of these

lands are at considerable altitute and are of marginal utility from the point of development. In cases, these lands include watersheds of potentially valuable water supply streams. Having little faith in land disposal policies of the State of Alaska, a village corporation is loathe to simply convey this land to the State. There is also some feeling that the situation would be rather unfair, if they were obliged to dispose of substantial acreages of their land irrevokably, without receiving compensatory acreage elsewhere. Thus, the directors are anxious to obtain relief which would permit them to engage in a more orderly process of land use planning, and are willing to agree to a recapture provision in order to insure that the provision is not expoited for less than honorable reasons.

The amendment also addresses itself to a second and very significant question. A village corporation in Alaska is presented with quite a problem in terms of finding qualified business management. New businesses are, additionally, always risky. The Village is a fairly well-to-do corporation, on paper. A new business venture, associated with considerable risks, places all the assets of the village corporation on the line. Other individuals in similar situations would normally incorporate a separate entity to carry on the high risk venture. However, the peculiar situation with regard to taxes in the Claims Settlement Act raises a serious question whether a subsidiary can be given land to work with, however distant in the future the actual use, without the land thereby becoming taxable and imposing a serious cash requirement on the venture before it is even fully organized. For this reason, Eklutna is requesting an amendment of the Act which would allow the village to set up a subsidiary corporation for some particular activity, without the existence of that corporation being in and of itself cause for the land becoming taxable.

17. The executive branch of the government has taken a rather conservative view of the definition of the terms "actually used in connection with the administration" of a Federal installation. You will recall that this language is found in the definition of public lands, which definition is carried forward into withdrawals and selections. In the greater Anchorage area, for example, we find the Alaska Railroad. It is a government-owned railroad, and is taking the position that anything which a private railroad could do with lands falls within the definition of lands actually used in connection with the administration of their "federal installation". Thus, a gravel pit which is apparently being used for the sole purpose of raising revenue through sales to private contractors for use elsewhere, is regarded as a use actually in connection with the administration of their

federal installation. The Eklutna Village Corporation is more of the view that those lands actually used by the Alaska Railroad in connection with its administration are the lands upon which the track lies, a reasonable easement on either side, and the lands on which its administrative offices, freight yards, warehouses and similar facilities operate. It also appears to be the attitute of the Alaska Railroad that the fact that it has once in the past used, or may in the future at sometime make use of a piece of ground, makes that ground "actually used in connection with the administration" of their federal installation. With this village corporation also disagrees. It is likely that this situation will ripen into litigation, at which point doubtless the village corporation will at the outset encounter a defense of sovereign immunity. We feel that it would be wholly beneficial to the purposes of the settlement if the Congress would intervene in this area and provide a further definition of actual use.

18. At the present time the shares in a village corporation are both valuable and inalienable. Granted the otherwise impoverished nature of the average Alaskan Native, there is some danger that the stock will wind up in the hands of the government. One wonders whether the inalienability of the shares indicates that they cannot be acquired by the government at a tax sale, or exactly what the relationship between the inalienability of these shares and the enforcement of the revenue laws is. In any event, it seems appropriate that until such time as the stock can be sold, there be no tax upon it for inheritance purposes. At the present time, a solution which offered the village corporations a first refusal on these shares would not be realistic, as the village corporations are still in an extreme cash short position, and could not hope to fund the purchase of such shares. Once the shares become alienable, some right in the village corporation to purchase these shares becomes more realistic.

19. One of the issues actually being litigated at the present time under the Claims Settlement Act is the status of lands within the State of Alaska owned by the organized boroughs. Under the statutory law of Alaska, there is a provision for transitional aid to newly organized boroughs, which permits them to select 10% of the vacant, unappropriated and unreserved state lands located within their boundaries. Pursuant to this state statute, the Greater Anchorage Area Borough, the Bristol Bay Borough, and doubtless other boroughs within the state, have commenced a program of

selection of state lands. As it turns out, many of these state lands are now also available for selection by native corporations. The question then arises whether the existence of a borough selection is a third party interest subject to which the Native corporation obtains title, or whether the borough selection has no better standing than the selection of the state of which it is an arm. We are not here concerned with the borough as an occupant of the lands, but rather merely with the borough as an entity which has selected the state lands. It is the position of Eklutna, and doubtless of many other Native corporations, that a borough selection should have no better standing than a state selection, by reason of the fact that the borough is merely a political expression of the state.

20. In connection with the preparation of balance sheets for purposes of filing income tax returns, and in connection with disposition of capital assets, village corporations are presented with a severe problem of placing a valuation upon the assets received pursuant to ANCSA. First of all, there is the immense problem of placing a valuation on many thousands of acres concerning which very little is known, and concerning which there are literally no comparables. There is the sheer bulk of the work involved, for which there presumably is nowhere near the number of qualified appraisers available. Lastly, there are uncertainties associated with the fact that it is not known which lands the corporation will in fact finally own, and therefore the extent to which land has been assembled in a single holding in a certain area is not known. This next-to insoluable problem faces Eklutna as soon as August, 1975, when certain tax returns must be filed. We do not presume to be such experts as to suggest infallible solutions to problems in the area of taxation. However, the particular amendment proposed is one which this firm, having considerable experience with commercial transactions, finds reasonably subject to implementation.

21. This proposed amendment is felt to be relatively non-controversial, and merely makes plain that engaging in the rational sort of land use planning and trading of parcels to obtain the useful management units, contemplated by Section 22 F, does not have attached to it a severe tax penalty.

. . . . . .

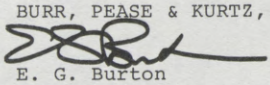
We are not unmindful of the fact that the proposed amendments above are voluminous and in some cases complex and of considerable significance. However, we can in good

faith state that there is some possibility, if not great probability, that each of the issues presented will otherwise find its way into the federal or state court systems, find its way to the highest level thereof, and consume considerable benefit dollars along the way. These are all issues which must be faced and answered, either by the Congress or by the courts, before the exact significance of the Claims Settlement Act can be determined. Eklutna, Inc. finds itself being penalized through being one of the front runners in the implementation of the Act; it is encountering each of these issues and finds its budget scarcely adequate to exploring them all. The directors, as well as the undersigned, strongly urge that the Congress do something to alleviate the situation. If the Congress finds its way to speak to the issues raised by the proposed amendments, the original stated policy of the Act will be served:

> 1. The settlement should be accomplished rapidly, with certainty . . . without litigation, . . .

Very truly yours,

BURR, PEASE & KURTZ, INC.



E. G. Burton

EGB/gd
enclosure

1 To Section 4(i) add the phrase:

; including specifically "City" and "organized Borough", as those terms are defined by the Alaska Statutes.

2 As Section 14(c)(6) add a paragraph:

The decision of the Village Corporation as to size and location of the several tracts referred to in sub-paragraph (1) and (2) above is not subject to review in any court provided that the Directors of such Corporation afforded each claimant of a tract notice and an opportunity for a hearing, except on the basis that the decision is fraudulent or unduly discriminatory as between claimants.

3 To 12(a) add (3):

Nothing in this Act shall be construed to require selection by a Village Corporation of lands previously identified for selection by the State, and a Village Corporation which desires to do so may forgo the selection of some or all of such lands even if it as a result is forced to select from among lands withdrawn under Section 11(a)(3). A Village Corporation may relinquish or reduce in priority any selection of State-selected lands it has made in favor of some other selection it has made, or in favor of another selection from lands withdrawn under amended Section 11(a) which it may make at the time of selection by Village Corporations pursuant to Section 12(b).

4 To 12(b) add (4) to same effect as 12(a)(3) suggested above.

5 To 12(a) add (4):

Any existing withdrawals of Federal Public lands hereafter terminated or declared surplus located within lands withdrawn under Section 11(a) or within the area of a former withdrawal or reserve for the benefit of the Native Village whether specifically so or for the Bureau of Education for educational purposes with the view of their later being reserved and declared an Indian reservation, or which were the subject of an Indian Claims Commission claim for the benefit of the Native Village, or whether or not the withdrawal under Section 11(a) has terminated, shall be available for selection by the Village Corporation on the basis of an acre for acre exchange for other lands selected by the Village Corporation which have not been developed or leased. When such an existing withdrawal of Federal public lands is terminated, the General Services Administration acting as provided by USCA shall first offer such lands to the Village Corporation.

6 To Section 11(a)(1) add following sentence:

As used in this section the phrase "contiguous to or corners on" is meant to include without limitation the spacial relationship between two townships which, but for a survey system standard parallel (correction line) would touch each other, that is, which generally number next North or South, and next West or East, of each other; in order that a Village Corporation's

withdrawal under Section 11(a) consist of no less than two full concentric rings encompassing 25 townships where that number in fact exists; where this sentence reverses a prior decision of the Secretary, the affected Village Corporation may exchange lands, relinquish its selection of lands previously selected and select an equal acreage of lands newly available, or re-designate the priority of affected selections, at or before the time Village Corporations make selections pursuant to Section 12(b).

7 Add a section generally:

Any lands newly made available for Native corporation selection by this [Omnibus] Act, which are located within a Village Corporation withdrawal area as defined by Section 11(a)(1) and (2), or which were once part of a withdrawal or reserve for the benefit of the Native Village whether specifically so or for the Bureau of Education for educational purposes with the view of their later being reserved and declared an Indian reservation, or which were the subject of an Indian Claims Commission claim for the benefit of the Native Village, shall first be made available for selection by such Village Corporation, which, if it has already exhausted or in the process of selecting such lands would exhaust its selection rights, may exchange lands previously selected on an acre for acre basis for lands now to be selected.

8 To 17(b)(1)(4) add:

The easement identification and reservation process pursuant to this section is in lieu of reserving any easements under the Act of August 30, 1890, 26 Stat. 391, or under the Act of March 12, 1914, 38 Stat. 305, which do not apply to conveyances under this Act whether already made or yet to be made.

[telegraph, telephone, railroads, ditches, canals]

9 To 17 (b)(3) add a sentence:

Such easements, to be valid, shall be described with particularity as to their location on the ground, in order not to cloud the title to adjacent lands.

10 As Section 3(m) add:

"Surface estate" means the fee simple estate in the land including without limitation the ground, vegetation, soil, sand, gravel, quarrystone, rock, and other material forming the natural or man-made surface of the ground, to a depth of 100 feet, or to the depth of a sand, gravel or quarrystone deposit, whichever is greater, together with all air rights above the ground, an easement of lateral support, and as against the owner of the subsurface estate any ~~subsurface~~ rights to waters on, in, or under the surface estate, at whatever depth located.

11 As section 3(r) add:

"Subsurface estate" means a fee simple interest in so much of the land as is not part of the surface estate and ~~including without limitation~~ metaliferous minerals, petroleum, and coal, at whatever depth located.

12 To 14(f) add:

; Provided, further, that the lands within the boundaries of the village for these purposes consist of all lands selected by the Village Corporation from within lands withdrawn under Section 11(a)(1) and (2). Such consent by the Village Corporation may be conditioned, inter alea, on receipt of consideration for loss of use of the surface estate and on compatibility of the exploration, development, or removal with the Village Corporations land use plan. The right to consent, or withhold consent, runs with the land.

13 To 14(c)(3) add to the provso:

Provided, further, that (a) if the Native village is located within an organized Borough, where the Village Corporation will be subject to planning, zoning and platting laws in its use and subdivision of lands within the Native village, or (b) if the Native village is located within an existing City, there need not be any conveyance to any Municipal Corporation or to the State in trust for any Municipal Corporation.

14 To 14(c)(4) add a provision:

; Provided, That "related services" means those services generally provided by government, as opposed to private enterprise; and

15 To 14(a) add a sentence:

It shall not be cause to withhold a patent, that the Secretary and the Village Corporation are engaged in any dispute respecting interests to be reserved; rather, the Secretary shall issue such patent subject to resolution of that dispute, in order that the Village Corporation may have marketable title to such lands therein included as are not affected by such dispute. Likewise, where the Secretary and the Village Corporation are engaged in a boundary dispute, patent shall immediately issue to the undisputed lands, without prejudice to the Village Corporation's claim to disputed lands.

16 To 21(d) add 2 sentences:

Specific real property shall, after the expiration of such twenty year period, remain exempt from real property taxation, if the Native owner thereof gives a written commitment to the taxing jurisdiction to keep the land in open space status for park, recreation, scenic or subsistence purposes; provided, that if such land is thereafter developed or leased, the taxing jurisdiction may according to then exist-

ing laws or ordinances recapture taxes for a period of arrears not exceeding five years. A conveyance of real property interests by a Native Village or Regional Corporation to its wholly owned subsidiary corporation does not in and of itself render the real property interest taxable.

17 To 4(e) add a sentence:

The words land "actually used in connection with the administration" of a Federal installation means present as opposed to prospective use, and means direct use as opposed to use in lieu of procurement of supplies or materials from the private sector or the State.

18 As Section 21(f) add:

No inheritance of shares of stock in the Regional or Village Corporation by or on behalf of any person shall be subject to Federal, State or local estate or inheritance taxes for a period ending December 18, 1991; such a Corporation may provide a stock purchase plan whereby it may after the expiration of such period purchase all or the necessary portion of the shares held by a decedant's estate in lieu of their being lost to a tax lien, levy or sale and whereby the heirs of such decedant may repurchase such shares from the Corporation.

19 Add to 14(g):

A selection of State selected lands by an organized Borough pursuant to AS 29.18.190 is not a valid, existing third party right.

20 To Section 21(c) add the following:

Section of the Internal Revenue Code of 1954 to the contrary notwithstanding, no land or interest in land need to valued until the earlier of the following two eventualities: sale or disposition; or the expiration of a period of three years after final receipt of patent to all lands to be patented pursuant to the Act to the Native Village or Regional Corporation in question. In the event of such sale or disposition, the value shall be set as the value of the consideration received, discounted back to the date of patent to reflect inflation and general change of market values in the area in question; the Secretary, in consultation with the Commissioner of Internal Revenue, shall promulgate regulations to effectuate such discount process.

21 To Section 22(f) add a sentence:

Lands received by a Village or Regional Corporation in such an exchange, or in an exchange of like kind with the State or a Municipal Corporation, shall have the same status for purposes of real property taxation as lands acquired by direct selection pursuant to this Act.

COOK INLET
CIRI
REGION, INC.

June 6, 1975

The Honorable Henry M. Jackson
United States Senate
New Senate Office Building
Washington, D. C. 20510

Dear Senator Jackson:

I have the pleasure of submitting for your consideration and possible introduction as part of, or in conjunction with, omnibus ANCSA legislation the enclosed draft Bill which seeks to remedy the problems that have plagued the land selection process for the Cook Inlet Region, Inc.

The legislation incorporates with few refinements, proposals made to the Cook Inlet Region by the Honorable Kent Frizzell, Solicitor of the Department of the Interior, in an offer which was subsequently withdrawn by then Secretary Rogers C. B. Morton.

The chief elements of the draft Bill are:

(a) The conveyance to the Cook Inlet Region, Inc. of approximately sixteen townships of Federal land that are similar in character to lands upon which the Cook Inlet Villages are located. Included are approximately ten townships, plus additional subsurface in the Kenai National Moose Range and six and one-half townships on the west coast of Cook Inlet (presently in D-2 status). The legislation would assure the State continuation of subsurface revenues from its oil leases until revenues from North Slope oil begin to flow;

(b) Alleviation of problems that have arisen to determining how the Secretary meets his ANCSA imposed responsibility to determine which portion of Federal installations are excess and the procedures for making such excess land available for Native selection.

In drafting this provision, due consideration was given to the views of local government, including the Anchorage Borough. Provision is made for withdrawal of excess Federal land for Regional selection because of the paucity of, "similar character" lands within the Region;

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(c) The remainder of the statute provides for the replacement of lands within the National Wildlife Refuge (section 3) and allowance of section-by-section selection by the Region (section 5(a)). Section 5(b) resolves a potential dispute between the State and the Region by permitting State priority for five townships that the Region might be obligated to take under ANCSA.

While this Bill provides a satisfactory resolution of Cook Inlet land selection dispute with the Department of the Interior, we are cognizant of the continuing interest of all parties -- the Region, the State of Alaska, the Federal government and the American public in a resolution of land ownership patterns that best serve the public interests while recognizing the just entitlement of the Native Corporation. To this end, the Cook Inlet Region, Inc., is continuing discussions with the State and Federal governments with the active and constructive participation of other interested parties. If these discussions yield an alternative that better meets the goals of the Alaska Native Claims Settlement Act, we shall inform you immediately.

In the next ten days, I shall be submitting a statement on behalf of the Region which I hope can be made part of the record when hearings are held on the Bill. In addition, we would appreciate the opportunity to appear in person.

Your continued advice and support for the Cook Inlet Region has been greatly appreciated and we would like to say again, how unselfish and helpful your staff has been in consulting with us.

Sincerely,

COOK INLET REGION, INC.

By _____
President

RMH:bf

DRAFT BILL

BE IT ENACTED, etc.

Section 1. Purpose. The purpose of this Act is to amend, supplement, and in part supersede certain provisions of the Alaska Native Claims Settlement Act ("ANCSA"), 43 U. S. C. Section 1601 et seq., relating to the land selection rights of the Alaska Native Regional Corporation established for the Cook Inlet Region, hereafter referred to as Cook Inlet Region, Inc.

Section 2. Conveyances.

(a) Nothwithstanding any contrary provision of ANCSA or other law of the United States, the lands set forth in subsection (c) shall be immediately conveyed to Cook Inlet Region, Inc., by patent issued by the Secretary of the Interior. After patenting, except as otherwise specifically set forth herein, all such conveyances shall be subject to the provisions of ANCSA.

(b) Lands set forth in subsections (c)(2) and (3) shall remain subject to the laws and regulations governing use and development of the national wildlife refuge system so long as such lands remain in the refuge. Any subsequent conveyance of these lands shall, as to such lands, provide that the United States has the right of first refusal so long as such lands remain within the national wildlife refuge system. The right of first refusal shall be for a period of 120 days from the date of notice to the United States that the owner of the land has received a bona fide offer of purchase. The United States shall exercise such right of first refusal by written notice to the village and/or regional corporation within such 120-day period. The United States shall not be deemed to have exercised its right of first refusal if the corporation does not consummate the sale in accordance with the notice to the United States.

To the extent the State of Alaska presently receives income from leases in subsurface areas subsurface areas subject to this Act, such income shall continue to be paid to the State until 1978, and shall not be considered income of the Cook Inlet Region, Inc., subject to Section 7(i) of ANCSA so long as such income is transferred to the State.

(c) Approximately five (5) townships, in the Kenai National Moose Range, surface and subsurface, unrestricted as to use, development and enjoyment, identified as:

T. 8 N., R. 9 W., S. M.

Sections 4 through 9
Sections 16 through 21
Sections 28 through 33

T. 8 N., R. 10 W., S. M.

Section 1
Sections 12 through 15
Sections 20 through 29
Sections 32 through 36

T. 7 N., R. 9 W., S. M.

Sections 4 through 9
Sections 16 through 21
Sections 28 through 33

T. 7 N., R. 10 W., S. M.

Sections 1 through 5
Sections 7 through 36

T. 7 N., R. 11 W., S. M.

Sections 23 through 26
Sections 35 and 36

T. 6 N., R. 9 W., S. M.

Sections 4 through 9
Sections 16 through 21
Sections 28 through 33

T. 6 N., R. 10 W., S. M.

Sections 1 through 29
Section 30 E. 1/2
Sections 32 through 36

T. 6 N., R. 11 W., S. M.

Sections 1 and 2
Sections 11 through 14

T. 4 N., R. 9 W., S. M.

Sections 5 through 8

T. 4 N., R. 10 W., S. M.

Sections 1 through 4
Sections 9 through 12

(2) Approximately five (5) townships in the Kenai National Moose Range, surface and subsurface, such townships being identified as:

T. 1 S., R. 9 W., S. M.

All lands located more than one mile from Tustumena Lake.

T. 1 S., R. 10 W., S. M.

All

T 1 S., R. 11 W., S. M.

Section 1
Section 12 and 13
Section 24 and 25
Section 36

T. 2 S., R. 9 W., S. M.

All lands located more than one mile from Tustumena Lake.

T. 2 S., R. 10 W., S. M.

All

T. 2 S., R. 11 W., S. M.

Section 1
Section 12 and 13
Section 24 and 25
Section 36

T. 3 S., R. 9 W., S. M.

All within the Moose Range boundary.

T. 3 S., R. 10 W., S. M.

Sections 1 through 6

T. 3 S., R. 11 W., S. M.

Section 1

T. 4 S., R. 9 W., S. M.

All within the Moose Range boundary.

(3) The subsurface estate, only in and to five (5) townships in the Kenai National Moose Range, such townships being identified as:

T. 10 N., R. 6 W., S. M.

Sections 18 through 20
Sections 29 through 32

T. 10 N., R. 7 W., S. M.

Section 1
Sections 10 through 16
Sections 19 through 36

T. 10 N., R. 8 W., S. M.

Section 25 and 26
Sections 34 through 36

T. 9 N., R. 6 W., S. M.

Sections 5 through 8
Section 17 and 18
Section 18

T. 9 N., R. 7 W., S. M.

All

T. 9 N., R. 8 W., S. M.

Sections 1 through 5
Sections 7 through 36

T. 9 N., R. 9 W., S. M.

Section 13
Sections 23 through 27
Sections 32 through 36

T. 8 N., R. 9 W., S. M.

Section 1 through 3
Sections 10 through 15
Sections 22 through 27
Sections 34 through 36

T. 6 N., R: 9 W., S. M.

Sections 1 through 3
Sections 10 through 15
Sections 22 through 27
Sections 34 through 36

(4) Six and one-half townships identified as:

T. 12 N., R. 25 W., S. M.

Sections 4 through 9
Sections 16 through 21
Sections 28 through 33

T. 12 N., R. 26 W., S. M. All

T. 11 N., R. 26 W., S. M. All

T. 10 N., R. 26 W., S. M.

Sections 1 through 18
Sections 19 through 21
Sections 28 through 33

T. 10 N., R. 27 W., S. M.

Sections 1 through 3
Sections 10 through 15
Sections 22 through 27
Sections 34 through 36

T. 3 N., R. 21 W., S. M.

Sections 1 through 3
Sections 10 through 15

T. 2 N., R. 22 W., S. M. All

T. 2 N., R. 23 W., S. M.

Sections 1 through 3
Sections 10 through 15
Sections 22 through 27
Sections 34 through 36

T. 3 S., R. 22 W., S. M. All

T. 4 S., R. 22 W., S. M.

On North Shore of Chinitna Bay.

(d) Village and Group Selection Rights; Non-Diminishment.

In the event any Native Corporation within Cook Inlet Region, now or hereinafter duly certified and established, shall under ANCSA be entitled to select, and shall select, any lands within the Kenai National Moose Range which by this Act are conveyable to but at such time have not actually been conveyed to Cook Inlet Region, Inc., these corporations' rights under ANCSA shall prevail; provided however, that if such native corporation or corporations cumulatively obtain more than two townships of such land, the Cook Inlet Region shall have the right to replace the excess lost to it, with an equivalent amount of land (and/or estate in land, as applicable) within the Kenai National Moose Range, designated by the Secretary within 1,000 feet of sea level and subject to no greater restrictions than were established by this Act for the land (or estate) so lost. Cook Inlet Region, Inc., may select the subsurface estate to lands in which the surface estate is conveyed, pursuant to this Act, to Native Corporations within the Moose Range.

Section 3. Replacement of National Wildlife Refuge System Lands.

The Secretary of the Interior shall add to the National Wildlife Refuge System from other public lands, either contiguous or non-contiguous to the Kenai National Moose Range, an equivalent amount of acreage to that conveyed to Cook Inlet Region, Inc., and any Village therein, pursuant to Section 2 of this Act, and in replacement thereof.

Section 4. The Secretary of the Interior shall determine within eighteen months of passage of this Act, the smallest practicable tract within the boundaries of the Cook Inlet Region enclosing lands actually used in connection with the administration of any Federal installations, as prescribed in Section 3(e) of the Alaska Native Claims Settlement Act. Such determination shall be

made in consultation with the holding agency and the Joint Federal-State Land Use Planning Commission. Upon determination that such land is outside the smallest practicable tract in any federal installation subject to Section 3(e) examination, it shall be withdrawn by the Secretary for selection by the Cook Inlet Region, Inc., provided that no such withdrawal or conveyance for the benefit of Cook Inlet Region, Inc., shall affect Point Woronzoff, Point Campbell or Campbell Airstrip. If such installation is within two miles of any home rule or first class city, it shall not be withdrawn for selection by Cook Inlet Region unless there is consent of the local governments affect. Selections by Cook Inlet of lands subject to this section will be valid even if filed prior to withdrawal so long as the selection is made by December 18, 1975.

Section 5. Remainder of Regional Section.

The lands and estates in conveyance to Cook Inlet Region, Inc., pursuant to this Act shall be an acre-for-acre partial satisfaction of the land selection rights accorded to Cook Inlet Region, Inc., pursuant to the provisions of ANCSA. The remainder of such selection rights pursuant to ANCSA shall be made from lands withdrawn for such selection and subject to the provisions of ANCSA and the Secretary's implementing regulations except that:

(a) The lands selected by the Cook Inlet Region, Inc., may be in whole sections where they are available or shall include all available lands in less than whole sections, and, wherever feasible, shall be in units of not less than 1,280 acres.

(b) Cook Inlet Region shall not be required to select lands in areas withdrawn pursuant to Section 11(a)(1) of ANCSA if the federal withdrawal for regional selection was subsequent to selections by the State of Alaska under the Statehood Act.

Section 6. Effective date.

The provisions of this Act shall take effect immediately.

WILKINSON, CRAGUN & BARKER
LAW OFFICES
THE OCTAGON BUILDING
1735 NEW YORK AVENUE, N.W.
WASHINGTON, D. C. 20006
(202) 833-9800
CABLE ADDRESS
"WILCBAR"

March 12, 1975

Honorable Henry M. Jackson
Chairman
Senate Committee on Interior and
Insular Affairs
3106 New Senate Office Building
Washington, D.C.

Re: S. 685

Dear Senator Jackson:

We wrote to you on February 19, 1975, concerning S. 685, a bill to authorize certain corporations under the Alaska Native Claims Settlement Act to merge or consolidate. We also indicated that Mr. John W. Schaeffer, President, NANA Regional Corporation, Inc., would be in Washington during the week of February 24, and would attempt to stop by to see either you or members of your staff concerning S. 685. Unfortunately, Mr. Schaeffer's schedule was aborted because of a need to return early to Alaska. However, in connection with consideration of S. 685, we enclose for your information a copy of Resolution No. 75-2, adopted by the Alaska Federation of Natives, endorsing passage of S. 685. We understand that Roger Lang and John Shively have talked about this legislation with Messrs. Van Ness and Quarles in scheduling it for hearings in conjunction with other legislation relating to the Settlement Act.

We expect to have written confirmation of support of this legislation by the State of Alaska, and as soon as we receive that confirmation, we will forward a copy of the same to you.

Sincerely,

WILKINSON, CRAGUN & BARKER

Richard A. Baenen

By: Richard A. Baenen

Enclosure

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 Saud
President

Fred I. Angasan
Secretary

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MAY 22 11:32 AM '75

SENATE INTERIOR COMMITTEE
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MAY 23 1975
WASHINGTON, D. C. 20510

May 21, 1975

Honorable Henry M. Jackson
Chairman, Senate Committee on Interior
and Insular Affairs
3106 NSOB
United States Congress
Washington, D. C.

Re: S. 131 and S. 685, Bills to Amend the Alaska Native Claims Settlement Act

Dear Senator Jackson:

On behalf of our client, NANA Regional Corporation, Inc., one of the regional corporations formed under the Alaska Native Claims Settlement Act, we wish to express our appreciation for the opportunity given us to testify at the hearings held by the Interior and Insular Affairs Committee on May 16, 1975, on the above-captioned bills.

S. 131 contains a provision temporarily exempting Settlement Act corporations from the provisions of the Investment Company Act of 1940. S. 685 authorizes mergers among certain corporations formed under the Settlement Act, and similarly raises questions of the jurisdiction of the Securities and Exchange Commission over corporations formed under the Settlement Act. As noted in our statement given at the hearings, we anticipate that the SEC shortly will submit to the Committee a report of its views regarding the 1940 Act exemption, as well as possibly also comments relating to merger. Since we view these as matters of great concern to our client as well as to the other corporations formed under the Settlement Act, we ask that we be given an opportunity to respond to the SEC's report when it is submitted. We would appreciate it if you would request the Committee's staff to send us a copy of the SEC's report as soon as the Committee

receives it, so that we may promptly furnish our comments in response.

Sincerely yours,

WILKINSON, CRAGUN & BARKER

Foster De Reitzes

By: Foster De Reitzes

cc: Senator Mike Gravel
Senator Ted Stevens
Mr. Steven P. Quarles

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SENATE INTERIOR COMMITTEE
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JUN 12 1975
WASHINGTON, D. C. 20510

June 12, 1975

HAND CARRIED

Honorable Henry M. Jackson
Chairman, Senate Committee on Interior
and Insular Affairs
3106 NSOB
United States Congress
Washington, D. C.

Re: S. 131, S. 685 and S. 1824,
Bills to Amend the Alaska
Native Claims Settlement Act

Dear Senator Jackson:

On behalf of our client, NANA Regional Corporation, Inc., we enclose a memorandum we have prepared relating to the provisions of the above-captioned bills dealing with mergers among Settlement Act corporations and the exemption of such corporations from the various securities laws. The memorandum discusses securities laws exemptions already contained in the bills, as well as the need for additional ones. While the memorandum addresses itself specifically to S. 1824, it is equally applicable to the comparable provisions of S. 131 and S. 685. Appendix B to the memorandum is a copy of sections 6 and 9 of S. 1824, showing the exact language of all changes we propose.

We view the question of merger and of exemptions from the securities laws as matters of great import to the future well being of Settlement Act corporations, and we will be glad to lend whatever further assistance we can to insure that the legislation, as finally enacted, covers these subjects in the most appropriate manner.

Sincerely yours,

WILKINSON, CRAGUN & BARKER

By: Foster De Reitzes

enc.
cc: (w/enc.) Mr. Steven P. Quarles
Mr. John W. Schaeffer
Mr. Lance Anderson
Mr. John Shively

54-919 O - 75 - 21

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June 11, 1975

MEMORANDUM

Re: S. 1824, A Bill To Amend The Alaska Native Claims Settlement Act

This memorandum, submitted on behalf of NANA Regional Corporation, Inc., discusses the need for certain additional amendments to sections 6 and 9 of S. 1824, which, respectively, exempt corporations formed under the Alaska Native Claims Settlement Act from the provisions of the Investment Company Act of 1940, and authorize the merger or consolidation of such corporations. In addition to proposing certain technical amendments to section 9, on merger, we wish herein also to comment on the securities law exemptions already existing in S. 1824, as well as the need for an additional exemption. Attached hereto are the following:

(a) Memorandum, dated May 23, 1975, outlining the applicability and requirements of the three principal securities laws (Appendix A); and

(b) A copy of sections 6 and 9 of S. 1824, showing all changes herein proposed (Appendix B).

While our comments are directed specifically at sections 6 and 9 of S. 1824, they apply equally to the comparable provisions of S. 131 and S. 685.

I. EXEMPTIONS FROM SECURITIES LAWS.

A. Investment Company Act of 1940.

Section 6 of S. 1824 exempts Settlement Act corporations, until December 31, 1991, from the provisions

of the Investment Company Act of 1940 (the "1940 Act").[1/] This exemption is essential for a variety of reasons. The 1940 Act generally applies to any corporation with over 100 stockholders and 40 percent of its assets (excluding cash and government securities) invested in securities. Approximately 175 of the Settlement Act corporations are large enough potentially to come under the provisions of the 1940 Act. While it may be thought that once the corporations receive most of their land entitlement they no longer will have 40 percent of their assets invested in securities, this will not necessarily be the case. Until most of the land has been appraised, which, because of costs involved may not occur for many years to come, it seems likely that the SEC will have to virtually ignore the value of the land in determining whether a corporation comes within the 40 percent requirement. The 1940 Act therefore could continue to apply to these corporations for many years to come, and an exemption until 1991 is therefore necessary. Without the exemption, the very burdensome and costly requirements of the 1940 Act could apply separately to each of these corporations, even though, because of the peculiar nature of the corporations and because their stock may not be traded, the purpose of many of these requirements is totally lost. The requirement for initial registration with the SEC and for submitting to the SEC extensive periodic reports which are kept on public file (but not mailed to the stockholders) are inappropriate where the stock of a corporation is not publicly traded. Similarly, the requirements for very detailed and complex proxy statements, including financial statements, in connection with any stockholder vote, but particularly with a vote on merger, do not properly serve the intended purpose of informing the Native 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 a primary means of communication. Conversely, the tight restrictions which the proxy rules place on verbal presentations virtually eliminate any effective use of what for many Natives is the primary means of receiving information, i.e., discussions and explanations, often of necessity simplified, at village or community meetings. Such meetings often must even be held in two languages in order to be useful.

1/ Section 6 of S. 131 provides for such an exemption only until December 31, 1976.

Thus, the application of the proxy rules would require that something that is totally new and foreign to most of the stockholders, such as a merger, be explained or disclosed to them through a medium to which they are similarly unaccustomed.

Section 17 of the 1940 Act, if applicable, presents special problems. This section prohibits transactions between "affiliated persons" without a prior application to the SEC for an order that the terms of the transaction are fair and equitable. Because of the degree of control which under the Settlement Act the regional corporations may exert over village corporations in their region, the SEC views regional and village corporations as "affiliated persons", and therefore any significant transaction between the two would require a prior application to and order from the SEC. Since the village corporations in the region are all "affiliates" of the same regional corporation, the same requirements may well apply for transactions between any two investment company village corporations in a region. Such cumbersome, time consuming and costly procedures could seriously delay, if not prevent, the timely development of these corporations.

A recent example in the NANA Region is quite revealing. 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. As a result, close to $200,000 of NANA's money received under the Settlement Act was wasted. We were also advised that no such order could be forthcoming until "extensive public hearings" were held.

We also 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 in the NANA Region, many located in bush Alaska many miles from civilization, had many "intangible" reasons for wishing to merge, the SEC was 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 until then the SEC may not be able to approve a merger among Settlement Act corporations which it deemed to be investment companies.

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. 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. It is, after all, 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.

B. Securities Exchange Act of 1934.

We strongly recommend that section 6 of S. 1824 be amended to exempt the corporations not only from the Investment Company Act of 1940, but also from the Securities Exchange Act of 1934 (the "1934 Act"). (See Appendix B hereto, for specific language necessary). The same recommendation applies also to comparable section 6 of S. 131.

The 1934 Act applies to corporations with over 500 stockholders and $1,000,000 in assets. While the registration of a corporation under the Investment Company Act of 1940 exempts it from the 1934 Act, an exemption of Settlement

Act corporations from only the 1940 Act would result in all the regional corporations and approximately the 19 of the village corporations being subject to the terms of the 1934 Act.

The 1934 Act requires extensive initial registration with the SEC, the filing of periodic reports with the SEC, and makes the detailed proxy rules applicable to any vote of stockholders. For the reasons discussed above under the 1940 Act, these requirements again have little proper application to Settlement Act corporations and do not fulfill their intended purpose in this context. In fact, in a recent letter to Congressman Lloyd Meeds, in connection with the question of exempting the corporations from the 1940 Act, the SEC characterized 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.

c. Securities Act of 1933.

We also strongly support subsection (e) of section 9 of S. 1824, which provides that the issuance of stock in any merger or consolidation pursuant to section 9 is exempt from the stock registration requirements of the Securities Act of 1933 (the "1933 Act") until December 31, 1991. The 1933 Act requires registration with the SEC of the stock issued in any public offering.

The 1933 Act covers virtually all mergers or consolidations among Settlement Act corporations involving an exchange of stock for stock. Whether a stock offering is a "public offering" depends partly on the number of persons to whom the stock is issued and their financial sophistication and knowledge of the corporation, and accordingly it appears that even a merger among two of the smallest village corporations would involve a public offering of stock. While an exemption exists for intra-state offerings, it usually is unavailable if even one stockholder to whom stock is offered resides out-of-state.

The 1933 Act requires that the stock be registered with the SEC, and a prospectus prepared and mailed to all stockholders to whom the stock is offered, prior to the time at which they make the decision on the merger. Stock registration under the 1933 Act is an extremely elaborate and technical proceeding. The resulting prospectus, to be mailed to the stockholders, is intended to disclose every last detail bearing on the question of whether the person should

acquire the stock. In the merger which NANA and the village corporations attempted to undertake in the Spring of 1975, the prospectus, which had not yet been cleared by the SEC but which resulted from the SEC's initial round of comments on an earlier version submitted, consisted of a total of 80 printed pages, including 50 pages of financial statements, and accompanying footnotes, on all the corporations involved. In view of the lack of sophistication of most of the stockholders, particularly on matters such as complex mergers, such a document clearly is not an appropriate method of informing the stockholders. Yet, such a document would be required. It is extremely costly to prepare, and, as noted, in the case of the NANA merger cost well over $100,000. Clearly such costs for practical purposes would preclude the possibility of merger between two small village corporations, who might be most in need of it.

Conversely, the tight restrictions of the 1933 Act on the verbal communications which may be made in conjunction with the prospectus virtually preclude any meaningful or simplified discussion at village or community meetings in order to explain merger to the stockholders. Thus the 1933 Act requires, for disclosure, an extremely complex and expensive document which does not serve its intended purpose at least as to Settlement Act corporations, but also precludes the one effective means of communication.

II. TECHNICAL AMENDMENTS TO SECTION 9, ON MERGER

We propose two amendments to section 9(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 and 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. Appendix B to this memo shows exact wording of this proposed amendment, as well as the other amendments to S. 1824 which we propose.

The second amendment to subsection (a) is to add a proviso to clarify the question of dissenters' appraisal rights. Section 9(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 light of the prohibition against stock alienation contained in the Settlement Act, a bill

authorizing mergers under Alaska law but not addressing itself to dissenters' rights would create an ambiguity as to whether or not the bill intended to permit stockholders to exercise dissenters' rights. The intent of this bill is that they should not, and this should be clarified by adding, at the end of subsection (a), the proviso set forth in Appendix B.2/

In section 9(b) of the bill, we again propose that a reference to corporations formed under sections 14(h)(2) or 14(h)(3) of the Settlement Act be added, 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.

We also propose that a new clause be added in the middle of section (b) to clarify that the terms and conditions of a merger or consolidation (which customarily are spelled out in a plan of merger to be adopted by the boards of directors and voted on by the stockholders) may provide for the issuance of additional shares of regional corporation stock to persons already owning stock. The merger of a village corporation into a regional corporation typically would involve the issuance of additional shares of regional stock in exchange for village stock, and the additional language makes clear that such a merger would not violate 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.

Section 9(c) of the bill deals with the treatment of at-large stockholders in a merger or consolidation and expressly permits the elimination of the at-large stockholders' extra dividend rights pursuant to section 7(m) of the Settlement Act in instances where the at-large stockholders, voting separately as a class, have approved such elimination. First, we propose that the reference to section 7(m), appearing at the beginning and end of this subsection, be expanded to include also section 7(j), since the extra dividend rights arise under both these sections. The second proposed change would take into account the fact that the dividend rights of the at-large stockholders might not be eliminated entirely, but merely altered.

2/ We note that S. 685, which also deals with merger, clarifies the same ambiguity by expressly stating that dissenters' rights *may* be exercised.

We also suggest that a new sentence be added at the end of subsection (c) to clarify how dividend rights are calculated and distributed to the at-large stockholders in the event of a plan of merger which does not provide for any change in such dividend rights. The language we propose (see Appendix B) 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 dividends calculated in the exact same manner as before, as if the merger had never occurred and all corporations continued to exist separately.

Finally, while we support the exemption from the 1933 Act contained in subsection (e) of Section 9, we suggest that, for purely technical reasons, it be reworded as shown in Appendix B hereto. The current language may not provide the complete exemption from the 1933 Act that is intended, since it leaves room for the argument that, while the issuance of stock is exempt, the offering of the stock is not. The revised language we propose precludes this possibility, by making the entire transaction exempt.

WILKINSON, CRAGUN & BARKER

By: Foster De Reitzes

APPENDIX A

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) '33 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.

APPENDIX B

S. 1824

Suggested Amendments

SEC. 6. The Settlement Act is amended by adding a new section 28, to read as follows:

"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 the Investment Company Act of 1940."

SEC. 9. (a) Notwithstanding any provision of the Alaska Native Claims Settlement Act (85 Stat. 688), 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 corporation or 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 said 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 said region pursuant to section 7(d), ~~or~~ 8(a), 14(h)(2) or 14(h)(3) of the Alaska Native Claims 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 Alaska Native Claims 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, as are applicable to the corporations and shareholders which participated in said mergers or consolidations or as 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 Alaska Native Claims 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 said class to receive dividends pursuant to said 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 such corporation referred to in this section may so merge or consolidate unless that corporation's shareholders have approved such merger or consolidation of that corporation with any other such corporation or corporations.

~~(e) The issuance of stock in any merger or consolidation pursuant to this section shall be exempt from the registration requirement of the Securities Act of 1933 until December 31, 1991.~~

(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.

WILKINSON, CRAGUN & BARKER

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JUN 16 6 33 AM '75

SENATE INTERIOR COMMITTEE
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WASHINGTON, D. C. 20510

June 13, 1975

HAND CARRIED

Mr. Steven P. Quarles
Special Counsel
Senate Committee on Interior
and Insular Affairs
3208 New Senate Office Building
United States Congress
Washington, D.C. 20510

Re: S. 131, S. 685, and S. 1824,
Bills to Amend the Alaska
Native Claims Settlement Act

Dear Steve:

We thank you for the opportunity you gave us to meet with you yesterday to discuss the merger and securities law aspects of the above-captioned bills. To supplement our June 11, 1975 memorandum, we submit the following by way of further suggestions or explanations on the points we discussed:

A. Dissenters' Rights. As shown in Appendix B to our June 11, 1975 memorandum, we suggested that a proviso be added at the end of section 9(a) of S. 1824, to clarify that the rights accorded under Alaska law to dissenting shareholders in a merger or consolidation may not be exercised by Settlement Act corporation stockholders. This proviso could be reworded to contain specific references to the applicable provisions of Alaska law, as follows:

> "Provided, That the rights accorded by Alaska Statutes 10.05.417 through 10.05.432 (§ 70ch 126 SLA 1957) to dissenting shareholders in a merger or consolidation may not be exercised in any merger or consolidation pursuant to this section."

Such rewording creates a technical change only. As I explained, the rights of dissenting stockholders to be paid the fair value of their shares under AS 10.05.417-432 are, to the best of our knowledge, the only special rights granted under Alaska law to dissenting shareholders in a merger or consolidation.

We believe, however, that some such proviso definitely should be included in the bill, since there otherwise would exist an ambiguity as to whether dissenters' rights are or are not available. We believe they should not be, so that, if a stockholder votes against the merger but is outvoted by the other stockholders, he would not be permitted to cash in his shares but instead would receive shares of the surviving corporation along with all other stockholders. While permitting mergers among Settlement Act corporations does not violate the spirit of the inalienability provisions of the Act, because the surviving corporation continues to be wholly-owned by Natives, permitting dissenting stockholders to cash in their shares clearly violates the Congressional mandate that the Natives keep their shares until 1991. Although to deny them this right may seem to deprive them of a right available to other stockholders, this deprivation is directly comparable to the fact that Settlement Act stockholders also may not sell their stock until 1991 while most persons owning stock are free to sell their shares anytime they wish.

B. Affirmative Vote Requirement. This relates to the suggestion that the merger provisions of the legislation perhaps should require a higher affirmative vote for approval of a merger or consolidation than that required under Alaska law. Alaska law generally requires mergers or consolidations to be approved by the affirmative vote of two-thirds of all outstanding shares. However, this spring the Alaska legislature passed an amendment stating that mergers solely among Settlement Act corporations may be approved by the affirmative vote of a majority of all outstanding shares of each corporation participating therein.

This vote requirement is already extremely difficult to achieve, and we strongly recommend against any attempt to raise it. It must be noted that having a merger approved by a majority of all outstanding shares is quite different from, and far more difficult to achieve than obtaining approval from a majority of the shares actually voting, or even two-thirds of the shares voting. Under that latter requirement, a merger might be approved by a majority of a 50 percent quorum, or only 25 percent of all outstanding shares.

The current requirement also means that any stockholder who, for whatever reason, does not bother to vote is in effect voting against the merger. After two rounds of stockholders' meetings in the NANA Region, we can assure you that it is in any case very difficult to get out the vote. Most Native stockholders have never owned stock before, and, whether out of confusion or apathy, many simply do not bother to vote. While stockholders living in the villages often can be actively urged to participate, many villages have a large number of stockholders residing elsewhere in the State of Alaska, or in the lower 48 states, and they are more difficult to reach. This is evident from the relatively small percentages of stockholders who participated in this April's annual stockholders' meetings of NANA and the eleven village corporations, at which directors were elected. For a quorum to be present, one-third of the outstanding shares had to be represented at the meeting, either in person or by proxy. At the NANA meeting, only 39 percent of the shares were present and voting, either in person or by proxy. For the eleven village corporations, the respective attendance percentages were as follows:1/ 33 1/3, 33 1/3, 38, 39, 44, 47, 47, 48, 59, 60 and 63. We also understand that other regions encounter similar situations, and that meetings in some regions have had to be postponed because a quorum was not present. It is therefore clear that even the present affirmative vote requirement for mergers will be very difficult to achieve. Not only must every corporation wishing to merge have 50 percent attending, but each also must have an absolute 50 percent voting in favor of merger. If this requirement were increased to two-thirds, we doubt that it would ever be possible to have a merger approved, at least in the NANA Region.

Regarding the possibility that the vote requirement be set at two-thirds of those voting (rather than two-thirds of all outstanding shares), coupled perhaps with a high quorum requirement, we note that with a 50 percent quorum requirement this could result in a merger being approved with the affirmative vote of only one-third of all outstanding shares. Similarly, a quorum requirement of two-thirds could result in a merger being approved with the affirmative vote of only 44 percent of all outstanding shares. Either of these alternatives could make merger easier to approve than the current requirement.

1/ The smallest village, Kobuk, with 63 stockholders, had only 21 attending - 8 in person and 13 by proxy.

C. Village Corporation Control Over Mineral Exploration Within Village Boundaries. Section 14(f) of the Settlement Act provides that the right to explore, develop, or remove minerals from the subsurface estate in the lands within the boundaries of any Native village shall be subject to the consent of the village corporation. This requirement by its terms applies only to lands actually within the boundaries of the village, rather than to all lands selected by the village. If a village corporation merges into the regional corporation, ceases to exist and the regional corporation succeeds to all the village corporation's rights, the terms of this provision would be rendered meaningless. The same would occur if two or more village corporations merge with each other; the surviving corporation again would succeed to each participating village corporation's right to give or withhold such consent.

It is difficult to deal with this provision in the merger bill itself. Protection of village stockholders from improper exploration within village boundaries is more appropriately left to the specific plan of merger or consolidation, since the appropriate method of dealing with this question might vary from region to region or village to village. For example, the NANA Board of Directors already has one representative from each village, and thus each village's particular interests are to some extent already protected. In the merger contemplated for this spring, each village which merged into NANA would have received at least one additional representative on the NANA Board. Furthermore, the Articles of Incorporation of NANA, as the surviving corporation, would through the merger have been amended to divide the eleven villages into geographic groups, and to provide that the land selected within the withdrawal area around each village in a group be managed by a committee consisting of the Board members representing the villages in the group. This was intended to insure at least some continued local control over land management. While this method of resolving the question may be appropriate for the NANA Region, it may not suit other regions. The ultimate protection of a village corporation's right to control exploration in the boundaries of the village is, of course, provided by the fact that, if the village stockholders do not wish to lose this control, they can vote against the merger and their village corporation would continue to exist independently.

If it is felt that the merger legislation nevertheless should contain some provision regarding these exploration rights, we would suggest that the following sentence be added immediately preceding the last sentence of section 9(b) of S. 1824:

> "The plan of merger or consolidation further shall provide in a suitable manner for the transfer or disposition of the right of affected Village Corporations to withhold consent, pursuant to section 14(f) of the Alaska Native Claims Settlement Act, to mineral exploration, development or removal within the boundaries of the Native village."

D. Securities Exchange Act of 1934. Our June 11, 1975 memorandum suggests that section 6 of S. 1824 (also section 6 of S. 131) be expanded to exempt Settlement Act corporations not only from the Investment Company Act of 1940, but also from the Securities Exchange Act of 1934 (48 Stat. 881, as amended). Most of the provisions of the 1934 Act are concerned with the regulation of securities exchanges, broker-dealers, and the trading in shares, and, as discussed in our memorandum, the vast majority of the Act therefore has little proper application to Settlement Act corporations, whose stock may not be traded until 1991.

Problems will result from any attempt to exempt Settlement Act corporations from fewer than all provisions of the 1934 Act. One reason for this is that many sections of the Act are tied together and operate jointly, and the legal interpretations which surround many of these provisions reflect this. Thus, if a certain section were made to apply in isolation, it would perhaps be unclear whether certain other sections, not expressly applicable but containing related provisions or remedies, were intended to apply by implication.

For example, as we discussed, the corporations might be exempt from all provisions of the 1934 Act except section 10(b). To accomplish this, section 6 of S. 1824 could read as follows:

> SEC. 6. The Settlement Act is amended by adding a new section 28, to read as follows:
>
> "SEC. 28. Any corporation organized pursuant to this Act shall through December 31, 1991, be exempt from all provisions of the Securities Exchange Act of 1934 (48 Stat. 881), as amended, except section 10(b), and from 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 the Investment Company Act of 1940."

We do not however think that to so limit the exemption is either necessary or appropriate. Section 10(b) of the 1934 Act makes it unlawful to use, in connection with the purchase or sale of any security, "any manipulative or deceptive device or contrivance" in contravention of the Commission's rules and regulations. Since Settlement Act corporation stock may not be sold until 1991, this provision, if applicable, would in any event come into play only in connection with mergers or consolidations. The Commission has promulgated several rules under this section, and of these the one most applicable would be Rule 10b-5. Section 10(b) and the rules thereunder constitute the basic fraud provisions of the 1934 Act and are, incidentally, the provisions under which a large portion of securities litigation takes place.

If section 10(b) were made to apply in isolation, civil lawsuits could be brought thereunder by private parties alleging violations of the section. It would be uncertain, however, whether the Commission itself could take action, for example under section 21 of the 1934 Act, which authorizes the Commission to investigate any violations of the Act and to impose certain remedies.

A further problem with the applicability of section 10(b) results from the fact that a large body of case law has evolved thereunder, setting strict standards as to exactly what activity is actionable under the section, and these standards sometimes are related to other provisions of the Act, such as the proxy disclosure requirements. They are basically securities law standards. For example, what is deemed to be a false or misleading statement in connection with a merger vote may possibly be related to what the 1934 Act in the first instance requires to be written in proxy material. The result might be that, even if the proxy rules did not expressly apply to Settlement Act corporations, the corporations nevertheless as a practical matter may have to follow the 1934 Act rules on proxy statements in order to avoid future liability under section 10(b). Thus much of the effect of the exemption may be nullified.

More importantly, however, no portion of the 1934 Act need apply to these corporations because they in any event are subject to the common law rules and standards on fraud and deception, and in our opinion, these provide much of the same protection to the stockholders and the corporations as does section 10(b), without subjecting them to the added complexities and costs of the securities law standards. Additional protection is also provided by the fact that, regardless of the securities laws, every board of directors under common

law is held to owe a strict fiduciary duty to its stockholders, and a violation of the duty is actionable and may result in liability. Thus we believe that common law principles already provide all protection necessary.

An alternate suggestion would be to provide for a complete exemption from the 1934 Act (see Appendix B to June 11, 1975 memorandum), but to require those corporations to whom the Act otherwise would apply2/ nevertheless to send its stockholders annual reports containing substantially the information required to be included in the annual report to stockholders of a corporation subject to the 1934 Act. This could be accomplished by adding the following new sentence at the end of section 6 of S. 1824:

> "Any such corporation which, but for this section, would be subject to the provisions of the Securities Exchange Act of 1934 shall transmit to its stockholders each year a report containing substantially all the information required to be included in an annual report to stockholders by a corporation which is subject to the provisions of such Act."

This requirement would be an addition to the requirement already contained in section 7(o) of the Settlement Act, for the annual mailing of an audit report or a summary thereof to all stockholders. Adding the requirement for an annual report, particularly in light of the SEC's new regulations as to its content, would inform the stockholders of the activities of the corporation and would give them the information necessary effectively to evaluate the competence and performance of their management.

If you have any questions, or if we may be of any further assistance, please do not hesitate to call on us.

Sincerely yours,

WILKINSON, CRAGUN & BARKER

Foster De Reitzes

By: Foster De Reitzes

cc: Senator Henry M. Jackson
Senator Ted Stevens
Senator Mike Gravel
Mr. Michael Spaan
NANA Board of Directors
Mr. John W. Schaeffer
Mr. Lance Anderson
Denis Pinkernell, Esquire
Mr. John Shively

2/ Corporations with over 500 stockholders and $1,000,000 in assets.

WILKINSON, CRAGUN & BARKER

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EDWARD M. FOGARTY
S. STEVEN KARALEKAS
ROBIN S. FRIEDMAN
JAMES E. MAGEE
ROBERT B. McKENNA, JR
JOSEPH P. MARKOSKI

July 9, 1975

Steven Quarles, Esquire
Special Counsel
Senate Committee on Interior and
Insular Affairs
3208 New Senate Office Building
United States Congress
Washington, D.C. 20510

Re: S. 1824

Dear Steve:

We have reviewed the sections on merger and exemption from the SEC laws as drafted in the July 2, 1975, Committee Print of S. 1824. We believe that these sections as drafted are fine and handle these matters in what we consider the best possible manner.

We should comment briefly on the last subsection of section 7 of the bill, which requires plans of merger or consolidation to transfer a village corporation's right to withhold consent to mineral exploration within the village boundaries, under section 14(f) of the Settlement Act, to a separate entity composed of the Native residents of the village. This appears to be the best solution to the question of how properly to dispose of these rights. Section 14(f) of the Settlement Act appears intended to guarantee local control of mineral exploration within the boundaries of a Native village, and this control should continue even if the village corporation merges with another village corporation or with the regional corporation. We assume that the requirement for conveyance "to a separate entity composed of the Native residents of such Native village" is not intended to require necessarily that a new entity be formed to take the place of the village

corporation which would go out of existence through the merger. We read the provision as leaving the matter open, that is, whatever entity is best suited to fulfill the need in light of the structure of the village.

As we told you yesterday, either Richard Baenen or I will be in town at any given time over the next month or two, and, therefore, should you need any further assistance from us or have any questions on these or other sections of the legislation, please do not hesitate to call on us.

Sincerely,

WILKINSON, CRAGUN & BARKER

Foster De Reitzes

By: Foster De Reitzes

cc: Mr. John Schaeffer
Mr. Lance Anderson
Mr. John Shively

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June 13, 1975

Mr. Steven P. Quarles
Special Counsel
Senate Committee on Interior
and Insular Affairs
3208 New Senate Office Building
United States Congress
Washington, D.C. 20510

Re: S. 131, S. 685, and S. 1824,
Bills to Amend the Alaska
Native Claims Settlement Act

Dear Steve:

We thank you for the opportunity you gave us to meet with you yesterday to discuss the merger and securities law aspects of the above-captioned bills. To supplement our June 11, 1975 memorandum, we submit the following by way of further suggestions or explanations on the points we discussed:

A. Dissenters' Rights. As shown in Appendix B to our June 11, 1975 memorandum, we suggested that a proviso be added at the end of section 9(a) of S. 1824, to clarify that the rights accorded under Alaska law to dissenting shareholders in a merger or consolidation may not be exercised by Settlement Act corporation stockholders. This proviso could be reworded to contain specific references to the applicable provisions of Alaska law, as follows:

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We believe, however, that some such proviso definitely should be included in the bill, since there otherwise would exist an ambiguity as to whether dissenters' rights are or are not available. We believe they should not be, so that, if a stockholder votes against the merger but is outvoted by the other stockholders, he would not be permitted to cash in his shares but instead would receive shares of the surviving corporation along with all other stockholders. While permitting mergers among Settlement Act corporations does not violate the spirit of the inalienability provisions of the Act, because the surviving corporation continues to be wholly-owned by Natives, permitting dissenting stockholders to cash in their shares clearly violates the Congressional mandate that the Natives keep their shares until 1991. Although to deny them this right may seem to deprive them of a right available to other stockholders, this deprivation is directly comparable to the fact that Settlement Act stockholders also may not sell their stock until 1991 while most persons owning stock are free to sell their shares anytime they wish.

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For example, as we discussed, the corporations might be exempt from all provisions of the 1934 Act except section 10(b). To accomplish this, section 6 of S. 1824 could read as follows:

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More importantly, however, no portion of the 1934 Act need apply to these corporations because they in any event are subject to the common law rules and standards on fraud and deception, and in our opinion, these provide much of the same protection to the stockholders and the corporations as does section 10(b), without subjecting them to the added complexities and costs of the securities law standards. Additional protection is also provided by the fact that, regardless of the securities laws, every board of directors under common

law is held to owe a strict fiduciary duty to its stockholders, and a violation of the duty is actionable and may result in liability. Thus we believe that common law principles already provide all protection necessary.

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> "Any such corporation which, but for this section, would be subject to the provisions of the Securities Exchange Act of 1934 shall transmit to its stockholders each year a report containing substantially all the information required to be included in an annual report to stockholders by a corporation which is subject to the provisions of such act."

This requirement would be an addition to the requirement already contained in section 7(o) of the Settlement Act, for the annual mailing of an audit report or a summary thereof to all stockholders. Adding the requirement for an annual report, particularly in light of the SEC's new regulations as to its content, would inform the stockholders of the activities of the corporation and would give them the information necessary effectively to evaluate the competence and performance of their management.

If you have any questions, or if we may be of any further assistance, please do not hesitate to call on us.

Sincerely yours,

WILKINSON, CRAGUN & BARKER

Foster De Reitzes

By: Foster De Reitzes

cc: Senator Henry M. Jackson
Senator Ted Stevens
Senator Mike Gravel
Mr. Michael Spaan
NANA Board of Directors
Mr. John W. Schaeffer
Mr. Lance Anderson
Denis Pinkernell, Esquire
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2/ Corporations with over 500 stockholders and $1,000,000 in assets.

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SENATE INTERIOR COMMITTEE
RECEIVED
MAY 12 1975
WASHINGTON, D. C. 20510

May 8, 1975

Honorable Theodore F. Stevens
United States Senator
Old Senate Office Building
Washington, D. C. 20510

Dear Ted:

In addition to the matters covered by S.131, 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 S.131 would provide for the necessay 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 1 (which would be redesignated as Section 1(a)). Provision is also made, as with the case of present Section 1, 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.

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

EW:ld

Enclosure

xc: All Members, Subcommittee on Indian Affairs, Senate Committee on Interior and Insular Affairs
Steven Quarles, Esq.

Proposed Amendment to [S.131]

Redesignate Section 1 of S.131 as Section 1(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.

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July 23, 1975

Honorable Ted Stevens
United States Senate
Washington, D.C. 20510

Dear Senator Stevens:

You and I have previously corresponded with respect to the revisions being considered by the Department of the Interior in the so-called Section 14(h) regulations.

The latest draft of those regulations, copy of which was sent to you under date of July 21 by Assistant Secretary Hughes, reveals that the Department continues to ignore Congress' expressed intent that a "group" is simply a village with less than 25 people.

The proposed regulations persist in adding new, far more stringent requirements than those which obtained in the village eligibility determinations. Moreover, there is a studied attempt, without coming right out and saying so, to deny Fish and Wildlife Refuge and National Forest lands to "groups," notwithstanding Congress' express provision making such lands available.

As an example of the latter, if the "dwelling structures" (itself a new requirement) for a native group are located outside but adjacent to a National Wildlife Refuge or National Forest, that group will not be permitted any land within such Wildlife Refuge or National Forest. As you know from both your Interior days and from your Alaskan experience, Secretary Seaton, among others, issued public land orders in some instances carving out a one square mile area where the Natives lived from the surrounding National Wildlife Refuge or National Forest. The result in such cases would be no land for that group.

Another example of the Department's studied determination to severely restrict the number of groups (there are some who conclude that no group can qualify under the proposed regulations) is found in the negation of the provision (Sec. 2653.2(d)) in the regulations which was intended to segregate lands applied for by a group or other miscellaneous applicant which were also included in a village withdrawal so that they could be made available to the group or other miscellaneous applicant if not selected by the village for whom the withdrawal was made. In the case of Native groups, this provision of the regulations is effectively negated by the new requirement that an otherwise qualified Native group will not receive lands unless the lands which are occupied by their "permanently affixed structures used as dwelling houses" (another formulation of a new requirement) are public lands which are vacant, unappropriated, not withdrawn under Section 11 of the Act..... This can only be described as gamesmanship, because the concluding phrase in Section 2653.2(d) was specifically included at my request and I was assured at the time that this provision would be applied so that groups as well as other miscellaneous applicants could receive lands which had been withdrawn under Section 11, if the lands were not selected by an eligible village or regional corporation.

As a further example of the spirit in which the Department approaches the availability of lands under Section 14(h) I would like to direct your attention to the fact that in the revision, six typewritten pages are devoted to establishing the gauntlet which must be run by a "historic place" or a "cemetery site" in order to be determined as such. What possible explanation can there be for such overkill?

The "group" revisions will have a particularly devastating effect in Kodiak. For one thing, Uganik, found in the village eligibility proceedings to possess every qualification for a village except 25 residents (it was found to have somewhere in the neighborhood of 15) might well be denied group status under these regulations.

Without your considerable powers of persuasion, I think it inevitable that the forthcoming discussions at Anchorage with the Task Force will end up in the same place that previous discussions on this subject have led, which is to say nowhere. If, as seems likely without your intervention, the proposed changes in the regulations are effectuated we can look forward only to lengthy hearings in the Department, followed by lengthy litigation. The Natives deserve better than to be put to such delays and the considerable expense that will be involved, to say nothing of the very considerable risk that the end result will be a denial of rights Congress wanted them to have.

I therefore urgently request, in fairness to the Natives involved and to bring some commonsense back into the proceedings, that you offer the enclosed amendment to the pending omnibus bill. The enclosure deals entirely with groups and it would accomplish these things:

1. It would require the Secretary to apply the same criteria (except, of course, for the number of residents involved) to establish eligibility in group eligibility determinations as were used in the village eligibility determinations.

2. It would prohibit the Secretary from withholding land from an otherwise eligible group simply because such land is located in a National Wildlife Refuge or a National Forest, or because the group is not located on "eligible land." I am sure that had Congress actually thought about the matter, it would not have wanted to deny land to a group in any case where a village would have received land simply because it turns out that the group is located on ineligible land.

3. It would avoid the necessity of a group applicant having to go through the time and expense of another round of hearings and examination on any eligibility factors which were determined in its favor in a village eligibility proceeding.

4. Finally, it would not prejudice the rights of any party to pending litigation over village eligibility with respect to whether the criteria applied by the Secretary in such village eligibility determinations were authorized by ANCSA.

The enclosed draft does not deal with the cemetery and historic sites provisions. I would hope that you will lend your assistance with respect to that matter and the Department will be agreeable to a reconsideration.

With kindest regards.

Sincerely yours,

Edward Weinberg
of DUNCAN, BROWN, WEINBERG & PALMER

EW:vcr

Enclosure

cc: Hon. Mike Gravel
Mr. Jacob Wick
Mr. Sam Kito

DRAFT
July 23, 1975

Section ____. Subparagraph (2) of Section 14(h) of ANCSA is redesignated subparagraph (2)(A) and a new subparagraph 2(B) is added, reading as follows:

(B) In determining the eligibility of a Native group, the Secretary shall not apply criteria more stringent than those applied in village eligibility determinations and an otherwise eligible Native group shall not be denied land because such group is not located on available public lands, in which event, the Secretary shall convey to such group, the nearest available lands of a character similar to the lands on which the group is located unless the group, with the concurrence of the regional corporation within whose boundaries such group is located, agrees to accept other land designated by the Secretary; nor shall an otherwise eligible Native group be denied land because such land is located on or adjacent to a National Wildlife Refuge or a National Forest: Provided, That where, in a village eligibility proceeding the applicant, though determined to be ineligible, was found by the Administrative Law Judge in an unreversed finding, or by the Alaska Native Claims Appeals Board, to meet one or more of the criteria for village eligibility, in the consideration of an application for Native group status by Natives who were members of such applicant for village eligibility, no further examination shall be had of such criteria; Provided further, That nothing in this subdivision shall prejudice the position of any party in any litigation now pending for review of village eligibility determinations heretofore made by the Secretary.

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July 25, 1975

Honorable Floyd K. Haskell, Chairman
Subcommittee on Environment & Land Resources
Committee on Interior and Insular Affairs
United States Senate
Washington, D.C. 20510

Dear Senator Haskell:

The Alaska Natives continue to experience great difficulties in realizing the land selection rights supposedly guaranteed them by the Alaska Native Claims Settlement Act in any instance in which those rights run counter to the desires of the Fish and Wildlife Service of the Department of the Interior.

The latest manifestation of this difficulty is the proposal of the Department of the Interior to amend the land selection regulations with respect to "group" selections under Section 14(h) of the Act, and with respect to the criteria for selection of "cemeteries" and "historic sites" under that section of the Act.

In meetings with the Department months ago, the representatives of the Alaska Natives entered strenuous objections. Nevertheless the Department continues to proceed and issuance of the proposed modifications, which constitute major revisions of the existing regulations, appears imminent. For the Department of the Interior, without either a Secretary or an Under Secretary to provide firm policy guidance, to take action of such far reaching consequence at a time when the period within which applications must be made has practically run out, is almost beyond belief.

I enclose for your information a letter that I have written to Senator Stevens on behalf of my client, Koniag, Inc. regarding this matter. I respectfully request that the Sub-committee direct its staff to immediately look into this problem.

Sincerely yours,

Edward Weinberg
of DUNCAN, BROWN, WEINBERG & PALMER

EW:vcr

Enclosure

cc: Hon. Henry M. Jackson
Mr. Steven Quarles

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July 25, 1975

JUL 28 1975

Honorable Henry M. Jackson, Chairman
Committee on Interior and Insular Affairs
United States Senate
Washington, D.C. 20510

Dear Senator Jackson:

Through the courtesy of Steve Quarles, I have been provided with a copy of a letter of July 24 to you from Acting Assistant Secretary of the Interior Bohlen regarding Section 12 of S. 1824.

As Mr. Bohlen states, this provision would legislate an agreement between the Department of the Interior and Koniag, Inc. Regional Corporation concerning lands in dual withdrawal status (17(d)(2) and for regional identification) in the area proposed by the Department of the Interior for establishment as the Aniakchak Caldera National Monument.

Significantly, Mr. Bohlen makes no claim that the provisions of Section 12, which I prepared, distort or otherwise fail accurately to reflect the agreement.

To say that Koniag, Inc., and I personally, am surprised and shocked by Mr. Bohlen's letter, is an understatement.

Mr. Bohlen offers two arguments against consideration of the legislation "at this time." First, Mr. Bohlen objects that the logical time to consider the agreement is during legislative consideration of the Aniakchak proposal as a whole. Second, Mr. Bohlen is concerned about the precedential aspects on other dual withdrawals.

There is a great deal less to Mr. Bohlen's objections than meets the eye.

First, there is nothing mysterious about the "scope and rationale" of the Aniakchak proposal. Its scope and rationale is fully set out in my exchange of correspondence with Assistant Secretary Hughes in his capacity as Chairman of the Department's Alaska Task Force. Its scope and rationale is very simple. Most of Koniag Island and Afognak Island is unavailable for regional selection. The only regional selections Koniag, Inc. has arise by reason of the prohibition in Section 12 (a)(1) of ANCSA which provides that where the surface estate going to a village is in a National Wildlife Refuge, the regional corporation may not receive patent to the subsurface estate underlying the village lands, but must instead select a subsurface estate from other lands withdrawn under Subsection 11(a) of the Act. Most of the villages in the Koniag region are situated on Wildlife Refuges. The Department of the Interior early recognized that there was a lack of available land both for village deficiency purposes and for subsurface regional selection in the Koniag region. The Department of the Interior, therefore, made withdrawals for these purposes on the mainland of Alaska across the Shelikof Strait, an arm of the ocean some 35 miles in width. It is obvious that lands so situated are useful to the natives of Koniag, none of whom live anywhere near the area, only for economic purposes.

Included within the lands withdrawn by the Department for village deficiency selection and regional subsurface selection were the very same lands that the Department proposed to be included in the Aniakchak Caldera National Monument. Recognizing, and legitimately so, that establishment of the Aniakchak Caldera National Monument without providing for subsurface selections therein by the Koniag regional corporation, to the extent that Koniag wishes to select within that area, would be unfair to Koniag, the Department of the Interior took the position that it would not only make the dual withdrawal but also that it would not oppose legislation providing, unlike all other D-2 dual withdrawals, that such selections could be made notwithstanding the establishment of the national monument. That is the long and short of the "scope and rationale" of the agreement. That being the case, there is no reason in the world why Congressional consideration of the agreement need be delayed until such time in the future as the Congress gets around to the Aniakchak Caldera National Monument proposal. So much for Mr. Bohlen's first objection.

What has been said above also demonstrates the emptiness of Mr. Bohlen's second objection. No other dual withdrawal situation includes any agreement by the Department of the Interior to support regional corporation selection rights within the D-2 proposal if adopted by Congress. Therefore, the Koniag situation

will not "have a troublesome precedential effect." Mr. Bohlen assumes that the Alaska Natives have no ability to distinguish one situation from another and by his letter, he attributes a similar lack of perception to the members of your Committee and in the Congress of the United States. Mr. Bohlen should not assume that others are not possessed of powers of reasoning.

In respect of Mr. Bohlen's comment that "we are currently exploring with several of these Native groups ways to solve the difficulties that dual withdrawals present," the Committee should know that the Department of the Interior has not brought to the attention of Koniag, Inc. any problem with respect to the dual withdrawals. Nor has the Department of the Interior brought to Koniag's attention any concern with respect to the agreement we thought had been entered into in good faith by both parties. Finally, I would suggest to Mr. Bohlen that we regard as insulting his patronizing comment that a "consistent approach be taken with regard to all dually withdrawn lands," in order to "serve the interests of Natives." There is an old saying that people can protect themselves from their enemies, but God help them when it comes to their so-called "friends." That is exactly the situation in which Koniag now finds itself. As I have stated, the Department of the Interior itself recognized that the Koniag situation was unique and it tailored a unique solution. For Mr. Bohlen now to suggest a delay and that Koniag's situation is no different from that of other village and regional corporations involved in dual withdrawals, is sophistry.

With regard to Mr. Bohlen's concerns about the inadequacy of public hearings on this matter, permit me to call to your attention that the Department's Environmental Impact Statement on the proposed Aniakchak Caldera National Monument contains the essentials of the agreement and the conservation societies reviewed that report and had the opportunity to, and did comment thereon.

I suppose that Koniag, Inc. should at least be grateful for the statement that the Department continues to support its agreement. The kind of support, however, that is evidenced by Mr. Bohlen's letter is not one which is calculated to inspire our confidence.

I realize, of course, that it is the Congress, not the Department of the Interior with or without the Alaska Natives, that disposes. And I do not suggest for a moment that the Congress is in any way bound or constrained by the agreement between the Department and Koniag. For our part, we think, for reasons above given, that nothing is to be gained by further delay. The only thing that can come out of delay is to give opposition to the Natives an

opportunity to build and to frustrate their legitimate aspirations. As matters now stand, with the Interior-Koniag agreement there can be both an Aniakchak Caldera National Monument, if that is the Congress' desire, and subsurface selections by Koniag, Inc. Absent legislation along the lines of Section 12 of S. 1824, under the ANCSA as it now stands, creation of a national monument would preclude regional selections within its borders. As I indicated at the outset of this letter, the purpose of the agreement was to enable both objectives to be realized. For our part, we want both objectives to be realized and we think that the way to assure that both are realized is to enact Section 12 at this time.

Finally, Mr. Chairman, I note in passing that Mr. Bohlen's letter was sent without compliance with the clearance procedures of the Office of Management and Budget. S. 1824 was introduced on May 22. Apparently, Mr. Bohlen's reservations matured very late and were regarded by somebody at the Interior Department as of such overwhelming importance that it was felt necessary to violate established OMB procedure. I can recall no instance in which the Department of the Interior has similarly disregarded OMB procedures on matters favorable to the Alaska Natives.

Sincerely yours,

Edward Weinberg

Edward Weinberg
of DUNCAN, BROWN, WEINBERG & PALMER

EW:vcr

cc: Hon. Floyd K. Haskell
Hon. Ted Stevens
Hon. Mike Gravel
Hon. Lloyd Meeds
Hon. Don E. Young
Acting Secretary Kent Frizzell
Assistant Secretary Royston C. Hughes
Assistant Secretary Nathaniel Reed

COOK INLET NATIVE ASSOCIATION
P. O. Box 515
Anchorage, Alaska 99510

PRESIDENT Robert W. rude
SECRETARY Tonya Gularte
TREASURER Britton Crosley

May 6, 1975

Senator Mike Gravel
3315 New Senate Office
Washington, D. C. 20510

Dear Senator Gravel:

For your information the Cook Inlet Native Association supports and endorses Senate Bill S.685, A bill to authorize certain corporations under the Alaska Native Claims Settlement Act to merge or consolidate, and for other purposes, and Senate Bill S.131, A bill to authorize the Secretary of the Interior to enroll certain Alaskan Native for benefits under the Alaska Native Claims Settlement Act and for other purposes. Both Bills are referred to the Committee on Interior and Insular Affairs.

We would appreciate it if you would submit this letter of endorsement to the appropriate committees for us.

Sincerely,

Robert W. Rude

Robert W. Rude
President/Executive Director
COOK INLET NATIVE ASSOCIATION

RWR:jlh

GRAHAM & JAMES
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TELEPHONE (202) 296-0508

June 6, 1975

Mr. Steven P. Quarles
Committee on Interior
and Insular Affairs
Room 3204
Dirksen Office Building
Washington, D. C.

Dear Mr. Quarles:

Pursuant to Monroe Price's request, transmitted herewith is a copy of the draft Cook Inlet Region Land Selection Bill with specific land selections identified. There may be technical changes inasmuch as state negotiations are still taking place.

Sincerely,

Frank A. Devine

FAD:ed
Encls.

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BE IT ENACTED, etc.

SECTION 1. PURPOSE. The purpose of this Act is to amend, supplement, and in part supersede certain provisions of the Alaska Native Claims Settlement Act ("ANCSA"), 43 U.S.C. §§1601, et seq., relating to the land selection rights of the Alaska Native Regional Corporation established for the Cook Inlet Association, hereafter referred to as Cook Inlet Region, Inc.

SECTION 2. CONVEYANCES.

(a) Notwithstanding any contrary provision of ANCSA or other law of the United States, the lands set forth in subsection (c) shall be immediately conveyed to Cook Inlet Region, Inc., by patent issues by the Secretary of the Interior. Except as otherwise specifically set forth herein, all such conveyances shall be subject to the provisions of ANCSA.

(b) Lands set forth in subsections (c)(2) and (3) shall remain subject to the laws and regulations governing use and development of the national wildlife refuge system so long as such lands remain in the refuge. Any subsequent conveyance of these lands shall, as to such lands, provide that the United States has the right of first refusal so long as such lands remain within the national wildlife refuge system. The right of first refusal shall be for a period of 120 days from the date of notice to the United States that Cook Inlet Region, Inc.

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has received a bona fide offer of purchase. The United States shall exercise such right of first refusal by written notice to the Cook Inlet Region, Inc. within such 120 day period. The United States shall not be deemed to have exercised its right of first refusal if the corporation does not consummate the sale in accordance with the notice to the United States. To the extent the State of Alaska presently receives income from leases in subsurface areas subject to this Act, such income shall continue to be paid to the State until 1978, and shall not be considered income of the Cook Inlet Region, Inc. subject to Section 7(I) of ANCSA so long as such income is transferred to the State.

(c)(1) Approximately five (5) townships, in the Kenai National Moose Range, surface and subsurface, unrestricted as to use, development and enjoyment, identified as:

T. 8 N., R. 9 W., S.M. W 1/2

T. 8 N., R.10 W., S.M.
Sections 1, 12 through 15, 20 through 29, 32 through 36.

T. 7 N., R. 9 W., S.M. W 1/2

T. 7 N., R.10 W., S.M.
Sections 1 through 5, 7 through 36

T. 7 N., R.11 W., S.M.
Sections 23 through 26, 35 through 36

T. 6 N., R. 9 W., S.M. W 1/2

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T. 6 N., R.10 W., S.M.
Sections 1 through 29, 30 E 1/2, 32 through 36

T. 6 N., R.11 W., S.M.
Sections 1 through 2, 11 through 14, 24 NE 1/4

T. 4 N., R. 9 W., S.M.
Sections 5 through 8

T. 4 N., R.10 W., S.M.
Sections 1 through 4, 9 through 12

(2) Approximately five (5) townships in the Kenai National Moose Range, surface and subsurface, such townships being identified as:

T. 1 S., R. 9 W., S.M.
All lands located more than one mile from Tustumena Lake.

T. 1 S., R.10 W., S.M.
All

T. 1 S., R.11 W., S.M.
Sections 1, 12 thorugh 13, 24 through 25, 36

T. 2 S., R. 9 W., S.M.
All lands located more than one mile from Tustumena Lake

T. 2 S., R.10 W., S.M.
All

T. 2 S., R.11 W., S.M.
Sections 1, 12 through 13, 24 through 25, 36

T. 3 S., R. 9 W., S.M.
All Moose Range (fractional)

T. 3 S., R.10 W., S.M.
Sections 1 through 6

T. 3 S., R.11 W., S.M.
Section 1

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T. 4 S., R. 9 W., S.M.
All Moose Range (fractional)

(3) The subsurface estate, only, in and to five (5) townships in the Kenai National Moose Range, such townships being identified as:

T.10 N., R. 6 W., S.M.
Sections 18 through 20, 29 through 32

T.10 N., R. 7 W., S.M.
Sections 1, 10 through 16, 19 through 36

T. 9 N., R. 6 W., S.M.
Sections 5 through 8, 17, 18

T. 9 N., R. 7 W., S.M.
All

T. 9 N., R. 8 W., S.M.
Sections 1 through 5, 7 through 36

T. 9 N., R. 9 W., S.M.
Sections 13, 23 through 27, 32 through 36

T. 8 N., R. 9 W., S.M.
E 1/2

T. 7 N., R. 9 W., S.M.
E 1/2

T. 6 N., R. 9 W., S.M.
E 1/2

(4) Six townships identified as:

T.12 N., R.25 W., W/2 S.M.

T.12 N., R.26 W., E/2 S.M.

T.11 N., R.26 W., All S.M.

T.10 N., R.26 W., N/2, SW/4 S.M.

T.10 N., R.27 W., E/2 S.M.

DRAFT

T. 3 N.,	R.21 W.,	NE/4	S.M.
T. 2 N.,	R.22 W.,	All	S.M.
T. 2 N.,	R.23 W.,	E/2	S.M.
T. 3 S.,	R.22 W.,	All	S.M.
T. 4 S.,	R.22 W.,	N/2 (fractional)	S.M.

(d) Village and group selection rights; non-diminishment. In the event any native corporation within Cook Inlet Region, now or hereinafter duly certified and established, shall, under ANCSA, be entitled to select, and shall select any lands within the Kenai National Moose Range which by this Act are conveyable to, but at such time have not actually been conveyed to, Cook Inlet Region, Inc., these corporations' rights under ANCSA shall prevail; provided, however, that if such native corporation or corporations cumulatively obtain more than two townships of such land, the Cook Inlet Region, Inc. shall have the right to replace the excess lost to it with an equivalent amount of land (and/or estate in land, as applicable) within the Kenai National Moose Range, designated by the Secretary, within 1,000 feet of sea level and subject to no greater restrictions than were established by this Act for the land (or estate) so lost. Cook Inlet Region, Inc. may select the subsurface estate to lands in which the surface estate is conveyed pursuant to this Act to native corporations, within the Moose Range.

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SECTION 3. REPLACEMENT OF NATIONAL WILDLIFE REFUGE SYSTEM LANDS. The Secretary of the Interior shall add to the national wildlife refuge system from other public lands, either contiguous or noncontiguous to the Kenai National Moose Range, an equivalent amount of acreage to that conveyed to Cook Inlet Region, Inc., and any village therein, pursuant to Section 2 of this Act, and in replacement thereof.

SECTION 4. The Secretary of the Interior shall determine, within 18 months of passage of this Act, the smallest practicable tract within the boundaries of the Cook Inlet Region enclosing lands actually used in connection with the administration of any federal installations, as prescribed in Section 3 (e) of the Alaska Native Claims Settlement Act. Such determination shall be made in consultation with the holding agency and the joint Federal-State Land Use Planning Commission. Upon determination that such land is outside the smallest practicable tract in any federal installation subject to Section 3(e) examination, it shall be withdrawn by the Secretary for selection by the Cook Inlet Region, Inc., provided that no such withdrawal or conveyance for the benefit of Cook Inlet Region, Inc. shall affect Point Woronzoff, Point Campbell or Campbell Air Strip. If such installation is within two miles of any home rule or first class city, it shall not be withdrawn for selection by Cook Inlet

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Region unless there is consent of the local government affected. Selections by Cook Inlet of lands subject to this section will be valid even if filed prior to withdrawal so long as the selection is made by December 18, 1975.

SECTION 5. REMAINDER OF REGIONAL SECTION. The lands and estates in conveyance to Cook Inlet Region, Inc. pursuant to this Act shall be an acre-for-acre partial satisfaction of the land selection rights accorded to Cook Inlet Region, Inc. pursuant to the provisions of ANCSA. The remainder of such selection rights pursuant to ANCSA shall be made from lands withdrawn for such selection and subject to the provisions of ANCSA and the Secretary's implementing regulations except that:

(A) The lands selected by the Cook Inlet Region, Inc. may be in whole sections where they are available or shall include all available lands in less than whole sections, and, wherever feasible, shall be in units of not less than 1,280 acres.

(B) Cook Inlet Region shall not be required to select lands in areas withdrawn pursuant to Section 11(A)(1) of ANCSA if the federal withdrawl for regional selection was subsequent to selections by the State of Alaska under the Statehood Act.

SECTION 6. EFFECTIVE DATE. The provisions of this Act shall take effect immediately.

Introduced by: Mayor
Date: May 20, 1975
Action: Enacted 109.5"Yes";18 "NO"

KENAI PENINSULA BOROUGH

RESOLUTION 75-30

A RESOLUTION DECLARING THE ATTITUDE OF THE KENAI PENINSULA BOROUGH WITH REGARD TO A PROPOSAL BY THE COOK INLET REGION, INC. TO AMEND, SUPPLEMENT, AND IN PART SUPERSEDE CERTAIN PROVISIONS OF THE ALASKA NATIVE CLAIMS SETTLEMENT ACT ("ANCSA"), 43 U.S.C. SECTION 1601 *ET SEQ.*, RELATING TO THE LAND SELECTION RIGHTS OF THE ALASKA NATIVE REGIONAL CORPORATION AND CLARIFYING THE INTENT OF KENAI PENINSULA BOROUGH RESOLUTION 73-51

WHEREAS, the Kenai Peninsula Borough did on August 7, 1973 adopt Resolution 73-51 (copy attached); and

WHEREAS, subsequently the Cook Inlet Region, Inc. has petitioned the Alaska Congressional Delegation for introduction of an Act to change certain provisions of the ANCSA relating to land selection based in part on Kenai Peninsula Borough Resolution 73-51; and

WHEREAS, the Kenai Peninsula Borough did visualize in 1973 that Resolution 73-51 would have to be expanded, clarified and supplemented as the various state and federal agencies, native organizations and individuals involved took specific action such as that now proposed by the Cook Inlet Region, Inc.; and

WHEREAS, the Kenai Peninsula Borough has and will continue to have a vital interest in the land control within its boundaries; and

WHEREAS, the Kenai Peninsula Borough does desire that its recommendations be heard and weighed in all such considerations although such recommendations have not been solicited; and

WHEREAS, the Kenai Peninsula Borough Planning Commission has recommended that this resolution be adopted,

NOW THEREFORE, BE IT RESOLVED by the Kenai Peninsula Borough Assembly:

1. That the surface estate described in Appendix "A" of Kenai Peninsula Borough Resolution 73-51 be made available for selection by the Cook Inlet Region, Inc. in the same manner as provided for qualified village corporations within the Kenai Peninsula Borough without regard to the "checkerboard" limitations of ANCSA's Sec. 12(c)(3) provided that:

   (a) The lands, waterways and roads now utilized by the Swanson River Oil Field, the Swanson River road system, the Swanson River canoe trails and campgrounds, the Skilak Lake Road and campgrounds, the Tustumena Lake Road and campgrounds, the Sterling Highway and adjacent campgrounds, other public trails and public areas within and provided by the National Wildlife Refuge shall not be conveyed.

   (b) The provisions of ANCSA Secs. 12(a)(1), 14(f) and 22(g) as pertains to National Wildlife Refuges are not changed or diminished.

2. Copies of this resolution be sent to Secretary of the Interior, Rogers C. B. Morton; Messrss. Burton Silcock and David Jackman, Co-Chairmen, Joint Federal/State Land Use Planning Commission; Governor Jay S. Hammond; Senators Ted Stevens and Mike Gravel; Representative Don Young; James Monnie, Kenai National Moose Range Manager; and Ralph A. Johnson, President, Cook Inlet Region, Inc. and other interested parties.

BE IT FURTHER RESOLVED that the Borough Mayor is hereby authorized to execute the necessary documents; and to undertake such actions as are necessary to accomplish the purpose of this resolution along with additional provisions deemed necessary to the best interests of the Kenai Peninsula Borough.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 20 DAY OF MAY, 1975.

James V. Carpenter
Assembly President

ATTEST:

Frances Brymer
Borough Clerk

SENATE INTERIOR COMMITTEE
RECEIVED
MAY 27 1975
WASHINGTON, D.C.
MAY 27 4 54 PM 1975

RESOLUTION: Passed May 2, 1975

From: Alaska Federation of Women's Clubs

Whereas, the Anchorage area does not have sufficient open space for the number of inhabitants in the area.

Whereas, A private corporation desires to secure those public lands suitable for parks and recreational purposes- particularly an area desired for a Bicentennial Park, by a proposed amendment to the Native Claims Settlement Act.

Whereas, A well informed Legislature should be thoroughly aware of the needs and desires of all the people in the area.

Therefore, be it resolved that the public lands affected by the proposed amendment to the Native Claims Settlement Act, that are deemed suitable and needed for parks and recreational purposes, and open-space, remain in public owenership, be it Federal, State or Borough for the welfare of all the peoples in the area regardless of race or color.

Alaska Federation of Women's Clubs
State Convention: Fairbanks, Alaska

President: Mrs. George Rae
Arline Rae
13272 Stephensen St.
Anchorage, Alaska 99502

○

U.S. SENATE,
COMMITTEE ON COMMERCE,
Washington, D.C., June 6, 1975.

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

DEAR SCOOP: When I introduced S. 1824, the Omnibus Bill which would correct late filers under the Alaska Native Claims Settlement Act, there was a typographical error in Section 14. The typographical error is with respect to the first township reference included in Section 14. Instead of T. 35 S., R. 52 W., the reference should have been T. 36 S., R. 52 W. The additional township references are T. 38 S., R. 51–54 W., and T. 41 S., R. 52–54 W. I will point this out at the hearings on this bill and would appreciate it if these corrections could be made before reports are requested.

With best wishes.

Cordially,

TED STEVENS, *U.S. Senator.*

ALASKA CONSERVATION SOCIETY,
KODIAK–ALEUTIAN, ALASKA CHAPTER,
December 4, 1974.

Hon. HENRY M. JACKSON,
Chairman, Interior Committee, U.S. Senate, New Senate Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: We understand that your committee will hold oversight hearings on December 10 to consider disposition of federal lands in Alaska. One topic we hope you will consider is the validity of Woody Island being certified by the Department of Interior as a bonafide village under the Alaska Native Claims Settlement Act.

Woody Island, closely adjacent to Kodiak, had one (1) Alaska Native in residence on April 1, 1970 instead of 25 Native persons the Act requires for qualifying a village. The 1970 U.S. Census confirms this figure.

Woody Island is owned primarily by a Baptist Church Council Mission group and the Federal Aviation Administration. The Baptist Mission operated there from the late 1800's until early 1940 when it moved most activities to Kodiak 2 miles distant. The Mission continues to use the island for a summer camp and livestock range. The road system, dock, and most buildings are of FAA or Church ownership and origin. Since the Mission raised and educated many Native children there over the years, many Kodiak Natives can claim ties or acquaintance with the island that should not, in truth, be construed as bonafide Native village origins.

The enclosed map and photo of Woody Island will acquaint you with the subject area. FAA development of navigational aids is more extensive than shown on the photo which dates from the mid 1960's. Other ownerships are several small holdings by the Russian Greek Orthodox Church and local families. The island was being used by only the one Alaska Native on the 1970 date stipulated by the Act, however.

Attached, for your further consideration, is a recommendation from the Kodiak Borough Attorney, dated January 7, 1974, wherein he urges Borough government objection to Woody Island being classed as a Native village. Although the Borough Assembly later acted contrary to this advice, the matter is being brought before the Assembly for reconsideration in the next several days. Hopefully, the tide of small town politics will turn and enable the Kodiak Island Borough to voice an objection.

The Kodiak-Aleutian Chapter of the Alaska Conservation Society formally objects to the certification of Woody Island as a Native Village and asks that the objection be entered in your records. We hope you will pursue this matter with Interior Department witnesses on December 10 and are willing to provide further assistance if you so desire. The outcome is quite pertinent to the Kodiak City area since Native land selections, in combination with local geography, are posing serious limits to town growth and access.

Sincerely,

GENENEIVA HANS,
President, Kodiak-Aleutian Chapter.

SIERRA CLUB,
Washington, D.C., June 16, 1975.

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

DEAR SENATOR JACKSON: On May 16, the Committee held a hearing on proposed amendments to the Alaska Native Claims Settlement Act. On May 22, Senator Stevens introduced S. 1824, which incorporates these amendments and adds others.

Among the new amendments are several of major concern to us. These include provisions that would:

Authorize the Sealaska Regional Corporation to select approximately 200,000 acres from the Tongass National Forest;

Grant $250,000 each to the urban Native corporations of Sitka, Juneau, Kenai and Kodiak for use in the selection of up to 23,040 acres per corporation;

Re-enroll Natives from ineligible villages and groups to eligible ones;

Grant approximately 325,000 acres of subsrface estate within the boundaries of the proposed Amakchak Caldera National Monument to Koniag, Inc.

In our discussions with Committee staff, we learned that there may not be a hearing on S. 1824. Instead the Committee could proceed to mark up soon.

The amendments discussed at the May 16 hearing were primarily of a technical nature. Senator Stevens' latest amendments, however, deal with conveyances of substantial amounts of public land. For this reason, I believe that an additional hearing would be appropriate, and I hope that you will schedule one prior to taking any final action on the legislation.

Sincerely,

BROCK EVANS,
Director, Washington Office.

FRIED, FRANK, HARRIS, SHRIVER & KAMPELMAN,
Washington, D.C., June 23, 1975.

Re Proposed amendments to the Alaska Native Claims Settlement Act.

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

DEAR SENATOR JACKSON: I have received a copy of a letter to you, dated May 30, 1975, from Harvey Samuelsen, President, Bristol Bay Native Corporation, suggesting three amendments to section 7(i) of the Alaska Native Claims Settlement Act. On behalf of Doyon, Ltd., and for the reasons hereinafter set forth, I am writing to request that two of Mr. Samuelsen's proposals be rejected, and that the third proposal be held in abeyance pending further consideration on the subject by all the Alaska Native regional corporations.

(1) Mr. Samuelsen's first amendment would change the word "patented" in section 7(i) of the Act to "conveyed." Although no explanation for this suggested change is given by its sponsor, Mr. Samuelsen apparently is concerned about the fact that, because of anticipated delays in the making of legal surveys, most Native corporations initially will receive and for many years will continue to possess only interim conveyances, rather than formal patents, and that at least one regional corporation is adopting the position that, as a matter of law, the resource revenue sharing mandated by section 7(i) does not take effect until after issuance of a patent.

The real issue posed by the present language of section 7(i), however, is whether the required sharing of income is applicable to revenues derived from the timber and subsurface resources on withdrawn lands which are subject to Native selection, but before either conveyance or patenting, and Mr. Samuelsen's proposal does not solve that problem. The precise question, on the other hand, now is pending before two Federal District Courts in *Doyon, Limited* v. *Nana Regional Corp., Inc.*, Civil Action No. 74-1531 (D., D.C.) and *The Aleut Corporation, et al.* v. *Arctic Slope Regional Corporation, et al.*, Civil Action No. A75-53 (D., Alaska). In this regard, I submit that legislation is not an appropriate method for resolving issues already presented to the courts, and that legislation which seeks to extinguish vested rights will only cause greater confusion in the implementation of ANCSA.

(2) Mr. Samuelsen's second amendment would substitute the class of "stockholders enrolled in each Regional Corporation" for the term "Natives enrolled in each region" which currently appears in the Act for purposes of calculating section 7(i) distributions. The proper population base for determining the respective shares of each regional corporation in section 7(i) resource revenues, however, also is before the courts in the two above-named cases and, additionally in *Doyon, Ltd.* v. *Morton*, Civil Action No. A75–89, now pending before the United States District Court for Alaska. Again I submit that an *ex post facto* change in ANCSA by Congress would not be an appropriate method for resolving a question which already has been presented to the courts, and that legislation which seeks to extinguish an otherwise vested right could only lead to more litigation and thus greater discord in the implementation of the Act.

(3) Mr. Samuelsen's third amendment would create a special committee for policing resource revenue sharing under section 7(i) of ANCSA. Doyon agrees that the existing situation is wasteful and that some mechanism must be established to administer this provision of the Act in orderly fashion. Whether the necessary administrative mechanism can best be set up through legislation, through voluntary agreement among the parties or through court appointment of a special master, however, remains to be seen. Until the affected regional corporations have an opportunity thoroughly to discuss these alternatives, I suggest that Mr. Samuelsen's proposal be held in abeyance.

With kind regards.

Sincerely yours,

ARTHUR LAZARUS, Jr.

BARRY W. JACKSON,
Fairbanks, Alaska, June 24, 1975.

Subject: Merger of ANCSA Corporation.

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

DEAR SENATOR JACKSON: The Board of Directors of Bering Straits Native Corporation has reviewed S. 685, a bill to authorize certain corporations under the Alaska Native Claims Settlement Act to merge or consolidate, and for other purposes.

The Board of Directors has no objection to the concept of merger or consolidation of Native corporations, and such legislation is probably desirable as means to permit small Native village corporations to combine their assets and management talent into larger business entities. As you know, the average Native village corporation has very limited cash flow, and there is a serious danger that the cash assets of a village corporation will be dissipated in administrative overhead. I am sure you will be receiving adequate testimony on the need for legislation like S. 685.

However, the Board of Directors is deeply concerned with the provision in Section 1(c) of S. 685 which, as we understand it, effectively allows dissenting shareholders in a merger or consolidation to require the surviving corporation to value their shares and pay off the dissenting shareholders in cash. Because of the economic circumstances of most Alaska Natives, a "buy-out right" will place a very great temptation before Native corporate shareholders. The cash value of the shares of a Native may be on the order of $10,000 to $100,000. For a family of two adults and five children, the cash realizable from dissenting to a merger may be on the order of $70,000 to $700,000. To ask a family with an annual cash income of perhaps $7,000 to resist such a temptation is to ask the impossible.

The proposed provision will effectively circumvent the twenty-year restriction on alienation clause of ANCSA and is likely to lead to dissipation of assets. By the twenty-year clause Congress intended to preserve substantial assets in Native ownership for at least a twenty year period in part so that the shareholders might know the value of their shares. Hopefully the shareholders would share in economic development, resulting both from ANCSA and general development in the State of Alaska, to the point that there would not, after 1991, be a great economic incentive on the part of shareholders to sell their stock.

One of the truly unusual features of ANCSA is that it neither tries to turn Natives into Yeoman farmers (as in the 1800's) nor into worker-consumers (as in current approaches), but into owners. Not investors, but owners in common of land, a continuation of tribal land ownership, with cash assets sufficient to avoid being "land poor."

While the Natives have a deep attachment for and appreciation of the land and their relationship to it, we still need the twenty year period to build a sophisticated ownership and stewardship ethic, one which will prevent sale of stock by shareholders except in extremities, and perhaps not even then. Ideally a Native shareholder should not part with his interest in the "family land," any more than would a Southern farmer.

Moreover, we anticipated that the restraint on alienation provision would give greater assistance that assets conveyed by way of stock, to Alaska Natives under the closed roll provisions of ANCSA, would permit shareholders to convey shares to children and grandchildren, thereby permitting those born after December 18, 1971, to participate in the Alaska Native Claims Settlement. As a result of the buy-out right which would be granted by S. 685, we foresee that a class of persons (born after 1971) will, in the course of time, be created who may claim, with some justification, that their parents or ancestors, by exercising buy-out rights, deprived them of the opportunity of ownership in Native corporations. This is likely to create serious problems not only for the children and descendants referred to, but also for the management of Native corporations, the Secretary, and the Congress.

The buy-out provision also creates another problem. Because the value of the lands conveyed under ANCSA far exceeds the value of the cash assets of the corporations, and because the corporations have, as of this point, received only a small percentage of the cash to which they are ultimately entitled, should 5% or 10% of the shareholders of merging or consolidating corporations elect to exercise their buyout rights, the merged or consolidated corporations may be seriously strapped for cash to pay off such dissenting shareholders; and their future business activities may be severely constrained because of this loss of working capital.

For the reasons stated, the Board of Directors of Bering Straits Native Corporation is opposed to buy-out rights being given to dissenting shareholders in any merger legislation. And we suggest that the rights of individual shareholders can be adequately protected in a merger or consolidation of Alaska Native corporations by (a) the requirement under State law that the shareholder resolution of merger or consolidation be adopted by a two-thirds vote of shareholders, and (b) by establishing a mechanism to provide review of the fairness of any proposed merger or consolidation.

In the case of merger of village corporations inter se the reviewing agency might be the Board of Directors of the appropirate regional corporation. If the regional corporation is involved in the merger or consolidation, the reviewing agency might be a Court or the S.E.C. (However, we are concerned that the review procedure, especially if performed by the S.E.C., not be too involved or cumbersome.)

Respectfully submitted,

BARRY W. JACKSON,
General Counsel, Bering Straits Native Corporation.

FEDERAL-STATE LAND USE PLANNING COMMISSION FOR ALASKA,
Anchorage, Alaska, July 3, 1975.

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

DEAR MR. CHAIRMAN: We have recently been advised that the Committee may soon commence a mark-up of pending amendments to the Alaska Native Claims Settlement Act. With this in mind, we are writing to suggest that the mark-up of amendments relating to the land entitlements of the Koniag and Sealaska Regional Corporations be postponed until public hearings or other substantive consideration of these provisions has taken place.

Enactment of the Koniag and Sealaska amendments could significantly affect land use, management, and other concerns in the areas involved. The Koniag provision relates to the subsurface estate of certain lands which have been withdrawn pursuant to Section 17(d)(2) of the Settlement Act, and the possible

impact of such private ownership should be carefully analyzed. Similarly, the Sealaska amendment could affect Forest Service management of the Tongass National Forest, State selections within the forest pursuant to Section 6(a) of the Alaska Statehood Act, recreational use, and other concerns.

Because of the time constraints involved, the Commission has not yet had an opportunity to analyze the impacts which might occur. It is likely that the State of Alaska, various Federal agencies, local governments, user groups, and other interested parties are in a similar position. In view of the significance of the Koniag and Sealaska amendments, we believe that the Committee would profit from input made by the parties just mentioned and the affected Native corporations. If you should decide on this approach, the Commission would be pleased to prepare an objective analysis of the impacts and other effects which are likely to result from enactment of the two amendments and to present our findings and conclusions to the Committee. In addition, if it would be helpful, we would be glad to schedule hearings, public meetings, or other forums in an effort to formulate a record which could be utilized by the Committee in considering the proposals. (Time constraints and the need for adequate notice will preclude us from holding such hearings, which are also a usual prerequisite to Commission action, prior to the time when we understand that your mark-up sessions would probably begin.)

In suggesting that mark-up of the Koniag and Sealaska amendments be postponed pending further substantive input, we do not mean to prejudge the results of this evaluation. Such an examination might indicate that the amendments are indeed sound. However, the vast quantity of acreage involved, the location of that acreage, and the considerations outlined previously indicate to us that an opportunity for governmental and public scrutiny would be helpful to the Committee. We also want to note that our suggestion does not relate to proposed amendments to the Settlement Act which have already been considered in public hearings or which are not likely to create the types of impacts discussed above.

Thank you for your consideration of this matter.

Sincerely yours,

BURTON W. SILCOCK,
Federal Cochairman.
DAVID S. JACKMAN,
State Cochairman.

[TELEGRAMS]

ANCHORAGE, ALASKA,
May 1, 1975.

Senator HENRY JACKSON,
Washington, D.C.

Request public hearings in Alaska on Cook Inlet native proposed bill. Strong opposition surfacing.

HOMER L. BURRELL.

ANCHORAGE, ALASKA,
May 1, 1975.

Senator HENRY JACKSON,
Washington, D.C.

Concerned Cook Inlet region proposed legislation demand Federal public hearings in Anchorage before any action.

RITA HENDRICKSON,
Conservation Chairman, Alaska Federation of Women's Clubs.

ANCHORAGE, ALASKA,
May 7, 1975.

Senator HENRY JACKSON,
Washington, D.C.

Oppose transfer land currently used for public recreation to Cook Inlet Region, Inc. request hearings.

KANVERS KAWAKERS.

54-919 O - 75 - 25

U.S. SENATE,
COMMITTEE ON COMMERCE,
Washington, D.C., June 2, 1975.

Hon. FLOYD K. HASKELL,
Chairman, Subcommittee for Environment and Land Resources, Senate Interior and Insular Affairs Committee, Dirksen Senate Office Building.

DEAR FLOYD: On May 22, 1975, I introduced an omnibus bill, S. 1824, which encompasses three bills previously introduced, (S. 131, S. 685, and S. 1469), dealing with the Alaska Native Claims Settlement Act, as well as several other issues arising from the Act, which were brought to the attention of the Committee during hearings held on those three bills on May 16.

I feel that in order to once and for all settle the problems which were created by the passage of the Alaska Native Claims Settlement Act, and clarify the intent of Congress in passing this Act, it is necessary to have an omnibus bill rather than attempting to solve these problems on an individual basis with several pieces of separate legislation. That is why I have taken this course of action.

As you know, the items addressed in this measure are pressing problems which need immediate solutions. Thus, it is extremely important that hearings be scheduled as soon as possible on this bill. I ask your cooperation and assistance in securing an early hearing date for consideration of this legislation.

With best wishes,
Cordially,

TED STEVENS,
U.S. Senator.

LAW OFFICES OF DAVIS, WRIGHT, TODD, RIESE & JONES,
Seattle, Wash., June 25, 1975.

Re *Edwardsen* v. *Morton*, Civil No. 2014–71 (D.D.C., filed Oct. 5, 1971).

Hon. CLIFFORD P. HANSEN,
U.S. Senate, Dirksen Senate Office Building,
Washington, D.C.

DEAR SENATOR HANSEN: On May 16, 1975, I had the opportunity to testify before the Committee on Interior and Insular Affairs in response to comments by Senator Stevens about the decision of United States District Judge Oliver Gasch in *Edwardsen* v. *Morton*, 369 F. Supp. 1359 (D.D.C. 1973). During the course of that testimony, you inquired about the judicial basis for distinguishing between a prospective extinguishment of unrecognized aborginal land title and a retroactive extinguishment of accrued trespass claims against third-party trespassers upon unextinguished aboriginal land. I told you then that I would furnish you with a line of cases that establish that distinction. Pages five through seven of our prepared statement to the Committee respond directly to your question.

For your convenience, a copy of our prepared statement and a copy of the Supreme Court decision in *United States* v. *Santa Fe Pacific R.R. Co.*, 314 U.S. on page six of the enclosed statement, the distinction recognized in *Santa Fe* 339 (1941), are enclosed. *Santa Fe* is the leading case on this issue. As set forth between the power of Congress to prospectively extinguish aboriginal title and the Indians' right to exclusive use and occupancy of aboriginal lands until extinguished by Congress was reaffirmed in *Tee-Hit-Ton* v. *United States*, 348 U.S. 272, 279 (1955), and most recently in *Oneida Indian Nation* v. *County of Oneida*, 414 U.S. 661, 667 (1974). If Judge Gasch's constitutional analysis of this issue is correct, Congress cannot extinguish accrued trespass claims of Arctic Slope Eskimos without paying the Eskimos the full value of those claims. Relevant portions of Judge Gasch's analysis are set forth at pages eight through ten of our statement.

Issues raised by *Edwardsen* are, as Senator Haskell stated, "not uncomplex." The same is true of many issues that would be raised by any attempt by Congres to extinguish *Edwardsen*. If further legislative consideration is given to this matter, please do not hesitate to call upon us for any information we can provide.

Sincerely yours,

O. YALE LEWIS, Jr.

DAYTON, LIMITED,
Fairbanks, Alaska, July 2, 1975.

Mr. STEVE QUARLES, *Legislative Assistant,*
Senator HENRY JACKSON,
Committee on Interior and Insular Affairs, Russell Building, Washington, D.C.

DEAR MR. QUARLES: Regarding the question of allowing Indian reservations the opportunity to vote again as to whether or not they desire to take their reservation land or elect to join regional corporations. Doyon, Limited would like to lodge a strong protest to this proposed legislative change except in the case of Klukwan. In our opinion Klukwan is a unique case and for moral issues should have a choice made; however, with regard to all other reservations, the issues are settled and people have chosen. We do not want to tamper with their choice.

I would appreciate it very much if you could relay our protest to the members of your committee. We are in a position to travel to Washington, D.C. if necessary.

Very sincerely,

JOHN C. SACKETT, *President.*

ALASKA FEDERATION OF NATIVES, INC.,
Anchorage, Alaska, July 3, 1975.

Mr. STEVEN QUARLES,
Senate Interior and Insular Affairs Committee,
Washington, D.C.

DEAR STEVE: I understand that there has been some controversy over the provision in S. 1824 to provide those Village Corporations who chose to accept former reserve lands under Section 19 of the Act a new election. The provision originally was developed by Sealaska in order to solve a somewhat complex problem in the village of Klukwan. Klukwan voted to take the option of surface and subsurface rights in the former reserve for their village corporation and forego the monetary benefits of the Settlement Act. However, it turns out that the United States Steel Corporation has an existing lease with the old IRA Council for the iron ore deposits which the Village Corporation thought they would get at the time they were voting. A new election would certainly clear up a very difficult situation in Klukwan.

We at AFN do not feel that it is necessary to have all the Village Corporations who chose the former reserve of lands option to vote again. We have written to these Village Corporations and informed them of the provision with our recommendation that only Klukwan be allowed this choice. As far as we know Klukwan is the only Village Corporation who desires a new election.

We expect that the Regional Corporations involved will be writing you about this.

Sincerely yours,

JOHN SHIVELY,
Executive Vice President.

WILKINSON, CRAGUN & BARKER LAW OFFICES,
Washington, D.C., July 9, 1975.

Re S. 1824.

STEVEN QUARLES, Esquire,
Special Counsel, Senate Committee on Interior and Insular Affairs, New Senate Office Building, U.S. Congress, Washington, D.C.

DEAR STEVE: We have reviewed the sections on merger and exemption from the SEC laws as drafted in the July 2, 1975, Committee Print of S. 1824. We believe that these sections as drafted are fine and handle these matters in what we consider the best possible manner.

We should comment briefly on the last subsection of section 7 of the bill, which requires plans of merger or consolidation to transfer a village corporation's right to withhold consent to mineral exploration within the village boundaries, under section 14(f) of the Settlement Act, to a separate entity composed of the Native residents of the village. This appears to be the best solution to the question

of how properly to dispose of these rights. Section 14(f) of the Settlement Act appears intended to guarantee local control of mineral exploration within the boundaries of a Native village, and this control should continue even if the village corporation merges with another village corporation or with the regional corporation. We assume that the requirement for conveyance "to a separate entity composed of the Native residents of such Native village" is not intended to require necessarily that a new entity be formed to take the place of the village corporation which would go out of existence through the merger. We read the provision as leaving the matter open, that is, whatever entity is best suited to fulfill the need in light of the structure of the village.

As we told you yesterday, either Richard Baenen or I will be in town at any given time over the next month or two, and therefore, should you need any further assistance from us or have any questions on these or other sections of the legislation, please do not hesitate to call on us.

Sincerely,

FOSTER DE REITZES.

ANCHORAGE ALASKA,
May 14, 1975.

Senator HENRY JACKSON,
Capitol Hill, D.C.

Because I was a Washington resident for many years and because you were acquainted with my mother Mrs. F. F. Powell, I am taking the privilege of contacting you. We homesteaded vacant unappropriated land on Yukon Island in 1959, and because of public pressure to enlarge the archeological reserve, our attempts to prove up were obstructed. Our claim was finally reduced to 10 acres. We established with my late husband. William F. Abbott, a scientific laboratory, a school, and a home on the island. We have planted gardens, berries, and fruit trees. We have never dug or disturbed archeological sites, and on numerous occasions have stopped others from doing so. Working with Dr. Fredricka de Laguna and the National Park Service, we executed and recorded a deed giving rights for authorized archeological exploration.

The archeology of Yukon Island is not of the Cook Inlet Region Inc. people. It is of ancient cultures which predate all present existing native groups. Yukon Island has never been a native village in recorded history.

We feel it would be a grave injustice and contrary to the national public interest to give Yukon Island to any private profit making group, including the Cook Inlet Region Inc.

Sincerely,

ALICE POWELL ABBOTT,
Yukon Island-homer.

COOK INLET REGION, INC.,
July 28, 1975.

Re: Committee Print of S. 1824.

Senator FLOYD K. HASKELL,
U.S. Senate,
Washington, D.C.

DEAR SENATOR HASKELL: Thank you for your letter of July 14, 1975. I appreciate the opportunity to comment on this very important legislation. My comments follow:

(1) Under (c) of the Enrollment provision we agree that new Native enrollees should receive distributions equal to Natives originally enrolled under ANCSA. However, we believe that future Alaska Native Fund distributions to the Regional Corporations should include an amount which would fully compensate the Corporations for paying the new enrollees as if they were originally enrolled under ANCSA.

(2) Regarding Section 7, we feel that the Social Security Act should be included along with the Food Stamp Act. This will make it clear that distributions from the Alaska Native Fund are not to be considered in determining the eligibility of a person to participate in programs under the Social Security Act.

We are in general agreement with the remainder of the Committee Print of S. 1824, particularly with the elimination of the language pertaining to *Edwardson* v. *Morton* as proposed by Senator Stevens. We feel that *Edwardson* is not a

proper subject for legislative action and that its inclusion in S. 1824 would certainly serve to delay the enactment thereof.

Again, thank you for allowing us the opportunity to comment on your Committee Print of S. 1824.

Sincerely,

ROY M. HUHNDORF, *President.*

U.S. SENATE,
COMMITTEE ON FINANCE,
Washington, D.C, July 7, 1975.

Hon. FLOYD K. HASKELL,
U.S. Senate,
Washington, D.C.

DEAR FLOYD. I have recounted below the subjects discussed with you during our meeting of Tuesday, June 22. I have also taken the liberty of expanding further on several points of particular concern to me and the Alaska native community.

I am of the understanding that proposed amendments covering the following subjects are not controversial from the point of view of the committee, the Alaska delegation, the Department of Interior, or the various Native organizations.

1. The so-called "late filers" provision giving those Alaskan natives who failed to file an enrollment application by the original March 30, 1973 deadline another opportunity to secure placement on the Alaska Native Settlement Act roll.

2. The so-called "food stamps" amendment mandating that revevnues and benefits received under the settlement act will be disregarded in determining the eligibility of any member of an Alaska Native household to participate in the food stamp program.

3. An amendment setting forth clear congressional intent that the ANCSA constitutes compensation for the extinguishment of aboriginal claims and is not to be deemed a substitute for government programs available to the Native people of Alaska.

The following items of concern to me are of a somewhat more complex nature.

1. *Mergers of Village and Regional Corporations.*—From my discussions with representatives of the NANA Corporation, the two items of principal concern in establishing the vehicle to allow mergers are dissenters rights and the affirmative vote requirement. Mr. Foster De Reitzes, on behalf of the NANA Corporation has directed considerable correspondence to Mr. Quarles on these two points, as well as certain exemptions from the SEC Act of 1934. Mr. Barry Jackson, attorney for the Bering Straits Native Corporation, has more recently directed comments to Chairman Jackson concerning dissenters rights and non-alienation of stock. A copy of his June 24 letter is enclosed. Attorneys for the AHTNA Regional Corpoel in the process of preparing a draft omnibus bill for committee consideratio would allow for groups within a region to merge with their parent regional corporations. I would suggest this may be a subject for consideration by committee counsel in the process of preparing a draft omnibus bill for committee consideration.

2. *Extension of the Life of the Federal-State Land Use Planning Commission.*—I feel it is safe to say that extending the life of the commission is not at issue although several bills have been presented to accomplish this purpose. In my view, the language used in S. 1501 or Section 10 of S. 1824 is sufficient. The differences surround a date for termination of the commission as it is presently structured. I purposely chose December, 1978 to coincide with the deadline established by ANCSA for treatment by Congress of the D–2 land question, with the thought there will be a continuing need for a body similar to the present commission but with somewhat different responsibilities.

3. *Intra Regional Revenue Sharing.*—The Bristol Bay Native Corporation has suggested the need for an amendment clarifying section 7(i) of the act. This section, which requires the sharing of 70% of all revenues received by each regional corporation from their timber resources and subsurface estate, is in the process of implementation but not without controversy. I have attached a copy of a letter from the president of the Bristol Bay Native Corporation for consideration. Included is the text of an amendment to section 7(i) suggested by the Bristol Bay Corporation.

4. *Section 2(a) and Section 4 of S. 131 and S. 1824.*—Language contained within these sections suggest the need for an escrow account for the deposit of

proceeds received by federal agencies which are derived from uses permitted of lands withdrawn for Native selection pursuant to the settlement act since enactment of ANCSA but in advance of final conveyance. These amendments also cover leases, permits, etc. issued prior to final conveyance under the Act to a Native corporation. In my view, it is essential that not only these amendments be enacted but also they contain language which makes the date of enactment of the Settlement Act itself the date which is key to the computation of benefits which will flow to the Native corporations under these provisions. Sections 2(a) and section 4 of S. 1824 contain appropriate language.

5. *Payment of Interest on Deposits in the Alaska Native Fund.*—Without question, high inflation rates in recent years have significantly reduced the value of the cash settlement we in the Congress granted to the Alaska Natives in 1971. The form of the cash settlement-fixed payments over time has made it highly vulnerable to shrinkage from the effects of inflation. In terms of 1971 dollars, the Natives will in fact not receive $960 million in cash. The progress of payments is largely fixed, being comprised of direct federal appropriations spread over a number of fiscal years, rents and royalties from oil production on federal and State lands where the variables are volume and timing of production, the price of oil, and, in the case of the State of Alaska, a share of bonus bids. The State of Alaska has, for several years, made a voluntary effort to discharge its obligations quicker than it otherwise might be paying into the Alaska Native Fund a "per barrel" tax collected from producers.

Absent modification of the Settlement Act to restore the value of the cash settlement to 1971 dollars i.e. an increased appropriation, we in the Congress may at least require the Federal Government to pay interest on amounts deposited in the Alaska Native Fund. Disbursements to regional corporation are made on a quarterly basis under the terms of the Act while State payments, which will become quite significant once pipeline construction is completed, are made on a monthly basis. I feel requiring that interest be paid on amounts on deposit is altogether equitable and certainly within the spirit and intent of the original Settlement Act.

6. *Amendment to Section 16(b).*—I have previously testified and would again like to emphasize my support for an amendment to section 16(b) of the Act to insure that the regional corporation for Southeast Alaska (Sealaska Corp.) is entitled to satisfy its allocation rights pursuant to section 14(h)(8) from lands within its own region. As you will recall, due to the Thlingit-Haida settlement, village corporations in Southeast Alaska were limited in their selections to 23,040 acres and the Sealaska Corp. was not granted land selection rights other than those provided by section 14(h). Section 14(h) authorizes the Secretary of Interior to withdraw and convey 2 million acres of land of which Sealaska will be allocated approximately 200,000 acres. The difficulty is section 14(h) uses the terms "unreserved and unappropriated public lands". In the case of Southeast Alaska and the Sealaska region this has been interpreted to mean lands outside the National Forest. Of the approximately 2½ million acres within the region not included in the Tongass National Forest, roughly one-half are included in a withdrawal pursuant to section 17(d)(2) of the Act and are slated to become part of the Wrangell-St. Elias National Park. The remainder is essentially mountain tops.

The obvious value of land to the Sealaska Corporation is for timber production purposes. The amendment suggested by Sealaska (found at section 12 of S. 1824) is to insure that its 14(h)(8) rights may be satisfied out of lands in areas withdrawn by section 16(a) for the 10 villages in the Southeastern region. This will allow Sealaska to combine its lands with those conveyed to its village corporations thereby forming compact selection units which will facilitate practical timber managements units. The value of this amendment extends not only to Sealaska but to the other eleven regions as well since, under section 7(i) of the act, Sealaska is required to share with the other regions of 70% of all revenues received from its timber operations. I might add that Mr. John Borbridge, President of the Sealaska Corporation, has presented excellent testimony in support of this amendment.

7. *The Village of Klukwan.*—I am most supportive of an amendment to allow the Natives enrolled to the Village of Klukwan to vote again on the question of whether to take full title to the lands of the former Klukwan Reserve or to take the benefits otherwise available under the Settlement Act. This is necessary as it now appears, contrary to what everyone understood at the time of the first election, that the existing mineral lease on the reserve may continue to be the

property of the Chilkat Indian Village, a corporation organized under the Indian Reorganization Act of 1934, rather than the property of the Klukwan Village Corporation organized under the Settlement Act. As we discussed, approximately 250 Natives are enrolled to Klukwan under the Act but only about 100 are members of the Chilkat Indian Village Corporation.

A decision by the Department of Interior setting forth the rights of only the IRA Corporation members to the mineral lease (an iron deposit) is expected soon. In fact, a delegation from Klukwan is expected in Washington the week of July 7 to meet with the Department, the Alaska Delegation, and no doubt the staff of the committee. Senator Stevens has suggested in section 13 of S. 1824 that the re-election privilege should be extended to any former reserve village which previously elected not to receive benefits under the Act. I do not concur. The problem is specific to Klukwan and therefore the remedy should be specifically only to that village.

8. *Financial Status of Reserve Village Corporations.*—In my written testimony to the committee I related another problem of the reserve villages. Section 19 of the Act at subsection (a) revoked the various existing Native reserves established in Alaska prior to enactment of the ANCSA with the exception of the Annette Island Reserve established for the people of Metlakatla. In each case, members of the village corporations formed in the area of each reserve were given the opportunity to hold an election to decide whether they wish to acquire title to the surface and subsurface estate of the former reserve or to acquire benefits normally accorded to a village corporation formed pursuant to the Act. Seven villages chose to retain their reserve status and as such are not eligible to select other land under the Act, or receive a distribution of regional corporation funds, and are not stockholders in their respective regional corporations. Essentially each reserve corporation has one asset—undeveloped land. To assist each of these corporations in realizing the fullest possible benefits from that land in the years to come, I feel it is altogether appropriate to amend the Act by granting $100,000 to each reserve corporation on a one time only basis for the purpose of properly completing their land planning and development tasks. Without question, completion of the necessary planning tasks is an expensive proposition, particularly in rural Alaska. Many organizations including the BIA, State of Alaska, Alaska Native Foundation, and Alaska Federation of Natives, have been trying to assist these groups. In my judgment, it is altogether appropriate to provide for an infusion of capital for each corporation to further, as best we can, the prospect that each may realize its fullest potential as a viable entity.

I would suggest an amendment similar to the following:

(a) The Secretary of the Interior is authorized and directed to pay, by grant, to each of the following village corporations $100,000 to enable such corporations to carry out their duties under the Settlement Act:

(1) Arctic Village;
(2) Elim;
(3) Gambell;
(4) Klukwan;
(5) Savoonga;
(6) Tetlin;
(7) Venetie.

(b) In the event the village of Klukwan, elects in accordance with section of this Act, to retain its status as a village corporation organized pursuant to section 19(b) of the Settlement Act the grant available under subsection (a) above is not authorized.

9. *The Urban Corporations.*—Similar to the situation described above is the problem faced by the so-called "four named corporations". These are the village corporations of Juneau, Sitka, Kenai and Kodiak. Each has a single asset—23,040 acres of land granted pursuant to section 14(h)(3). Members of these "urban" village corporations are stockholders in their respective regional corporations; however, the village corporations themselves are not the recipient of funds under the Act. Thus, their only assets are the lands that will be granted to them and put to a productive income producing use. Meanwhile, they have incurred and continue to incur expenses in connection with organizing and operating their corporations, making land selections, and engaging in appropriate and necessary planning. Understandably, they are reluctant to borrow on the security of future land uses and financial institutions are equally reluctant to advance funds on any other basis. In addition, meeting the terms of financial institutions automatically places them in a "pressure situation" where the need to make immediate

use of land is felt to satisfy creditors and thereby precluding the consideration of all development alternatives.

In view of this situation, I strongly endorse the amendment found at section 11 in S. 1824.

I very much appreciate your taking the time last Tuesday to discuss my concerns with respect to necessary amendments to the Settlement Act. I hope this letter will be useful in amplifying my position and my concern for areas of the Act requiring adjustment. And again, I do hope to have the opportunity to review a draft of the omnibus bill I understand is being prepared by Mr. Quarles for committee consideration.

Warm regards.

Sincerely,

MIKE GRAVEL.

Enclosures.

BARRY W. JACKSON,
Fairbanks, Alaska, June 24, 1975.

Hon. HENRY M. JACKSON,
Chairman, Committee on Interior and Insular Affairs,
U.S. Senate, Washington, D.C.
Subject: Merger of ANCSA Corporations.

DEAR SENATOR JACKSON: The Board of Directors of Bering Straits Native Corporation has reviewed S. 685, a bill to authorize certain corporations under the Alaska Native Claims Settlement Act to merge or consolidate, and for other purposes.

The Board of Directors has no objection to the concept of merger or consolidation of Native corporations, and such legislation is probably desirable as means to permit small Native village corporations to combine their assets and management talent into larger business entities. As you know, the average Native village corporation has very limited cash flow, and there is a serious danger that the cash assets of a village corporation will be dissipated in administrative overhead. I am sure you will be receiving adequate testimony on the need for legislation like S. 685.

However, the Board of Directors is deeply concerned with the provision in Section 1(c) of S. 685 which, as we understand it, effectively allows dissenting shareholders in a merger or consolidation to require the surviving corporation to value their shares and pay off the dissenting shareholders in cash. Because of the economic circumstances of most Alaska Natives, a "buy-out right" will place a very great temptation before Native corporate shareholders. The cash value of the shares of a Native may be on the order of $10,000 to $100,000. For a family of two adults and five children, the cash realizable from dissenting to a merger may be on the order of $70,000 to $700,000. To ask a family with an annual cash income of perhaps $7,000 to resist such a temptation is to ask the impossible.

The proposed provision will effectively circumvent the twenty-year restriction on alienation clause of ANCSA and is likely to lead to dissipation of assets. By the twenty-year clause Congress intended to preserve substantial assets in Native ownership for at least a twenty-year period in part so that the shareholders might know the value of their shares. Hopefully the shareholders would share in economic development, resulting both from ANCSA and general development in the State of Alaska, to the point that there would not, after 1991, be a great economic incentive on the part of shareholders to sell their stock.

One of the truly unusual features of ANCSA is that it neither tries to turn Natives into Yeoman farmers (as in the 1800's) nor into worker-consumers (as in current approaches), but into owners. Not investors, but owners in common of land, a continuation of tribal land ownership, with cash assets sufficient to avoid being "land poor."

While the Natives have a deep attachment for and appreciation of the land and their relationship to it, we still need the twenty year period to build a sophisticated ownership and stewardship ethic, one which will prevent sale of stock by shareholders except in extremities, and perhaps not even then. Ideally a Native shareholder should not part with his interest in the "family land," any more than would a Southern farmer.

Moreover, we anticipated that the restraint on alienation provision would give greater assurances that assets conveyed by way of stock, to Alaska Natives under the closed roll provisions of ANCSA, would permit shareholders to convey shares to children and grandchildren, thereby permitting those born after

December 18, 1971, to participate in the Alaska Native Claims Settlement. As a result of the buy-out right which would be granted by S. 685, we foresee that a class of persons (born after 1971) will, in the course of time, be created who may claim, with some justification, that their parents or ancestors, by exercising buy-out rights, deprived them of the opportunity of ownership in Native corporations. This is likely to create serious problems not only for the children and descendants referred to, but also for the management of Native corporations, the Secretary, and the Congress.

The buy-out provision also creates another problem. Because the value of the lands conveyed under ANCSA far exceeds the value of the cash assets of the corporations, and because the corporations have, as of this point, received only a small percentage of the cash to which they are ultimately entitled, should 5% or 10% of the shareholders of merging or consolidating corporations elect to exercise their buy-out rights, the merged or consolidated corporations may be seriously strapped for cash to pay off such dissenting shareholders; and their future business activities may be severely constrained because of this loss of working capital.

For the reasons stated, the Board of Directors of Bering Straits Native Corporation is opposed to buy-out rights being given to dissenting shareholders in any merger legislation. And we suggest that the rights of individual shareholders can be adequately protected in a merger or consolidation of Alaska Native corporations by (a) the requirement under State law that the shareholder resolution of merger or consolidation be adopted by a two-thirds vote of shareholders, and (b) by establishing a mechanism to provide review of the fairness of any proposed merger of consolidation.

In the case of merger of village corporations inter se the reviewing agency might be the Board of Directors of the appropriate regional corporation. If the regional corporation is involved in the merger or consolidation, the reviewing agency might be a Court or the S.E.C. (However, we are concerned that the review procedure, especially if performed by the S.E.C., not be too involved or cumbersome.)

Respectfully submitted,

BARRY W. JACKSON,
General Counsel, Bering Straits Native Corp.

BRISTOL BAY NATIVE CORP.,
Dillingham, Alaska, May 30, 1975.

Hon. MIKE GRAVEL,
U.S. Senate, Washington, D.C.

DEAR MIKE: Section 7(i) of the Alaska Native Claims Settlement Act—the section providing for a split of mineral and timber revenues among the Native Regional Corporations—is putting a tremendous burden on the Act's continued operation. During the past year, legal and accounting fees directly related to problems of 7(i) interpretation and application consumed approximately one fourth of the entire cash flow of all twelve Regional Corporations—so we judge from annual reports and our own experience—and the hassles have only just begun. The ANCSA threatens to become another link in the long chain of Indian Treaties, another cruel hoax.

We understand that Congress has been reluctant to deal with this provision of the ANCSA because of the provision's controversiality. The reluctance is not proper. The controversy exists mainly because of lacunae in the original Congressional expression, and Congress is the appropriate agency to clear up the lacunae. Moreover, there are broad areas of agreement among all but one or two of the Regional Corporations, and Congress could speak to the areas of agreement even if it choose not to deal with the remaining issues. Finally, the real problem with 7(i) is not so much the differing interpretations of its application to particular agreements as it is the lack of a process, short of twelve-sided federal litigation, for resolving those differences. Even if Congress choose not to speak to any of the substantive problems in 7(i), it could establish a process for resolving differences.

Attached to this letter is a version of 7(i) incorporating three very small clarifying revisions in terminology. Ten or more regional corporations would agree with each of the revisions, and we are certain that all the revisions represent the true intent of Congress. Yet adoption by Congress would obviate the necessity for massive multi-district litigation currently underway.

Also attached to this letter is a proposal for a section 7(i)(2), which would obviate the need for most if not all future litigation.

Unless the Congress take such action now, we are fairly certain that some future Congress will be asked to eliminate the section from the Act entirely, amid circumstances of general recrimination by Regional Corporations sadly reduced.

Sincerely,

HARVEY SAMUELSEN, *President.*

ATTACHMENT 1

7(i) Seventy percentum of all revenues received by each Regional Corporation from the timber resources and subsurface estate ~~patented~~ *conveyed* to it pursuant to the Act shall be divided annually by the Regional Corporations organized pursuant to this section according to the number of ~~Natives~~ *stockholders* enrolled in each ~~region~~ *Regional Corporation* pursuant to Section 5. The provisions of this subsection shall not apply to the thirteenth Regional Corporation if organized pursuant to subsection (c) hereof.

ATTACHMENT 2

7(i) (1) Seventy per centum. . . .

(2) According to the number of stockholders enrolled in each Regional Corporation pursuant to Section 5, each Regional Corporation shall contribute to the expenses of operation of a Committee consisting of at least three members, at least one of whom shall be an attorney and one of whom shall be an accountant. The Committee shall review all revenue-producing agreements entered by Regional Corporations and affected with timber resources or subsurface estate, and for each such agreement it shall determine the divisions required pursuant to paragraph (1) of this subsection. Any Regional Corporation aggrieved by any determination of the Committee shall submit the grievance to binding arbitration pursuant to the rules and regulations of the American Arbitration Association; provided however, that Regional Corporations contemplating agreements affected with timber resources or subsurface estate may, subject to a schedule of fees to be established by the Committee, submit such agreements to the Committee for confidential review and advice on the divisions such agreement will require.

FEDERAL-STATE LAND USE PLANNING COMMISSION FOR ALASKA,
Anchorage, Alaska, July 3, 1975.

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

Atten: Steven Quarles.

Dear MR. CHAIRMAN: We have recently been advised that the Committee may soon commence a mark-up of pending amendments to the Alaska Native Claims Settlement Act. With this in mind, we are writing to suggest that the mark-up of amendments relating to the land entitlements of the Koniag and Sealaska Regional Corporations be postponed until public hearings or other substantive consideration of these provisions has taken place.

Enactment of the Koniag and Sealaska amendments could significantly affect land use, management, and other concerns in the areas involved. The Koniag provision relates to the subsurface estate of certain lands which have been withdrawn pursuant to Section 17(d)(2) of the Settlement Act, and the possible impact of such private ownership should be carefully analyzed. Similarly, the Sealaska amendment could affect Forest Service management of the Tongass National Forest, State selections within the forest pursuant to Section 6(a) of the Alaska Statehood Act, recreational use, and other concerns.

Because of the time constraints involved, the Commission has not yet had an opportunity to analyze the impacts which might occur. It is likely that the State of Alaska, various Federal agencies, local governments, user groups, and other interested parties are in a similar position. In view of the significance of the Koniag and Sealaska amendments, we believe that the Committee would profit from input made by the parties just mentioned and the affected Native corporations. If you should decide on this approach, the Commission would be pleased to

prepare an objective analysis of the impacts and other effects which are likely to result from enactment of the two amendments and to present our findings and conclusions to the Committee. In addition, if it would be helpful, we would be glad to schedule hearings, public meetings, or other forums in an effort to formulate a record which could be utilized by the Committee in considering the proposals. (Time constraints and the need for adequate notice will preclude us from holding such hearings, which are also a usual prerequisite to Commission action, prior to the time when we understand that your mark-up sessions would probably begin.)

In suggesting that mark-up of the Koniag and Sealaska amendments be postponed pending further substantive input, we do not mean to prejudge the results of this evaluation. Such an examination might indicate that the amendments are indeed sound. However, the vast quantity of acreage involved, the location of that acreage, and the considerations outlined previously indicate to us that an oportunity for governmental and public scrutiny would be helpful to the Committee. We also want to note that our suggestion does not relate to proposed amendments to the Settlement Act which have already been considered in public hearings or which are not likely to create the types of impacts discussed above.

Thank you for your consideration of this matter.

Sincerely yours,

BURTON W. SILCOCK,
Federal Co-Chairman.
DAVID S. JACKSON,
State Co-Chairman.

U.S. SENATE,
COMMITTEE ON COMMERCE,
Washington, D.C., July 9, 1975.

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

DEAR SCOOP: This note is in further response to your recent letter addressing certain issues arising from the Alaska Native Claims Settlement Act. After meeting with representatives of the Alaska Federation of Natives over the July 4 recess, I now believe it would be best if the noncontroversial amendments to ANCSA contained in S. 1824 were acted on as soon as possible by the Senate Interior Committee. I feel that these measures include the Native enrollment extension, the escrow fund provision, the food stamp amendment, the merger provision and other issues which were the subject of hearings this May.

Several provisions of the omnibus bill such as the grant of Forest Service lands to Sea-Alaska, the granting of lands to Koniag, Inc., and the $250,000 to the four named cities provision were the subject of my comments at the hearings. If those and others not involved in the *Edwardsen* problem are not too controversial to move without holding specific hearings on them, I would like to see those reported too. In any event, I would appreciate it if hearings can be scheduled for September on the other provisions of S. 1824, including Section 15, the *Edwardsen* provision.

With best wishes,

Cordially,

TED STEVENS,
U.S. Senator.

U.S. SENATE,
COMMITTEE ON COMMERCE,
Washington, D.C., July 15, 1975.

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

DEAR SCOOP: I am writing to request that the Committee include in the Committee draft of S. 1824, a provision which would make a grant of $100,000 each to seven reserves in Alaska, (Arctic Village, Elim, Gambell, Klukwan, Savoonga, Venetie, and Tetlin), to assist them in their efforts to achieve self-determination.

These reserve villages were formed under the Alaska Native Claims Settlement Act, but did not receive the financial benefits of the Settlement Act. Thus, they find it extremely difficult to carry on the responsibilities required of them

as a reservation. With this financial assistance, they will be able to meet their financial obligations, and hopefully can become an independent and economically viable enterprise.

Your favorable consideration of this request will be very much appreciated by myself and the seven reserves involved.

With best wishes,

Cordially,

TED STEVENS,
U.S. Senator.

JUNEAU, ALASKA,
July 21, 1975.

Senator HENRY M. JACKSON,
Capitol Hill, D.C.

The State presently understands that a markup session for the native land claims amendments is scheduled before the August congressional recess. Regarding the following amendment, the State believes that an inadequate record exists for action and requests that committee action not be taken until after the recess and after the State and others have had an opportunity to take a position on the record. The amendments are: (1) Cook Inlet Region Land Trade amendments; (2) Edwardsen amendment: (3) Sealaska Land Selection amendment: and (4) Koniag Land Selection amendment.

The State is presently undertaking active consideration and discussion on all amendments but strongly believes that action before recess is premature and without adequate public notice and study on the amendments specified.

GUY R. MARTIN,
Commissioner, Department of Natural Resources.

JULY 26, 1975.

Senator HENRY JACKSON,
Chairman, Senate Interior Committee,
Washington, D.C.

DEAR MR. CHAIRMAN: Last week, on behalf of the State, I telegramed you to indicate the State's desire that four amendments to S. 1824 not be marked up prior to the August recess. Such a telegram is never adequate to convey full meaning, but was thought necessary due to information the State received that a mark-up could occur as early as the next day in your committee. Certain misconceptions, some of them understandable, have arisen as a result, and it is my purpose in this letter to address these issues, while still maintaining the basic request made in the telegram.

Most important, the inclusion of the four amendments in the telegram does not mean that the State has any common position on the various amendments other than that it believes the public interest will be better served by mark-up after the recess. Indeed, on three of the amendments—Cook Inlet, Koniag, and SeaAlaska—the State has not yet taken a substantive position, and does not do so now.

Second, the State has no intent to tie the fate of hese amendments together, to deprive them of inclusion in the omnibus bill, or to link them to the *Edwardson* amendment, on which the State has taken a strong position. On the contrary, the State believes each of the amendments should be taken up as a part of the overall bill, and should be fully considered as soon as possible in September.

Each of the amendments has important implications for State land policy and planning, and these have been under study since the amendments were first put forward in the hearings on this bill. These implications, in each case, have been recognized by others in addition to the State. In each case the State has proceeded with its study under the general assumption that mark-up wou'd not occur either before the recess or without further hearings or opportunity for written submissions. Only the prospect of earlier mark-up necessitated the request for delay.

During the next five weeks the State will be completing its own work on these amendments and intends to meet and work as closely as possible with the proponents of each amendment. In the case of the Cook Inlet amendment, discussions and intensive work sessions have been under way for months, and both the State and Region remain enthusiastic regarding ultimate agreement, yet the State has a promised obligation to give public exposure to the proposal. Only August is available for this task.

In the case of the SeaAlaska and Koniag amendments, the State has a similar commitment to work closely and intensively with the Regions, but until August first will not have completed even its own internal analysis of the amendments. The State's request for the time to carry out this work is made in the good faith belief that fair consideration of the amendments will not be prejudicially affected by the delay. Should the Chairman or others be convinced that such prejudice will occur and outweigh the public benefits the State believes are inherent in its request, then such a judgment would be respected. Nonetheless, the State believes its request is well-founded and hopes this correspondence clarifies its position.

Very truly yours,

GUY R. MARTIN,
Commissioner of Natural Resources, State of Alaska.

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

Hon. HENRY M. JACKSON,
U.S. Senate, Washington, D.C.

DEAR SENATOR JACKSON: We would like to take this opportunity to comment on an amendment to the Alaska Native Claims Settlement Act—section 12 of S. 1824—that we understand is under consideration by the Interior Committee. This provision would legislate an agreement between the Department of the Interior and the Koniag Regional Corporation concerning the lands withdrawn under section 17(d)(2)(e) of the Claims Act in the area proposed by this Department for establishment as the Aniakchak Caldera National Monument in the National Park System.

The pertinent agreement—which in essence was that the Department of the Interior would not oppose the region's selection of the subsurface estate of certain lands proposed for inclusion in the monument—is embodied in an exchange of correspondence between Royston C. Hughes, Assistant Secretary of the Interior for Program Development and Budget and Chairman of the Department's Alaska Task Force, and Mr. Edward Weinberg, attorney for Koniag, Inc. Copies of this correspondence, which were previously sent to the Committee on January 20, 1975, are enclosed for your convenience.

The specific amendment we refer to has been proposed in the revised Committee print as follows:

SEC. 12. The Secretary shall convey under sections 12(a)(1) and 14(f) of the Settement Act to Koniag, Incorporated a Regional Corporation established pursuant to section 7 of said Act, such of the subsurface estate as is selected by said corporation from lands withdrawn by Public Land Order 5397 for identification for selection by it located in township 36 south, range 52 west; township 37 south, ranges 51–54 west; township 38 south, ranges 51–54 west; township 39 south, ranges 51–54 west, township 40 south, ranges 51–54 west, and township 41 south, ranges 52–54 west. Seward meridian, Alaska, notwithstanding the withdrawal of such lands by Public Land Order 5179, as amended, pursuant to section 17(d)(2) of the Settlement Act: Provided, That notwithstanding the future inclusion in any national monument or other national land system referred to in section 17(d)(2)(A) of the Settlement Act of the surface estate-overlying any subsurface estate conveyed as provided in this section, Koniag, Incorporated, may use the surface estate, and shall have such right of access thereto, as is reasonably necessary to prospect for and to mine and remove minerals from said subsurface estate, subject to such reasonable regulations by the Secretary as are necessary for the protection of surface values."

We object to the legislation of the agreement at this time. Our primary concern is that such legislation would place one aspect of the consideration of d-2 proposals ahead of the others. The logical time for consideration of the agreement reached between the Department and Koniag is during consideration of the Aniakchak proposal as a whole. Otherwise, a decision will have been reached on one aspect of the proposal without a full appreciation of its scope and rationale. In addition, advance legislation regarding this dual withdrawal problem with Koniag would have a troublesome precedential effect on several other proposals: currently more than 3,000,000 acres are dually withdrawn under section 17(d)(2)(e), and several regional and village corporations are involved. We are currently exploring with several of these Native groups ways to solve the difficulties that dual withdrawals present. In order to serve the interests of Natives as well as of

the nation, we recommend that a consistent approach be taken with regard to all dually withdrawn lands, namely that their disposition be considered at the same time that the Committee reviews the "four systems" proposal in which each such withdrawal occurs.

Our other major concern regarding the adoption of this provision centers on the lack of public hearings on the amendment. One of the main reasons that this Department did not itself hold hearings on the d-2 proposals was anticipation of full public participation in the Congressional conideration of the proposals. While this Department continues to support the agreement reflected in the enclosed correspondence, we also feel that there should be the opportunity for public hearings on this important agreement. With the public's recognition and support of this agreement, we would be in a better position to make it work over the long term for the benefit of all parties involved.

We, therefore, recommend deferral of this amendment, pending consideration of the d-2 proposal.

Sincerely yours,

CURTIS BOHLEN,
Acting Assistant Secretary of the Interior.

Enclosures.

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

Mr. EDWARD WEINBERG,
Duncan, Brown, Weinberg & Palmer,
Washington, D.C.

DEAR MR. WEINBERG: This responds to your letter of December 13, 1974, concerning subsurface deficiency selections by the Koniag Region Corporation in d-2 lands recommended by this Department for inclusion in the proposed Aniakchak Caldera National Monument. As you point out, the understanding between the Department and the Regional Corporation—that the Department will not oppose Koniag selection of the subsurface estate of the lands proposed for the monument and described in Paragraph 1(b) of P.L.O. 5397—is not reflected in the "four systems" proposal as transmitted to the Congress (S. 2917 in the 93rd Congress). In addition, the Administration will not be resubmitting this proposal to the 94th Congress. In light of this situation, your request that, upon the convening of the 94th Congress, this Department transmit to the Interior Committees a letter containing the substance of the Interior-Koniag agreement is in both of our interests, and we will be pleased to do so. Of course, you have our assurance that our testimony at the appropriate hearings will recognize and support the agreement.

Sincerely yours,

ROYSTON C. HUGHES,
Chairman, Alaska Task Force.

DUNCAN, BROWN, WEINBERG & PALMER,
Washington, D.C., December 13, 1974.

Hon. ROY HUGHES,
Assistant Secretary of the Interior, Chairman of Alaska Task Force, Department of the Interior, Washington, D.C.

DEAR SECRETARY HUGHES: Thank you for your telegram of December 6 to Jack Wick, President of Koniag, Inc. responding to the wire he and I sent you and Mr. Kirton December 3.

We are delighted to have the assurances set out in your telegram.

We are particularly glad to have your reaffirmance that the Department of the Interior will not oppose Congressional recognition of lands identified for selection by Koniag, Inc. in the Aaniakchak area. These lands are withdrawn by PLO 5397 for identification by Koniag, Inc. for selection under Section 12 of ANCSA and are also withdrawn under ANCSA § 17(d)(2)(A).

To further clarify the Aniakchak situation, I met with Deputy Assistant Secretary Wheeler (who was accompanied by Messrs. Drabelle and Jones) on December 10.

To place this matter in perspective, a brief review is appropriate. Koniag's regional selection rights under Section 12 of ANCSA arise, as you know, under the concluding sentence of Section 12(a)(1). Therefore, they are in lieu rights to select subsurface estate because of surface selections within the National Wild-

life Refuge System by Koniag villages. Hence, these regional selection rights are valuable only for mineral purposes and do not carry with them the right to use and enjoy the overlying surface estate except as incidental to the enjoyment of the subsurface estate.

Koniag, Inc., it will be recalled, early expressed to the Department of the Interior its concern regarding the insufficiency and other inadequacies of lands available to satisfy Koniag village and regional deficiency entitlements. Because so much of Kodiak and Afognak Islands are unavailable for selection because of the Wi'dlife Reserve, the National Forest and state selections, Koniag and its villages were relegated to taking deficiency lands on the mainland of Alaska, an area which, at its closest point, is some fifty miles across the open sea from Kodiak Island, and most of which is substantially more remote. The problem was compounded by the fact that a substantial part of the deficiency area does not meet the "similar character" requirement prescribed by ANCSA § 11(2)(3), and, of the better quality land, surface values in the Aniakchak area made those lands candidates for national monument and wild river consideration.

To resolve the problem amicably and without litigation, Kodiak was agreeable to the exclusion from its selection area of the one mile corridor along the Aniakchak River with the understanding that it would be able to select and receive patent to the subsurface estate in the balance of the Aniakchak lands, these being T.36S. R.52W., T.37S., Rs.51–54W., T.38S. R.54W., T.39S. Rs.51–54W and T.40S. Rs.51–52W., Seward Meridian. To this the Department was, and I understand from your telegram and from my discussions with Mr. Wheeler, remains agreeable. As an initial step in implementing this arrangement, PLO 5397 withdrew the Aniakchak lands as regional deficiency, subject to a D–2 override, but excepted from regional deficiency identification all lands in sections wholly or in part within one mile of the Aniakchak River.

Because Koniag's selection rights are to the subsurface estate, the foregoing arrangement, if fully implemented, would be consistent with the objectives both of Koniag and the Department. Koniag would have subsurface, i.e., mineral, rights and the surface estate (along with the full estate in the Aniakchak River corridor) would remain in federal ownership for preservation of national land system values, with both the mineral and surface values capable of being realized through cooperative land use arrangements to be worked out between the parties.

Because the Department has included the lands in question in its D–2 recommendation for the Aniakchak Coldera National Monument, Section 17(d)(2)(E) of ANCSA, in terms, would make it impossible for Koniag, Inc. to actually select and receive patent to the subsurface estate withdrawn under Paragraph 1(b) of PLO 5397 unless the Congress either fails to take action on the Department's D–2 recommendation for five years or makes provision for Koniag's selection of the subsurface estate in enacting the legislation establishing the national monument.

Unfortunately, the Department of the Interior's December 17, 1973 recommendation for D–2 legislation, which was introduced as S.2917, 93d Cong., does not reflect the Department's decision not to oppose Congressional recognition of Koniag's selection of the subsurface estate in the Aniakchak area. The Congress is, therefore, unaware of that position and enactment of S.2917 in the form in which it was transmitted to the Congress by the Department would preclude its effectuation.

In these circumstances, we respectfully request, consistent with your December 6 telegram, that (a) the Department communicate to the House and Senate Interior Committees promptly upon the convening of the Ninety-fourth Congress, its agreement to recognition of Koniag's selection of the subsurface estate in the lands described in Paragraph 1(b) of PLO 5397 and (b) that the Department support Koniag's request for such Congressional recognition in Congressional hearings on D–2 legislation. We would, of course, appreciate your early confirmation to us of the Department's intention so to advise the Committees.

For our part, we are more than willing to develop with the Park Service a joint land use cooperative agreement for the Aniakchak area which will accommodate our respective interests. We have no doubt that a satisfactory agreement can be arrived at.

Again, let me express our appreciation for the Department's cooperation in this matter. May I hear from you at your earliest convenience.

Sincerely yours,

EDWARD WEINBERG,
of Duncan, Brown, Weinberg & Palmer.

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