

AMENDING THE ALASKA NATIVE CLAIMS SETTLEMENT ACT TO PROVIDE
THAT ALEXANDER CREEK, ALASKA, IS AND SHALL BE RECOGNIZED AS
AN ELIGIBLE NATIVE VILLAGE UNDER THAT ACT, AND FOR OTHER PUR-
POSES

NOVEMBER 30, 2018.—Committed to the Committee of the Whole House on the
State of the Union and ordered to be printed

Mr. BISHOP of Utah, from the Committee on Natural Resources,
submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 1418]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 1418) to amend the Alaska Native Claims Settlement Act to provide that Alexander Creek, Alaska, is and shall be recognized as an eligible Native village under that Act, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of H.R. 1418 is to amend the Alaska Native Claims Settlement Act to provide that Alexander Creek, Alaska, is and shall be recognized as an eligible Native village under that Act.

BACKGROUND AND NEED FOR LEGISLATION

The Alaska Native Claims Settlement Act of 1971 (ANCSA, 43 U.S.C. 1601 et seq.), extinguished all claims of Native people based on aboriginal title to lands and waters in Alaska. Under the Act, fee title to 44 million acres of public lands in Alaska and nearly \$1 billion were conveyed and paid to Alaska Natives. Section 7 divided the State into twelve geographic regions, approximated by twelve regional Native associations, “composed as far as practicable of Natives having a common heritage and sharing common inter-

ests.” Section 11 listed approximately 200 villages with 25 or more Native residents where they formed a majority of the population. The Regional Associations and Native Villages were authorized to form for-profit business corporations organized under the laws of Alaska to manage the settlement lands and funds. Fee title to the surface estate to the lands was divided among the Regional and Village Corporations, while the Regional Corporations obtained fee title to the subsurface estate of most Regional and Village Corporation lands.

The Act prescribed a host of conditions under which Native Corporations must operate. For example, settlement lands conveyed to the ANCSA Corporations are treated as private property subject to State regulation, but they are nontaxable until developed. While ANCSA Corporations may buy, sell or trade their lands like any private landowner, shares issued by the Corporations are not publicly traded or sold. Importantly, section 7 of ANCSA requires that 70% of revenues derived by a Regional Corporation from the development of timber and mineral resources on its settlement land be shared with the other Regional Corporations, which must in turn redistribute these benefits to Village Corporations in their regions and to at-large shareholders (at-large shareholders of a Regional Corporation do not own shares in a Village Corporation).

Depending on its population, each Alaska Native Village of 25 or more residents is entitled to the surface estate between 69,120 and 161,280 acres of public land for its Village Corporation. Relevant to Alexander Creek, ANCSA provides that a Village of fewer than 25 Native residents may form a “Group Corporation” entitled to a maximum of 7,680 acres.

Alexander Creek

Alexander Creek is located 27 miles northwest of Alaska’s largest city of Anchorage. Though not specifically listed as a Native Village in ANCSA, Alexander Creek secured recognition as a Village under administrative procedures authorized under section 11 of that Act. Its recognition as a Village was challenged through administrative appeals and lawsuits, precipitated by (among other things) concerns that it would obtain the right to select public lands to which the State of Alaska and the Matanuska-Susitna Borough sought to select pursuant to other acts.

In 1974 the Department of the Interior Alaska Native Claims Appeals Board (ANCAB) resolved appeals challenging Alexander Creek’s designation as a Village. The ANCAB decided there were only 22 Native people properly enrolled to Alexander Creek, three short of meeting the eligibility requirements for a Village. Alexander Creek contends that not all of its enrollees were properly counted because the Bureau of Indian Affairs (BIA) failed to notify residents of the administrative proceedings where they could have testified as to their status.

Alexander Creek filed a lawsuit that resulted in protracted litigation. The case eventually went to the U.S. Court of Appeals for the District of Columbia Circuit, which reversed the Department of the Interior’s determination but remanded the case to a lower court for further proceedings. This led to negotiations that resulted in Alexander Creek organizing as a Group Corporation rather than a Vil-

lage Corporation. Subsequent leadership of Alexander Creek petitioned Congress for Village status.

On March 20, 2012, the Subcommittee on Indian and Alaska Native Affairs held a hearing on a predecessor bill to H.R. 1418 (H.R. 4194), and heard testimony from Stephanie Thompson, the President of Alexander Creek, and the Obama Administration. Ms. Thompson submitted materials demonstrating that a number of Natives (who have since passed away) were not given a fair opportunity to testify before the BIA as to their membership in Alexander Creek. At the time, the Interior Department opposed the bill on the grounds that a final settlement over the Group's status was struck and that it should not be reopened.

COMMITTEE ACTION

H.R. 1418 was introduced on March 7, 2017, by Congressman Don Young (R-AK). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Indian, Insular and Alaska Native Affairs. On July 25, 2017, the Natural Resources Committee met to consider the bill. The Subcommittee was discharged by unanimous consent. No amendments were offered, and the bill was ordered favorably reported to the House of Representatives by unanimous consent on July 26, 2017.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

COMPLIANCE WITH HOUSE RULE XIII AND CONGRESSIONAL BUDGET ACT

1. Cost of Legislation and the Congressional Budget Act. With respect to the requirements of clause 3(c)(2) and (3) of rule XIII of the rules of the House of Representatives and sections 308(a) and 402 of the Congressional Budget Act of 1974, the Committee has received the following estimate for the bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 22, 2107.

Hon. ROB BISHOP,
*Chairman, Committee on Natural Resources,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1418, a bill to amend the Alaska Native Claims Settlement Act to provide that Alexander Creek, Alaska, is and shall be recognized as an eligible Native village under that Act, and for other purposes.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Robert Reese.

Sincerely,

KEITH HALL,
Director.

	By fiscal year, in millions of dollars—													2017– 2022	2017– 2027
	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027				
INCREASE IN SPENDING SUBJECT TO APPROPRIATION															
Estimated Authorization Level	0	0	16	0	0	0	0	0	0	0	0	0	0	16	16
Estimated Outlays	0	0	16	0	0	0	0	0	0	0	0	0	0	16	16

Basis of estimate: For this estimate, CBO assumes that H.R. 1418 will be enacted near the end of 2017, that DOI will reach a monetary settlement with the Alexander Creek village within a year and that any amounts necessary to finalize the settlement will be provided in fiscal year 2019.

Background

ANCSA established a process to classify Native Alaskan communities as Native corporations and withdrew nearly 44 million acres of federal land in Alaska for the purpose of conveying land to those communities. Under ANCSA, Native villages are entitled to receive about 69,000 acres from that withdrawn land, and Native groups can receive up to about 8,000 acres. The Alexander Creek community was classified as a Native group in 1974, and that classification was affirmed and codified in the Alaska National Interest Lands Conservation Act of 1980 (ANILCA). In that agreement, the Alexander Creek community was entitled to receive almost 8,000 acres of the 44 million acres of federal land withdrawn under ANCSA.

Alexander Creek reclassification

H.R. 1418 would designate the Alexander Creek community as a Native village under ANCSA, which would require DOI, in conjunction with the General Services Administration (GSA), to settle land and other claims with the newly designated Native village. Under the bill, part of the settlement could involve transferring some of the government's excess personal property, such as office equipment and furniture, to Alexander Creek. (The disposition of excess personal property is administered by the GSA.)

Because H.R. 1418 would supersede the ANILCA agreement and classify the Alexander Creek community as a Native village, they would be entitled to receive an additional 61,000 acres of the federal land withdrawn under ANCSA. According to DOI, nearly all of that land has been or is in the process of being conveyed to other Alaska Native corporations. Under the bill, DOI would be required to enter into negotiations with Alexander Creek to settle the community's land claims by providing the community with some combination of other land in the public domain, personal property held by GSA, or other compensation. H.R. 1418 would require the settlement to be reached within 13 months of the bill's enactment.

Based on the value of undeveloped acreage in the vicinity of the Alexander Creek community, CBO estimates that 61,000 acres of land in this area of Alaska would have an appraised value of about \$32 million. Because there is little land available to settle the claim CBO expects that the settlement under H.R. 1418 would be in the form of a monetary settlement to the community. That settlement could come from amounts appropriated to DOI for that purpose; however, if the amounts required to settle the community's claim

are not appropriated to DOI, CBO expects the settlement could also be made from the Treasury's Judgment Fund (a permanent, indefinite appropriation available to pay judicially and administratively ordered monetary awards against the United States). A federal agency may request that payment of an award be made on its behalf from the Judgment Fund when no other funds are available to pay an obligation of the government.

The timing and the amount of a settlement are uncertain and would ultimately depend on the terms agreed upon by DOI and the Alexander Creek Native Village. DOI indicates that there are insufficient amounts of land in the region to compensate the village, and GSA notes that there is not enough surplus federal personal property to compensate the village in a reasonable amount of time.

CBO expects that under H.R. 1418 there is a 50 percent chance that a settlement agreement could be reached that would need to be funded and finalized through subsequent legislation (at a discretionary cost of \$16 million) and a 50 percent chance that a settlement could be agreed to directly under H.R. 1418, which would result in direct spending totaling \$16 million that would be paid by the Judgment Fund.

Pay-As-You-Go considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays that are subject to those pay-as-you-go procedures are shown in the following table.

CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR H.R. 1418, A BILL TO AMEND THE ALASKA NATIVE CLAIMS SETTLEMENT ACT TO PROVIDE THAT ALEXANDER CREEK, ALASKA, IS AND SHALL BE RECOGNIZED AS AN ELIGIBLE NATIVE VILLAGE UNDER THAT ACT, AND FOR OTHER PURPOSES, AS ORDERED REPORTED ON JULY 26, 2017

	By fiscal year, in millions of dollars—													
	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2017– 2022	2017– 2027	
NET INCREASE IN THE DEFICIT														
Statutory Pay-As-You-Go Impact	0	16	0	0	0	0	0	0	0	0	0	16	16	

Increase in long-term direct spending and deficits: CBO estimates that enacting H.R. 1418 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

Intergovernmental and private-sector impact: H.R. 1418 contains no intergovernmental or private-sector mandates as defined in UMRAs and would impose no costs on state, local, or tribal governments. Enacting the bill would benefit the community of Alexander Creek by designating land as a native village and potentially entitle members of Alexander Creek to increased land holdings and other federal benefits.

Estimate prepared by: Federal costs: Robert Reese and Matthew Pickford; Impact on State, local, and tribal governments: Rachel Austin; Impact on the private-sector: Amy Petz.

Estimate approved by: H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

2. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective

of this bill is to amend the Alaska Native Claims Settlement Act to provide that Alexander Creek, Alaska, is and shall be recognized as an eligible Native village under that Act.

EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

COMPLIANCE WITH H. RES. 5

Directed Rule Making. This bill does not contain any directed rule makings.

Duplication of Existing Programs. This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program. Such program was not included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139 or identified in the most recent Catalog of Federal Domestic Assistance published pursuant to the Federal Program Information Act (Public Law 95-220, as amended by Public Law 98-169) as relating to other programs.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

ALASKA NATIVE CLAIMS SETTLEMENT ACT

* * * * *

SEC. 43. ALEXANDER CREEK VILLAGE RECOGNITION.

(a) *RECOGNITION OF THE VILLAGE OF ALEXANDER CREEK.*—Subject to the limitations of this section and notwithstanding section 1432(d) of the Alaska National Interest Lands Conservation Act (Public Law 96-487) and any conveyance or agreement in furtherance thereof or thereto, to the contrary, Alexander Creek, located within Township 15N, Range 7W, Seward Meridian, Alaska, is and shall be recognized as an eligible Native village under section 11(b)(3) of this Act.

(b) *DEFINITIONS.*—For the purposes of this section, the following terms apply:

- (1) The term “agency” includes—
 - (A) any instrumentality of the United States;
 - (B) any element of an agency; and

(C) any wholly owned or mixed-owned corporation of the United States Government identified in chapter 91 of title 31, United States Code.

(2) The term “Alexander Creek” means Alexander Creek, Incorporated, an Alaska Native Group corporation organized pursuant to this Act prior to the enactment of this section, but subsequent to enactment of this section means Alexander Creek, Incorporated, an Alaska Native Village corporation recognized and organized pursuant to section (a).

(3) The term “Region” means Cook Inlet Region Incorporated, an Alaska Native Regional Corporation, which is the appropriate Regional Corporation for Alexander Creek under section 1613(h) of this Act.

(c) ORGANIZATION OF ALEXANDER CREEK.—As soon as practicable after enactment of this section, Alexander Creek shall cause to be filed—

(1) any amendments to its corporate charter in the State of Alaska necessary to convert from a Native group to a Native Village corporation; and

(2) if necessary, any amendments to its corporate charter and governing business documents that fulfill the terms of the agreement authorized under this Act.

(d) NEGOTIATIONS.—Not later than 30 days after the date of the enactment of this section, the Secretary shall open negotiations with Alexander Creek and, not later than 13 months after the date of the enactment of this section, reach an agreement with Alexander Creek to fairly and equitably settle Alexander Creek’s aboriginal land claims and any other claims of Alexander Creek against the United States. An agreement under this section shall be in approximate value parity with those of other Alaska Native Village Corporations, notwithstanding Alexander Creek’s prior status as a Group Corporation. The Secretary shall effectuate such agreement under the authority in this section, other existing authorities, and in coordination with the Administrator pursuant to 40 U.S.C. 549 with respect to property to be transferred to Alexander Creek pursuant to such agreement. Notwithstanding paragraphs (2) and (3) of section 549(a) of title 40, United States Code, Alexander Creek is hereby considered both a “State” and a “State agency” under that section for the sole purpose of the Secretary effectuating an agreement under this section.

(e) SHAREHOLDER PARTICIPATION.—Alexander Creek shall notify each member of the Native village recognized under this section that, upon the effective date of this section, such members shall cease to receive benefits from the Region as at-large shareholders pursuant to section 7(m), and that all future resource payments from the Region shall be made to the Village Corporation pursuant to section 7(j). The Region shall not be liable under any State, Federal, or local law, or under State or Federal common law, for damages arising out of or related to the cessation of payments to such individuals under section 7(m) pursuant to this section.

(f) CONSTRUCTION.—Except as provided in this section with respect to Alexander Creek, nothing in this section shall be construed to modify or amend land conveyance entitlements or conveyance agreements between the Region and village corporations other than Alexander Creek in such region, nor between the Region and the

Federal Government, nor between any such parties and the State of Alaska.

(g) CONSTRUCTION REGARDING CURRENT ALEXANDER CREEK LAND.—Nothing in this section shall be construed to reduce the land entitlement to which Alexander Creek became entitled as a Group Corporation, including the land selected by and conveyed to Alexander Creek at the time of enactment of this section.

ADDITIONAL VIEWS

I am deeply disappointed in the Congressional Budget Office's (CBO) unprofessionalism and lack of consistency during their efforts throughout the last three Congresses to analyze this legislation. CBO's failure to provide accurate, timely feedback to my office and produce a report that reflects the realities of the impact of this bill has been a significant roadblock to the bill's advancement. Ultimately, this has perpetuated historic injustices faced by the people of Alexander Creek, Alaska.

My office has sought advice from CBO with the goal of producing language for the legislation that does not score. During the 113th Congress, CBO made recommendations to this end (after long delays) regarding including provisions specifying that the bill does not authorize funds for a settlement or create a federal liability through the Indian Tribal Judgment Funds Use or Distribution Act (25 U.S.C. 1401). After my office made CBO's recommended changes, CBO reversed their position and issued a report that found the bill scored. In addition, further legal analysis determined that CBO's recommended language regarding the Tribal Judgment Fund was based on a flawed understanding of Indian policy and did not make sense.

During the 114th Congress, my office sought to develop further changes to the legislation to ensure it did not score. Understanding the significant amount of time required to move a bill to final passage, my staff requested CBO analyze the proposed changes as the first step in the process. After more than three months of delay, a CBO staffer informed my staff that the revised bill language would not score. At this point, based on input from the committee, my staff brought the revised language to Leadership staff for review to ensure the language did not violate the earmark ban.

This review was a long process but resulted in a finding that the revised language did not violate the earmark ban. Because of the elapsed time, it was not possible to move the bill in the 114th Congress, and I introduced the revised version at the beginning of the 115th Congress. After the bill was ordered reported by the committee this Congress, I was surprised when CBO issued its official report and reversed its position on the language, assigning it a significant score.

When my staff met with CBO staff to discuss the report, CBO staff was evasive and refused to reveal their methodology and documentation behind their determination. CBO staff also refused to reveal the name or names of staff at the Department of Interior that they had consulted prior to making the determination. This is particularly troublesome given that some career staff at the Department had a history of opposing the bill, and I suspect their input to CBO regarding costs was politically motivated.

CBO's delays, lack of transparency and accountability, and fluctuating positions have undermined the prospects for passing this legislation over the last six years. Beyond H.R. 1418, these problems at CBO are harmful to the legislative process as a whole. It is my hope that they can be addressed in the 116th Congress.

DON YOUNG,
Congressman for all Alaska.

