

Public Law 106-194
106th Congress

An Act

To amend the Alaska Native Claims Settlement Act to restore certain lands to the Elim Native Corporation, and for other purposes.

May 2, 2000
[H.R. 3090]

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

SECTION. 1. ELIM NATIVE CORPORATION LAND RESTORATION.

Section 19 of the Alaska Native Claims Settlement Act (43 U.S.C. 1618) is amended by adding at the end the following new subsection:

“(c)(1) FINDINGS.—The Congress finds that—

“(A) approximately 350,000 acres of land were withdrawn by Executive orders in 1917 for the use of the United States Bureau of Education and of the Natives of Indigenous Alaskan race;

“(B) these lands comprised the Norton Bay Reservation (later referred to as Norton Bay Native Reserve) and were set aside for the benefit of the Native inhabitants of the Eskimo Village of Elim, Alaska;

“(C) in 1929, 50,000 acres of land were deleted from the Norton Bay Reservation by Executive order;

“(D) the lands were deleted from the Reservation for the benefit of others;

“(E) the deleted lands were not available to the Native inhabitants of Elim under subsection (b) of this section at the time of passage of this Act;

“(F) the deletion of these lands has been and continues to be a source of deep concern to the indigenous people of Elim; and

“(G) until this matter is dealt with, it will continue to be a source of great frustration and sense of loss among the shareholders of the Elim Native Corporation and their descendants.

“(2) WITHDRAWAL.—The lands depicted and designated ‘Withdrawal Area’ on the map dated October 19, 1999, along with their legal descriptions, on file with the Bureau of Land Management, and entitled ‘Land Withdrawal Elim Native Corporation’, are hereby withdrawn, subject to valid existing rights, from all forms of appropriation or disposition under the public land laws, including the mining and mineral leasing laws, for a period of 2 years from the date of the enactment of this subsection, for selection by the Elim Native Corporation (hereinafter referred to as ‘Elim’).

“(3) AUTHORITY TO SELECT AND CONVEY.—Elim is authorized to select in accordance with the rules set out in this paragraph, 50,000 acres of land (hereinafter referred to as ‘Conveyance Lands’)

within the boundary of the Withdrawal Area described in paragraph (2). The Secretary is authorized and directed to convey to Elim in fee the surface and subsurface estates to 50,000 acres of valid selections in the Withdrawal Area, subject to the covenants, reservations, terms and conditions and other provisions of this subsection.

Deadline.

“(A) Elim shall have 2 years from the date of the enactment of this subsection in which to file its selection of no more than 60,000 acres of land from the area described in paragraph (2). The selection application shall be filed with the Bureau of Land Management, Alaska State Office, shall describe a single tract adjacent to United States Survey No. 2548, Alaska, and shall be reasonably compact, contiguous, and in whole sections except when separated by unavailable land or when the remaining entitlement is less than a whole section. Elim shall prioritize its selections made pursuant to this subsection at the time such selections are filed, and such prioritization shall be irrevocable. Any lands selected shall remain withdrawn until conveyed or full entitlement has been achieved.

“(B) The selection filed by Elim pursuant to this subsection shall be subject to valid existing rights and may not supercede prior selections of the State of Alaska, any Native corporation, or valid entries of any private individual unless such selection or entry is relinquished, rejected, or abandoned prior to conveyance to Elim.

“(C) Upon receipt of the Conveyance Lands, Elim shall have all legal rights and privileges as landowner, subject only to the covenants, reservations, terms and conditions specified in this subsection.

“(D) Selection by Elim of lands under this subsection and final conveyance of those lands to Elim shall constitute full satisfaction of any claim of entitlement of Elim with respect to its land entitlement.

“(4) COVENANTS, RESERVATIONS, TERMS AND CONDITIONS.—The covenants, reservations, terms and conditions set forth in this paragraph and in paragraphs (5) and (6) with respect to the Conveyance Lands shall run with the land and shall be incorporated into the interim conveyance, if any, and patent conveying the lands to Elim.

“(A) Consistent with paragraph (3)(C) and subject to the applicable covenants, reservations, terms and conditions contained in this paragraph and paragraphs (5) and (6), Elim shall have all rights to the timber resources of the Conveyance Lands for any use including, but not limited to, construction of homes, cabins, for firewood and other domestic uses on any Elim lands: *Provided*, That cutting and removal of Merchantable Timber from the Conveyance Lands for sale shall not be permitted: *Provided further*, That Elim shall not construct roads and related infrastructure for the support of such cutting and removal of timber for sale or permit others to do so. ‘Merchantable Timber’ means timber that can be harvested and marketed by a prudent operator.

“(B) Public Land Order 5563 of December 16, 1975, which made hot or medicinal springs available to other Native Corporations for selection and conveyance, is hereby modified to the extent necessary to permit the selection by Elim of the lands heretofore encompassed in any withdrawal of hot or medicinal springs and is withdrawn pursuant to this subsection.

The Secretary is authorized and directed to convey such selections of hot or medicinal springs (hereinafter referred to as 'hot springs') subject to applicable covenants, reservations, terms and conditions contained in paragraphs (5) and (6).

"(C) Should Elim select and have conveyed to it lands encompassing portions of the Tubutulik River or Clear Creek, or both, Elim shall not permit surface occupancy or knowingly permit any other activity on those portions of land lying within the bed of or within 300 feet of the ordinary high waterline of either or both of these water courses for purposes associated with mineral or other development or activity if they would cause or are likely to cause erosion or siltation of either water course to an extent that would significantly adversely impact water quality or fish habitat.

"(5) RIGHTS RETAINED BY THE UNITED STATES.—With respect to conveyances authorized in paragraph (3), the following rights are retained by the United States:

"(A) To enter upon the conveyance lands, after providing reasonable advance notice in writing to Elim and after providing Elim with an opportunity to have a representative present upon such entry, in order to achieve the purpose and enforce the terms of this paragraph and paragraphs (4) and (6).

"(B) To have, in addition to such rights held by Elim, all rights and remedies available against persons, jointly or severally, who cut or remove Merchantable Timber for sale.

"(C) In cooperation with Elim, the right, but not the obligation, to reforest in the event previously existing Merchantable Timber is destroyed by fire, wind, insects, disease, or other similar manmade or natural occurrence (excluding manmade occurrences resulting from the exercise by Elim of its lawful rights to use the Conveyance Lands).

"(D) The right of ingress and egress over easements under section 17(b) for the public to visit, for noncommercial purposes, hot springs located on the Conveyance Lands and to use any part of the hot springs that is not commercially developed.

"(E) The right to enter upon the lands containing hot springs for the purpose of conducting scientific research on such hot springs and to use the results of such research without compensation to Elim. Elim shall have an equal right to conduct research on the hot springs and to use the results of such research without compensation to the United States.

"(F) A covenant that commercial development of the hot springs by Elim or its successors, assigns, or grantees shall include the right to develop only a maximum of 15 percent of the hot springs and any land within $\frac{1}{4}$ mile of the hot springs. Such commercial development shall not alter the natural hydrologic or thermal system associated with the hot springs. Not less than 85 percent of the lands within $\frac{1}{4}$ mile of the hot springs shall be left in their natural state.

"(G) The right to exercise prosecutorial discretion in the enforcement of any covenant, reservation, term or condition shall not waive the right to enforce any covenant, reservation, term or condition.

"(6) GENERAL.—

"(A) MEMORANDUM OF UNDERSTANDING.—The Secretary and Elim shall, acting in good faith, enter into a Memorandum

of Understanding (hereinafter referred to as the 'MOU') to implement the provisions of this subsection. The MOU shall include among its provisions reasonable measures to protect plants and animals in the hot springs on the Conveyance Lands and on the land within $\frac{1}{4}$ mile of the hot springs. The parties shall agree to meet periodically to review the matters contained in the MOU and to exercise their right to amend, replace, or extend the MOU. Such reviews shall include the authority to relocate any of the easements set forth in subparagraph (D) if the parties deem it advisable.

"(B) INCORPORATION OF TERMS.—Elim shall incorporate the covenants, reservations, terms and conditions, in this subsection in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Conveyance Lands, including without limitation, a leasehold interest.

"(C) SECTION 17(b) EASEMENTS.—The Bureau of Land Management, in consultation with Elim, shall reserve in the conveyance to Elim easements to the United States pursuant to subsection 17(b) that are not in conflict with other easements specified in this paragraph.

"(D) OTHER EASEMENTS.—The Bureau of Land Management, in consultation with Elim, shall reserve easements which shall include the right of the public to enter upon and travel along the Tubutulik River and Clear Creek within the Conveyance Lands. Such easements shall also include easements for trails confined to foot travel along, and which may be established along each bank of, the Tubutulik River and Clear Creek. Such trails shall be 25 feet wide and upland of the ordinary high waterline of the water courses. The trails may deviate from the banks as necessary to go around man-made or natural obstructions or to portage around hazardous stretches of water. The easements shall also include one-acre sites along the water courses at reasonable intervals, selected in consultation with Elim, which may be used to launch or take out water craft from the water courses and to camp in non-permanent structures for a period not to exceed 24 hours without the consent of Elim.

"(E) INHOLDERS.—The owners of lands held within the exterior boundaries of lands conveyed to Elim shall have all rights of ingress and egress to be vested in the inholder and the inholder's agents, employees, co-venturers, licensees, subsequent grantees, or invitees, and such easements shall be reserved in the conveyance to Elim. The inholder may not exercise the right of ingress and egress in a manner that may result in substantial damage to the surface of the lands or make any permanent improvements on Conveyance Lands without the prior consent of Elim.

"(F) IDITAROD TRAIL.—The Bureau of Land Management may reserve an easement for the Iditarod National Historic Trail in the conveyance to Elim.

"(7) IMPLEMENTATION.—There are authorized to be appropriated such sums as may be necessary to implement this subsection."

SEC. 2. COMMON STOCK TO ADOPTED-OUT DESCENDANTS.

Section 7(h)(1)(C)(iii) of the Alaska Native Claims Settlement Act (43 U.S.C. 1606(h)(1)(C)(iii)) is amended by inserting before the period at the end the following: ", notwithstanding an adoption,

relinquishment, or termination of parental rights that may have altered or severed the legal relationship between the gift donor and recipient”.

SEC. 3. DEFINITION OF SETTLEMENT TRUST.

Section 3(t)(2) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(t)(2)) is amended by striking “sole” and all that follows through “Stock” and inserting “benefit of shareholders, Natives, and descendants of Natives,”.

Approved May 2, 2000.

LEGISLATIVE HISTORY—H.R. 3090:

HOUSE REPORTS: No. 106-452 (Comm. on Resources).

SENATE REPORTS: No. 106-258 (Comm. on Energy and Natural Resources).

CONGRESSIONAL RECORD:

Vol. 145 (1999): Nov. 9, considered and passed House.

Vol. 146 (2000): Apr. 13, considered and passed Senate.