The Historic Deficit in University of Alaska's Federal Land Grant

INTRODUCTION: THE LAND GRANT UNIVERSITY WITHOUT THE LAND

The University of Alaska is a "land grant" college in name more than in fact. Of the 49 states that received college land grants, only Delaware received less acreage than Alaska. (Hawaii was given cash in lieu of a land grant.) Under federal laws enacted in 1915 and 1929, the University of Alaska was entitled to receive large amounts of public land in Alaska. The 1929 Act entitlement was eventually achieved. However, the 1915 Act reservations, converted into land grants by Congress in the Statehood Act "for the purposes for which they were reserved," remain a promise largely unfulfilled.

The university currently owns just 150,600 acres of land, of which about 12,000 acres are used for educational or research facilities, with the remainder intended for investments or revenues. These lands include those conveyed under the 1929 Act, other lands acquired from local, state or federal governments for restricted educational purposes, purchased lands, and lands donated to the University.

1915-1917: THE LAND GRANT BEFORE THE LAND GRANT UNIVERSITY

Former Judge James Wickersham was a strong proponent for a university. He understood that each state would, upon admission to the Union, get lands for higher education (30,000 acres for each of the new state's representatives and senators) under the 1862 Morrill Act, but Wickersham wanted the Territory of Alaska to get some lands for a college sooner rather than later. As the Territory's non-voting delegate to Congress, he pushed for a land grant, not only before there was a State of Alaska, but even before there was actually a college to benefit from it.

Without waiting for Alaska's Territorial Legislature to establish a college, Wickersham persuaded Congress in 1915 to make land reservations for the future college, and for the Territory's public schools.

Section 1 of that 1915 Act made two sets of lands reservations. First, for the "common schools," sections 16 and 36 in each township in the entire Territory were to be reserved, "[w]hen the public lands of the Territory of Alaska are surveyed." Second, for higher education, section 33 "in each township in the Tanana Valley" (a rectangle described by latitude and longitude) were to be reserved for the support of a Territorial agricultural college and school of mines "when established by the Legislature of Alaska upon the tract granted in section two of this Act." (Section

2 granted the Territory four specific sections of land near Fairbanks to be forever reserved and dedicated to use as a site for an agricultural college and school of mines.)

Drawing on his legal expertise, Wickersham was careful to use language establishing the reservations in the present as well as the future (the specified sections "shall be, and the same are hereby, reserved"). But he also crafted the language, in conformity with U.S. Supreme Court precedent, to insure that the reservations would not retard development within the large unsurveyed areas of the Territory. If, when the sections were surveyed, it was discovered that a homestead or other Congressionally-authorized land development fell within one of the reserved sections, the reservation would be abrogated, with the Territory then entitled to select other lands for the college (or for the common schools) in lieu of the forfeited reserved lands; and if, at the time of survey, the reserved sections turned out to be valuable for minerals, again the reservation would be abrogated, but with the federal share of the mineral revenues dedicated to the college (or common schools) in a permanent fund.

The only aspect of Wickersham's bill that occasioned debate in Congress was the stipulation that the college reservations be "for the support of a Territorial agricultural college and school of mines when established by the Legislature of Alaska upon the tract granted in section two of this act." Some opponents questioned whether Congress should specify where the college should be located. Wickersham's allies responded, "The reservation is made whether the school is located in that place or not. The declaration is that the purpose of the reservation shall be for the support or assistance of this school if located there, but the reservation is complete whether the school is located there or not located at all." Questioned whether it was the intent of the Alaska Territorial Legislature to establish the college, Wickersham said "I hope to have it done in March, when the legislature meets."

It took longer than Wickersham thought, but the Territorial Legislature in 1917 established the Alaska Agricultural College and School of Mines (AACSM), specifying that it was to be located by its Board of Trustees within the boundaries of the four sections of land Congress granted in section two of the 1915 Act.

1917-1958: THE LAND GRANT POSTPONED

As above, although the reservations for AACSM were "complete," the exact benefit AACSM would eventually derive from that reservation (whether a grant of the land itself, an "in lieu" reservation of other selected lands, or the federal revenues derived from mineral development of the lands) would vary depending on circumstances as they existed at the time of survey. The fact that these determinations could not be made pre-survey, coupled with the slowness of surveys during the Territorial era, meant that the 1915 Act lands were investments for the far future, and there was little or nothing the fledgling AACSM could do on its own to accelerate that.

The survey paralysis afflicting the 1915 land reservations led Wickersham's successor,

Alaska Delegate Daniel Sutherland, to promote separate legislation in 1929. Creating a new entitlement of 100,000 acres in addition to the 1915 Act reservations, the 1929 Act differed by allowing the Territory to select lands rather than having the sections specified by the legislation itself. Although not free of controversy or of its own delays, this model still proved to be more effective, and the 100,000 acres of lands authorized by the 1929 Act were selected and eventually conveyed post-Statehood, and these form the bulk of the University's holdings today. Still, the 1915 Act reservations remained unaffected by the 1929 legislation. There were other attempts in Congress to set aside more territorial lands for the AACSM (or, after 1935, the University of Alaska), but none succeeded.

During this same period, the move towards statehood slowly gained momentum, and each statehood proposal contained some provision for lands for higher education. Wickersham's original 1916 statehood bill called for Congress to grant Alaska approximately 11.3 million acres for the support of higher education. Delegate Anthony Dimond's 1943 statehood bill included an additional 10 million acres for the University, as did Delegate Bob Bartlett's 1947 and 1949 statehood bills. The Department of the Interior, although opposed to such large grants for the University, did support the University receiving the amount of lands contemplated by the 1915 and 1929 Acts, which by Interior's calculation entitled the University to 438,000 acres.

Many statehood bills delineated the new state's general land entitlements by specifying certain sections; a 1948 proposal, for example, would have given the state four sections out of each township in the Territory. But a 1950 Senate committee bypassed this checkerboard approach in favor of allowing the nascent state to make its own selections. As this idea caught on, the legislators starting thinking about repealing the 1915 Act. Most such proposals linked this with a quantified amount of acreage for higher education. Up until 1957, most statehood bills included at least 1,000,000 acres for higher education (most typically, 500,000 acres for the University of Alaska, with another 500,000 acres for teachers' colleges or normal schools).

1958-1959: THE LAND GRANT RESERVATION PRESERVATION

Ultimately, the actual Statehood Act did repeal the 1915 Act, but simultaneously elevated the 1915 Act reservations to the status of land grants to the new State of Alaska, "for the purposes for which they were reserved." The proper interpretation and application of this preservation clause has fueled numerous debates and controversies since then.

The Statehood Act gave Alaska a generous general selection grant of 102,500,000 acres, and subsection 6(*l*) explicitly stated that this large grant was to be in lieu of several categories of land grants to which other states were entitled. These included the Morrill Act land grants for higher education (30,000 acres for each Senator and Representative), as well as a half-million acres for each state for "internal improvements" (roads, railways, bridges), and all of a state's "swamplands" with any proceeds to be dedicated to construction of dams and levees. Alaska was

to get none of these additional land grants. To this day, Alaska remains the only state which received neither Morrill Act lands nor a monetary amount appropriated in lieu thereof by Congress for its university.

But, in marked contrast to these categories of land grants which were declared *not* to extend to Alaska, the separate subsection 6(k) revoking the 1915 land reservation legislation specifically said that "all lands therein reserved" *were* to be granted to the new state, "for the purposes for which they were reserved." The details of how to fulfill those purposes were up to the new State, but the mandate to honor those purposes was explicit.

Alaska's first legislature, in recognition of the State's responsibility in this regard, passed a bill requiring that 1 million acres of state land be reserved for the support of the University.

Taking the University by surprise, Governor Egan vetoed the bill in May of 1959. His veto message indicated that he mistakenly grouped the 1915 Act reservations with the "internal improvement" grants which Congress had explicitly refrained from extending to Alaska. Egan also worried that allowing the University to increase its meager federal land grant endowment would open the door to any other state agency wanting its own earmarked aid. He also faulted the University for asking the state to fulfill the Congressional intent with regard to the unsurveyed sections 33 in the Tanana Valley rectangle; not having been surveyed, he thought that they had therefore never been reserved (apparently overlooking or ignoring the "the same is hereby reserved" language in the 1915 Act), so the University's worry that those were being lost "is to say that the University has lost something it never had." UA President Ernest Patty made valiant attempts to change to change Egan's mind, but unsuccessfully.

Rebuffed by the state, the University contacted Senator Bartlett's office later in 1959 to explore the possibility of receiving additional federal lands; but the response from Senator Bartlett's office in November 1959 was a firm no, as the state now held the lands covered by the former 1915 Act reservations, and it was to the state that the University should look.

1960-2000: STRUGGLES AND A BREAKTHROUGH

This pattern of reciprocal referrals and ping-pong procrastination between the state and federal governments characterized a good deal of the ensuing decades. As William Wood succeeded Patty as UA President in 1960, he found that state and federal authorities consistently agreed that the university should have received more land, and consistently advised him to approach the other to do something about it.

State legislators proposed land grants to the University throughout the 1960's, but these did not garner enough support to overcome the promised vetoes. Governor Hickel succeeded Gov. Egan after the 1966 election, but in November 1966 then-Interior Secretary Udall imposed the land

freeze pending resolution of Native Land claims, and the University's land issues were pushed back even further from the front burner.

In 1977, the Alaska Supreme Court, in a case not involving UA, decided that the section 6(k) of the Statehood Act, and the Alaskan voters' consent under Article XII section XIII of the Alaska Constitution, had created a trust for those lands originally reserved under the 1915 Act and subsequently granted to the State of Alaska "for the purposes for which they were reserved." This undercut the basis for Governor Egan's views in his veto 18 years prior – but a lot of land had passed out of the State's hands in those 18 years.

In 1978, the Alaska Legislature tried to resolve several issues of the territorial land trusts (the school reservations, the UA reservations, and a third set of lands reserved for the support of mental health needs) by enacting legislation converting all those reserved lands into state general selection lands, and providing a revenue stream (1/2 of 1% of state resource revenues) instead. In the case of UA, the legislation was made contingent on approval of the Board of Regents, which conveyed its disapproval in a resolution later that year. (The conversion of school trust lands and mental health lands were not made contingent on anyone's approval. A lawsuit was later brought regarding the mental health lands and the Alaska Supreme Court determined that the 1978 legislation had violated the Alaska's Statehood Trust obligation. Another lawsuit raised the same issue as to the reserved school trust lands, and a superior court found a parallel breach of trust as to those, with the case resolving before it reached the Alaska Supreme Court.)

In 1981, the Alaska Supreme Court made another important ruling, regarding UA lands under the 1929 Act that had been legislatively included in the Chugach State Park. The Alaska Supreme Court ruled that the land was held in trust for UA, and that, although the legislature had the same authority it had with respect to other public lands to include them in a park, there was an obligation to compensate the University for those lands.

In the wake of that ruling, the State acknowledged its trust obligation and agreed with the University that the State should sign over to the University as much of the 1915 and 1929 reserved lands as it still could validly convey. Virtually all of the 100,000 acres reserved under the 1929 Act were conveyed to the University after 1981; but of the 1915 Act reservations for UA, which the Interior Department had estimated at 336,000 acres, ultimately only about 11,000 acres had not been lost and were still available for conveyance to the University.

Within the Alaska Legislature, legislators continued to propose measures to address the shortfall. As the 1990s progressed, bipartisan support for a lands grant remedy grew. In 1994, the Senate approved a 500,000 acre grant for the University, and the House approved a 250,000-acre grant, but time ran out before the two figures could be compromised. In 1995, a bill designating 350,000 acres for the University passed both houses, but was vetoed; the legislature made an attempt to override the veto in early 1996 which came close but fell short. Another lands bill emerged later in the 1996 session, again for 350,000 acres, again passing both houses, again vetoed. A bill in 1998 for 250,000 acres passed the Senate by a veto-proof majority (14-6) and

appeared to be on the verge of passing the House, but was not taken up before the session ended.

These state-level efforts were echoed on the federal level, as Senator Frank Murkowski in 1997 introduced a bill in Congress that would have granted the University an additional 250,000 federal acres, plus an additional 250,000 federal acres contingent on the state making its own grant of 250,000 acres. The State Legislature passed a resolution supporting the bill.

Finally, a 1999 state bill passed both houses and, although vetoed, had that veto overridden by the legislature in early 2000, and became law, designating 250,000 acres for the University. It had taken over forty years, but the legislative process had finally fulfilled the 1959 Congressional promise that the Alaska Legislature would make good on those obligations to the University Congress had transferred to Alaska's Legislature in the Statehood Act.

2001-2009: MORE STRUGGLES AND A SETBACK

Initially, the break in the logjam on the state level seemed to impart momentum at the federal level as well. Senator Murkowski succeeded in getting a later version of his federal lands bill through the Democratic Senate in 2002, although it did not come to a vote in the House.

On the state level, though, the administration refused to recognize the veto override, arguing that the vote (41-9), although more than two-thirds, was not the three-quarters necessary to override a veto of an appropriations bill, and the administration took the position that the lands bill was an appropriations bill. When the Legislative Council brought suit to compel implementation of the bill, the superior court sided with the governor. An appeal to the Alaska Supreme Court resulted in a 2004 decision that non-monetary transfers were not appropriations, so the veto override was valid.

By the time of that decision, former Senator Murkowski was now Governor Murkowski, and he supported and signed legislation in 2005 that sought to accelerate transfer of the acreage to the University.

But further litigation ensued. Several environmental groups raised an argument not reached in the 2004 decision, i.e., whether the legislation violated the anti-dedication clause of the Alaska Constitution. Again, the litigation took several years, during which the State was proceeding with its transfer of acreages to the University.

Ultimately, in 2009, the Alaska Supreme Court ruled that the 2000 and 2005 legislation did violate the anti-dedication clause. The university was forced to re-convey to the State of Alaska almost all of the lands that the 2000 and 2005 Alaska Legislatures intended it to receive. (A state research forest was exempted by the Alaska Supreme Court, and the lower court later found two Fairbanks buildings need not be re-conveyed.)

In the wake of that ruling, it was no longer simply a matter of persuading the Alaska Legislature to remedy the land grant deficit. The legislature was constitutionally impaired from

doing so. The assumption that Congress had made in 1959, that the Alaska Legislature would be able to fulfill the remaining obligations to the University under the Statehood Act, was now proven to have been mistaken.

2010 TO DATE: CURRENT LAND GRANT EFFORT

There may still be a path by which the University can be given the remaining lands which the 1915 Congress, the 1959 Congress, the 2000 Alaska Legislature, and the 2005 Alaska Legislature wanted to be dedicated to the University. It will have to be done congruently with the Alaska Constitution's anti-dedication clause, and that will require a joint federal-state effort, a difficult undertaking given the differing viewpoints taken by the federal and state governments on so many land issues.

Further, even once the long-awaited lands are forthcoming, it will take several more decades before they are likely to yield enough revenue to appreciably relieve the budgetary concerns that will undoubtedly plague the successors of the University's current officers.

But if there is one lesson that the University should take from the decades-long battles over statehood and Alaska lands, it is that persistence is indispensable to the resolution of complex problems. Generations of University Regents, legislators, and advocates have struggled to remedy the university's land grant deficit, and that struggle continues.