



February 12, 2016

Senator Cathy Giessel
House Resources Committee
State Capitol
Juneau, AK 99801

Dear Senator Giessel,

On behalf of Arctic Slope Regional Corporation ("ASRC"), I am pleased to submit comments to your committee on the United States Supreme Court case, *Sturgeon v. Frost*. ASRC, via the filing of *amicus* briefs, has supported Mr. Sturgeon's efforts, as this case has highlighted yet another example of the federal government's attempt to extend its reach in an area where many of us thought clear lines were drawn in 1980 with the passage of the Alaska National Interest Lands Conservation Act ("ANILCA"). Through ANILCA, Congress balanced the conservation interests of the federal government with the economic development and subsistence interests of Alaska Native Corporations. Unless the ruling of the United States Court of Appeals for the Ninth Circuit is overturned by the Supreme Court, the ruling has the potential to dramatically upset this balance and undermine Alaska Native access and use of lands conveyed in the Alaska Native Claims Settlement Act of 1971 ("ANCSA").

ASRC is an Alaska Native Corporation, representing the Iñupiat people of the North Slope region of Alaska. We were created pursuant to the terms of ANCSA. ANCSA was designed to settle the aboriginal claims of Alaska Natives and authorized the transfer of roughly 45 million acres of land to twelve for-profit regional corporations and more than two hundred village corporations in the state. The legislation extinguished Alaska Native aboriginal land rights, and authorized and directed us to adopt a western corporate model to manage Native lands and natural resources for the benefit of our shareholders.

ASRC owns nearly 5 million acres of land on Alaska's North Slope. Almost half of our approximately 13,000 shareholders live in or around eight extremely remote Arctic villages in one of the most isolated and challenging environments in the world. Through ANCSA, Congress authorized ASRC to use the North Slope's natural resources to benefit the Iñupiat people both financially and culturally. Consistent with this unique legislation, ASRC is a for-profit business committed to providing benefits to its shareholders, including dividends, and to promoting the preservation and perpetuation of Iñupiat culture and traditions.

Nearly ten years after passing ANCSA, Congress enacted ANILCA. The purpose of ANILCA was two-fold: to preserve the natural landscapes in Alaska and its wildlife, while also allowing rural residents to maintain their subsistence way of life. Congress was clear that ANILCA was not intended to impede upon Native Corporations' control of Native lands conveyed under ANCSA. Rather, Congress repeatedly emphasized in ANILCA that regulation under that Act was to be limited to "public lands," which were by definition specifically limited to "Federal lands" in Alaska (specifically excluding certain State and Native Corporation lands). ANILCA established "units" which would be federally regulated as new or expanded national parks, preserves, monuments or wildlife refuges. At the time, Congress made clear that only the "public lands" within such boundaries would "be deemed to be included as a portion of such unit."

Over 120 million of Alaska's federally owned acres are now protected within federal conservation system units ("CSUs"). ANILCA-created CSUs ultimately have surrounded over eighteen million acres of Native Corporation-owned land. Eleven of Alaska's twelve regional corporations and many of its over 200 village corporations own inholdings within ANILCA CSUs, and many Native people live on these lands in rural villages.

More than 380,000 acres of ASRC lands are "inholdings," situated within the Gates of the Arctic National Park, the Alaska Maritime National Wildlife Refuge, and the Arctic National Wildlife Refuge ("ANWR"), all federal CSUs created or expanded by ANILCA. ASRC shareholders reside in two villages located on its inholdings within CSUs—Anaktuvuk Pass within Gates of the Arctic National Park and Kaktovik on the coastal plain within ANWR. These inholdings are necessary to ASRC's shareholders for subsistence use and economic development. The health of, and access to, caribou herds, fish, water fowl, Dall sheep, muskoxen, marine mammals, and other subsistence food populations are critically important to ASRC's shareholders. Many of the inholding acres also have high potential for oil and gas development, other mineral development, tourism, and other economic uses that could support our communities.

In *Sturgeon*, the U.S. District Court for the District of Alaska and the Ninth Circuit Court of Appeals both incorrectly interpreted the plain language in section 103(c) of ANILCA to expand federal authority over non-federal inholdings, including millions of acres of lands owned by Native Corporations. The plain language of section 103(c), supported by the structure and context of ANILCA as a whole and the legislative history of that Act, unambiguously limits federal regulatory authority to "public lands."

Under the Ninth Circuit's reading of ANILCA, forty percent of private ANCSA lands may now be subject to this vast federal regulatory scheme. Innumerable activities integral to economic and social life on inholdings can fall within the regulatory ambit of the federal government. The potential day-to-day consequences of applying the general National Park Service ("NPS") regulations – which are specifically at issue in *Sturgeon* – to private inholdings are stunning. Buildings may not be constructed in national parks without advance approval from the federal government. Hunting and fishing on park lands are subject to extensive restrictions and permitting requirements. Even gathering berries requires written findings from a park superintendent. Modes of transportation critical in rural Alaska such as snowmobiles, ATVs, watercraft, and even bicycles, are all limited to locations approved by the NPS. Aircraft—another critical aspect of access to rural Alaska communities—may be used only in designated locations

and by permit. Commercial activities are circumscribed and regulated. Research may be conducted only by specific institutions and agencies and only under the regulatory watch of the NPS. Public meetings, demonstrations and distribution of printed materials all require permits and federal government oversight.

Federal regulatory authority over ANCSA lands is an issue of tremendous economic and social importance to Alaska Native Corporations. Indeed, shortly after the Ninth Circuit's decision, the NPS proposed oil and gas regulations that would—for the first time—apply to ANCSA lands. In doing so, the NPS cited to the Ninth Circuit's decision in *Sturgeon* as a basis for its authority.

Through ANCSA, Congress specifically intended that Native corporations would utilize ANCSA lands largely for economic development benefiting the Native people of Alaska. Through ANILCA, Congress made clear that the establishment of new conservation units would not impede Native corporations' control of their own lands. ASRC seeks to pursue responsible economic development while maintaining our Iñupiat traditions. We are significantly challenged by the climate, by the cost of energy, by the lack of transportation infrastructure and distance to markets, and by the regulatory environment in which we work. In *Sturgeon*, the Ninth Circuit Court of Appeals has upended the balance established by Congress in ANCSA and ANILCA by allowing federal regulatory authority to be extended to millions of acres of Native Corporations' lands through the very statutory provision meant to limit that authority.

Fortunately, the Supreme Court granted *certiorari* to review the Ninth Circuit's decision and oral arguments were held on January 20, 2016. We remain cautiously optimistic that the decision of the Ninth Circuit, which one of the Supreme Court justices characterized as "ridiculous," will be overturned.

We appreciate the committee taking the time to review the pending *Sturgeon* case. As stated above, the outcome of this case can have dramatic impacts to Native Alaskans in our region and across the entire state of Alaska.

Sincerely,



Richard Glenn
Executive Vice President of Lands & Natural Resources
Arctic Slope Regional Corporation

Cc: Senate Resources Committee Members