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Bristol
Bay
Native
Corporation

445 E. 5TH AVENUE / P.O. BOX 220 / ANCHORAGE, ALASKA 99510 / PH (907) 278-3602

February 2, 1979

The Honorable Morris K. Udall
Chairman, Interior and Insular Affairs Committee
United States House of Representatives
235 Cannon House Office Building
Washington, D.C. 20515

Dear Mr Udall:

Bristol Bay Native Corporation requests this letter be included in the record as part of the hearings on the H.R. 39 Alternative Administrative Actions-Alaska National Interest Lands Conservation Act. Our comments pertain primarily to the recent proclamations and emergency withdrawals within or partially within the Bristol Bay region.

OVERVIEW

Any study of Bristol Bay region should include the entire region, the overall effect on any potential resource development, the effect on a number of villages and their lands as well as the regional selected lands. In addition, the study should include the new Wood-Tikchik State Park of some 1.4 million acres of land that precludes mining.

The Bristol Bay region comprises an area of about 26 million acres of uplands including lakes. Of these lands, approximately 12.4 million are Federal, about 10.6 million State selected and about 3.0 million Native selected.

The recently proclaimed National Monuments and the emergency withdrawals within the Bristol Bay regional boundaries essentially include all public domain lands of about 12.4 million acres with the possible exception of about 23,000 acres and even this small amount was withdrawn for Native selections. We find it extremely difficult to understand why our region should be so severely impacted.

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ALASKA MARINE RESOURCES

We object to withdrawing Stroganof Point at the entrance to Port Heiden as it definately should have a navigation light. If other islands and points are included, they may well affect any potential future port development sites.

BECHAROF NATIONAL MONUMENT

We find no previous record of environmental statements proposing the Becharof National Monument. We find this to be a very unusual administrative procedure at this late date.

In our previous testimony we have consistently pointed out the desirability of having an ice-free port on Shelikof Strait for future energy development as well as a western route for future NPR-A development. The southern portion of the route is between Becharof Lake and Katmai Monument. Since we objected to the Multimodal Corridor proposals for the Bristol Bay region, we were advised to submit our own route which we did by letter and maps addressed to Royston C. Hughes, Assistant Secretary on August 5, 1975. Our proposed route would terminate at Puale Bay. One of the Multimodal routes was located on the south side of Becharof Lake and terminated at Portage Bay. This is no longer feasible due to the volcanic eruptions in 1977.

Katmai Monument eliminates access to about 100 overall miles of coast on Shelikof Strait. The addition of the Becharof National Monument adds an additional restriction of another 50 miles of coast plus the two potential port sites mentioned above.

The western portion is in an oil and gas province that also has sedimentary uranium potential. In fact, the State has just recently issued some oil and gas leases adjacent to the western boundary.

We respectfully request the entire Becharof National Monument be recinded until sufficient studies are undertaken regarding cross peninsula access as we proposed in 1975. To do otherwise will create a severe economic deterrent to the future development of potential Federal, State and Native energy resources and possibly NPR-A developments.

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ANIACHAK NATIONAL MONUMENT

In our testimony we have supported Aniakchak Caldera as a logical natural wonder that should be protected, even though it has geothermal potential. At the same time we have opposed the southern boundary that includes a large portion of the Meshik River Valley, a broad low level valley with oil, gas and sedimentary uranium potential. The valley has no relation to either the caldera or the mountain. As presently drawn, the park would preclude a future cross peninsula energy route from the lowlands or Bristol Bay OCS. The primary route would be located through the Meshik Valley across a small unnamed pass to Aniakchak Bay at no point being less than two miles from the lower Aniakchak River. The secondary route would be across an unnamed pass to the upper deep end of Kujulik Bay. Both routes and port sites would be blocked.

Further, we have consistently maintained that any designation should guarantee that geologic and scientific studies would not be restricted in The Gates, The Garden Wall or the Caldera. Rock exposures here are of great importance to the study of the Bristol Bay lowlands, OCS and the older Cook Inlet Mesozoic Province as well as offshore to the south.

KATMAI NATIONAL MONUMENT EXTENSIONS

We have objected to the addition of the southwest side of Katmai as we see no real justification for this addition. The western portion includes lands selected by the villages of Naknek and South Naknek (subsurface in BBNC under ANCSA 12(a)). Neither the villages or BBNC intends to commit these lands to a park. These villages are adamant as they have lived next to the monument for years.

As for northern additions, we were advised that there would be some expansion of Katmai and if we had any preference we should indicate where it was to be expanded. Therefore, we have consistently testified that our recommendation would be to add the American Creek drainage including Hammersly and Murray Lakes, and the McNeil and Kamishak River drainages which would exclude the Nushagak Petroleum Province. We see no need or justification for adding Nonvianuk and Kulik Lakes as they are not part of the Naknek River drainage.

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We are outright opposed to adding Kukaklek and Battle Lakes. The village of Iguigig has selected lands on the west side of Kukaklek Lake including the source of the Alagnak River. There are two separate BBNC's selections ANCSA 14(h)(8) in this area. Kukaklek Lake has also been studied as having high hydroelectric potential. Battle Lake is a known mineralized area. Recent proprietary scientific studies using new techniques indicate this mineralized area extends to the northeast and may have far greater potential than previously realized. Due to the fate suffered by many new mineral discoveries in Alaska, we are not about to pinpoint any given area. We only ask that it not be locked up. The Bristol Bay Native Corporation has no intention of committing lands to a park.

Including Kukaklek Lake in the monument would preclude any transportation route from the Nushagak-Kvichak area as proposed by alternate #11 in the 1974 Multimodal Transportation and Utility Corridor System, a road by the State of Alaska's long range highway planning or one of BBNC's proposed pipeline alternates. In fact, the shortest, most direct pipeline route to Chenik Head on Cook Inlet (north of McNeil Cove) would be on the south side of Kukaklek Lake. We have a promising mineral prospect on selected lands that will require the use of the eastern portion of this route to Chenik Head.

We consider the northern extension of Katmai, to be a matter of grave economic concern to our corporation, our shareholders and a number of the villages in the upper Bristol Bay Region. If we are denied access to ice-free tidewater for resource development by being "locked in" from Cook Inlet and lower Shelikof Strait (Becharof), then the Administration is thwarting the intent of ANCSA. Although our region is remote and essentially a wilderness, we never realized that our goals could be so easily nullified by those who have no respect for logic or economic development. We respectfully request you give very careful and well reasoned review before you expand Katmai to the north beyond the Naknek, McNeil and Kamishak River drainages.

TOGIK EMERGENCY WITHDRAWAL

The study area encompasses several partial drainage systems, surrounds three village selections, (Togiak, Twin Hills and Manokotak), adjoins three village selections, (Clarks Point, Ekuk and Dillingham), and has a common boundary on the east side for over 70 miles with the Wood-Tikchik State Park where mining is precluded on 1.4 million

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acres. Numerous mineralized areas are included in the area. There is oil, gas and sedimentary uranium potential on the Nushagak Peninsula, a portion of the Nushagak Petroleum Province. We see no justification for this designation and have consistently testified against it.

The villagers have enjoyed overland travel, trade and commerce from Dillingham as far west as Goodnews and Platinum. These inter village access routes need to be maintained and protected.

LAKE CLARK EMERGENCY WITHDRAWAL

The villages of Nondalton and Iliamna, the Port Alsworth Group and BBNC all selected lands in this area. We assumed this part of our region would not be included in any future park except perhaps for Port Alsworth which is a group located outside of the Bristol Bay Region. The village, Group and Regional selections were made in good faith under the terms of ANCSA. We were somewhat astounded to say the least to find that part of Nondalton's, Iliamna's and BBNC's selections were included in this withdrawal. Bristol Bay Native Corporation has no intention to commit its subsurface lands and nine sections of ANCSA 14(h)(8) selections to a National Park. For the Administration to appropriate Native lands by such a means is beyond the point of reality.

ILIAMNA EMERGENCY WITHDRAWAL

This large withdrawal is even more extensive than the original Environmental Impact Statement area. It affects Federal lands selected by 16 of our 29 villages, as well as regional selected lands. The majority of these lands are in the Nushagak Petroleum Province which is essentially unexplored as is the sedimentary uranium potential. Through our joint venture agreement with a major oil company, they are planning an exploration program that would involve large areas. If they are restricted to exploring only Native lands under existing regulations and permits, then the program is severely limited.

Normal winter travel, trade and commerce between villages could also be restricted. We question whether or not the withdrawal is necessary to add more protection to the area than that provided under existing Federal and State permits and regulations.

LOWER PENINSULA EMERGENCY WITHDRAWAL

This withdrawal borders Aniakchak National Monument of the south and includes all public domain lands in our region. It also includes village and regional selections affecting six villages (Port Heiden, Chignik, Chignik Lake, Chignik Lagoon, Perryville and Ivanof Bay). These lands as well as the Central Peninsula withdrawal have oil and gas, sedimentary uranium, and mineral potential.

WILD AND SCENIC RIVER WITHDRAWALS

These withdrawals affect lands selected by three villages (Koliganek, New Stuyahok and Kokhanok). In addition, two withdrawals restricts access to State selected lands within our region where Bristol Bay Native Corporation would have an interest in any mineral development.

CUMULATIVE IMPACTS ON MINERAL UTILIZATION, OIL AND GAS

The majority of Bristol Bay villages and regional selections were based on subsurface resource potential. BBNC has entered into agreements with oil and mining companies. A great deal of proprietary information was developed and used in village and regional selections. Bristol Bay Native Corporation has from its inception supported the principle of multiple use and the wise development of our resources. In all of our agreements we have the option to participate within our regional boundary, regardless of whether or not Native lands are involved. Since these agreements are really joint ventures, we are involved in the planning that provides for the protection of cultural and subsistence resources in addition to a host of State and Federal regulations. Naturally then, we are concerned about ingress and egress for our resource development.

CUMULATIVE IMPACT ON ECONOMY

We maintain that the monuments and emergency withdrawals within our region will severely impact a resource based economy in the Bristol Bay Region, because of restricted and limited access to potential resources.

Finally, we see no reason for any action at this time as the lands in our region are sufficiently protected under existing laws and regulations. We know of no immediate plans for even minor development that would be beyond the present governmental permit systems. This also includes Native lands.

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ADMIRALTY ISLAND NATIONAL MONUMENT

Although this monument is not within the Bristol Bay Region, our wholly owned subsidiary Bristol Resources, Inc. does have an interest in a mining venture known as Greens Creek Joint Venture. Exploratory work over the past few years resulted in the staking of approximately 438 valid existing mining claims that are presently within the monument boundary. Work began last June to drive an adit (tunnel) into the side of a mountain in order to do additional underground drilling to further evaluate the ore body.

If the mine is put into production, it would employ from 200 to 350 people who would be based in Juneau. Additionally, the zinc, lead, copper, silver and gold production would reduce the nation's balance of payments.

Bristol Bay Native Corporation respectfully requests this highly mineralized area be excluded from the monument.

Sincerely,

Harold H. Samuelson

Harold H. Samuelson
President

cc: Sen Stevens
Sen Gravel
Rep Young
Gov Hammond
Dr LeResche
CMAL
Alaska Federation of Natives
Mr George Miron
Ms Carol Mendelsohn
Mr R.C. Bacon, BBNC
Mr W.C. Bishop, BBNC

For Release on
Tuesday, February 6, 1979

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ALASKA NATIVES CHALLENGE ADMINISTRATION'S ACTION ON ALASKA LAND

Washington--

Stating that the Carter Administration's recent proclamations designating national monuments in Alaska erode Natives' benefits granted under the Alaska Native Claims Settlement Act, the Bristol Bay Native Corporation today filed suit in federal court here to ask that the Administration be blocked from implementing its actions.

The lawsuit contends that the Administration's permanent withdrawal of millions of acres of land in Alaska obstructs access to land to be conveyed to the Natives by the 1971 Settlement Act to satisfy their aboriginal claims to the land of Alaska. According to the suit, the withdrawals diminish the utility of the Natives' land and their ability to develop petroleum and other minerals.

An official of the Bristol Bay Native Corporation stated that the suit was filed to block the Administration's action and to give Congress another chance to enact "responsible and reasonable legislation to protect the variety of interests that are at stake." The lawsuit comes as the House Interior Committee is holding hearings on Alaska land legislation that failed to pass the Congress last year.

According to the lawsuit, the purpose of the Settlement Act (ANCSA) was "to provide an economic settlement to the Alaska Natives, both in terms of cash contributions and patents to land and mineral rights to be used by the Natives as a form of capital for economic development. Congress intended that the Regional Corporations would become profit-making arms for the Alaska Natives."

The suit charges that "Any action of the United States which impairs the ability of the regional corporations to use the land to promote their development is contrary to ANCSA."

The Bristol Bay Native Corporation (BBNC) is one of twelve regional corporations that have come into being as a result of the Settlement Act. Natives in the region are stockholders in the Corporation and receive dividends from it. The dividends result from the Corporation's profit-making ventures and, in the future, development of lands conveyed to the Corporation by the Act.

The Act established a procedure for a "fair and just" distribution of the federal government's vast holdings of land in Alaska. Some was to go to the Natives, some to the State, with the remainder to be federal public land. The Congress adjourned last Fall without action on legislation to set land aside permanently as "national interest land." The deadline for Congressional action passed in December 1978.

In November 1978, the Carter Administration made emergency withdrawals for a three-year period of almost all the federal land in the Bristol Bay Region. Then in early December, President Carter, claiming to act under existing authority, permanently withdrew some of the same lands, designating them as national monuments. It is this action which the BBNC suit challenges.

"We do not object to some of this land being designated as national monuments, and have so recommended," said a spokesperson for BBNC. "We simply do not believe that the Administration should act so broadly that all other legitimate interests in the land are restricted.

"We agreed to the settlement in 1971 in good faith. We saw that the lands that would be available for our selection would meet our needs both for subsistence hunting and fishing and for economic development. In December 1978, we learned that this was no longer so. If we can't get to our land or if we can't transport natural resources from it, the value of the land settlement is greatly reduced. We feel that the federal government gave with one hand, and took away with the other," said the spokesperson.

The Bristol Bay Region surrounds Bristol Bay in Southwestern Alaska. Some of the region is located on the Alaska Peninsula, which separates the Bay from the Pacific Ocean. Some of the Native-selected land is

on the northwest side of the upper Peninsula, where the coast is blocked by ice for at least half the year. This land, along with State-selected land in the same area, has potential for petroleum and mineral resources. Development, however, is dependent on transportation routes across the Peninsula to ice-free port sites on the southeastern coast. The Carter Administration withdrawals for the Aniakchak National Monument block a cross-Peninsula route to the ice-free port sites.

The withdrawals for the Becharof Monument and additions to the existing Katmai National Monument also block proposed routes to ice-free ports for a pipeline through the Region from National Petroleum Reserve Alaska.

The withdrawals for the Katmai National Monument also reduce the utility of land selected by several villages in the region, in one case by denying access to customary hunting and fishing areas. The Lake Clark, Illiamna, lower Alaska Peninsula and Togiak emergency withdrawals block existing travel routes between villages and completely isolate several villages from overland transportation.

"Not only do these withdrawals diminish our ability to earn income for our stockholders as Congress intended, but they also disrupt our way of life. Supplies of food and fuel may no longer come to our villages overland; the cost of air shipment would be exorbitant. People may no longer be able to visit one another by snow machine," said a spokesperson.

Today's lawsuit contends that the President lacks authority to make permanent withdrawals of such large parcels of land. The President can, under the Antiquities Act, reserve the smallest possible area of land to protect a legitimate object of antiquity. But, since the lands withdrawn are neither the smallest possible areas, nor are the monument withdrawals aimed at preserving bona fide objects of antiquity, the suit contends that the President's conduct "constitutes an attempt to arrogate power constitutionally conferred upon the legislative branch alone and is invalid."

BBNC noted that the Administration's action was unnecessary since the land was already withdrawn from development under another section of the Settlement Act which did not expire in December. "In adding an additional layer of unnecessary protection to the land, the President usurped the authority of Congress to make the final determination on federal public lands," the BBNC official said.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BRISTOL BAY NATIVE CORPORATION
Post Office Box 220
445 East 5th Avenue
Anchorage, Alaska 99501
(907) 278-3602

and

BRISTOL RESOURCES, INC.
Post Office Box 220
445 East 5th Avenue
Anchorage, Alaska 99501
(907) 278-3602

Plaintiffs

v.

JIMMY CARTER
President of the United States
The White House
1600 Pennsylvania Avenue, N. W.
Washington, D. C. 20500
(202) 456-1414

and

CECIL D. ANDRUS
Secretary of the Interior
U. S. Department of the Interior
18th and C Streets, N. W.
Washington, D. C. 20240
(202) 343-7351

and

BOB BERGLAND
Secretary of Agriculture
U. S. Department of Agriculture
12th Street and Independence Avenue, N. W.
Washington, D. C. 20250
(202) 447-3631

Defendants

RECEIVED
Department of Law
Juneau, Alaska

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Civil Action No.

COMPLAINT FOR INJUNCTIVE,
DECLARATORY AND OTHER RELIEF

Plaintiffs, by their attorneys, bring this action to
obtain injunctive, declaratory and other relief against the
defendants, and complain and allege as follows:

COUNT I

PUBLIC OFFICIALS' ARROGATION
OF CONGRESSIONAL AUTHORITY

This count is brought by Plaintiff Bristol Bay Native Corporation.

JURISDICTION AND VENUE

1. This complaint seeks declaratory, injunctive and other relief pursuant to 28 U.S.C. §§2201 (1975) and 28 U.S.C. §1331 (1976), against the named individual defendants to protect rights of the plaintiff provided for in the Alaska Native Claims Settlement Act of December 18, 1971, 85 Stat. 688, 43 U.S.C. §§1601-1628 (Supp. III 1973), hereinafter called "ANCSA").

2. This Court has jurisdiction under 28 U.S.C. §1331(a) (1976), 28 U.S.C. §1361 (1976), 28 U.S.C. §2201 (1976), and 5 U.S.C. §§701-4, 706 (1976).

3. The matter in controversy, exclusive of interests and costs, exceeds \$10,000.

4. Venue lies in the District of Columbia pursuant to 28 U.S.C. §1391(e) (1976).

THE PLAINTIFF

5. Plaintiff Bristol Bay Native Corporation (hereinafter called "BBNC") is an Alaska Native Regional Corporation, as that term is defined by Section 3(g) of ANCSA, 43 U.S.C. §1602(g) (Supp. III 1973).

6. ANCSA directed the Secretary of the Interior to divide the State of Alaska into twelve geographic regions. Each Native who was a resident of Alaska when the 1970 Census was enumerated was entitled to be enrolled in the region where he permanently resided. The Natives of a Region were to establish a Regional Corporation under the laws of Alaska to conduct business for profit. The enrollees each were to be

issued one hundred shares of common stock of a Regional Corporation, said shares of stock to be inalienable until December 18, 1991.

7. DBNC was incorporated on June 13, 1972. There are approximately 5,300 Alaska Natives enrolled as shareholders in the corporation.

THE DEFENDANTS

8. Defendant Jimmy Carter (hereinafter called the "President") is the President and Chief Executive of the United States of America. The President is sued herein in his official capacity.

9. Defendant Cecil D. Andrus (hereinafter called "Secretary Andrus") is the Secretary of the Interior of the United States of America. Secretary Andrus is sued herein in his official capacity.

10. Defendant Bob Bergland (hereinafter called "Secretary Bergland") is the Secretary of Agriculture of the United States of America. Secretary Bergland is sued herein in his official capacity.

BACKGROUND OF DEFENDANTS' ARROGATION OF AUTHORITY

11. ANCSA, enacted on December 18, 1971, embodied the settlement between the United States and the Natives of Alaska whereby the Natives' aboriginal title to the lands of Alaska was extinguished in exchange for a promise of the United States to pay the Natives, through Native Regional Corporations, a sum of money over a period of years, and to issue to the Native Village and Regional Corporations, patents to approximately 44 million acres of land in Alaska withdrawn for that purpose. All future revenues to be derived from the land patented to the Natives were to be the property of the Native corporations. 43 U.S.C. §1606(i) (Supp. III 1973).

12. ANCSA Section 12(a), 43 U.S.C. §§1611(a) (Supp. III 1973), provides that Village Corporations could select lands from a pool of lands to be withdrawn by the Secretary of the Interior for that purpose. The amount each Village Corporation could select was based on a formula related to Native population as reported in the 1970 Census enumeration. The smallest eligible Village Corporations (25 to 99 Natives) could select 69,120 acres, and the largest (more than 600 Natives) could select 161,280 acres. Village Corporations were entitled only to the surface estates of lands they selected.

13. Regional Corporations were entitled to the subsurface estates of lands conveyed to the Village Corporations, except that if a surface estate was within the National Wildlife Refuge System, or was withdrawn or reserved for national defense purposes, Regional Corporations were entitled to in lieu of selections of other subsurface estates. In addition, Regional Corporations were, under section 12(c), 43 U.S.C. §1611(c) (Supp. III 1973), entitled to select both surface and subsurface estates of an additional 16 million acres of land. Also, two million acres of land were available for selection by Regional Corporations under section 14(h), 43 U.S.C. §1613(h) (Supp. III 1973).

14. Section 7(i) of ANCSA, 43 U.S.C. §1606(i) (Supp. III 1973), requires that each Regional Corporation divide among all twelve Regional Corporations on an annual basis seventy percent of the revenues which it derives from the timber resources and subsurface estate patented to it. Thus, each Regional Corporation has a right to share in revenues derived by each other Regional Corporation from such other Corporation's development of timber and minerals from land it receives pursuant to ANCSA.

15. ANCSA created the Alaska Native Fund (the "Fund") as the means to fulfill the promise to pay the Natives a sum of money in a maximum amount of \$962.5 million. 43 U.S.C. §1605 (Supp. III 1973). The Fund is to pay the Natives \$462.5 million out of funds appropriated by the Congress over a period of eleven years through fiscal year 1981, and, in addition, a maximum of \$500 million, derived: (a) from the State of Alaska and the United States, two percent of the gross value of minerals produced from certain of their lands in Alaska (the Outer Continental Shelf is excluded from the royalty base), 43 U.S.C. §1608(i) (Supp. III 1973); (b) from the State and the United States, two percent of the bonuses and rentals they will receive from the lease or sale of their lands in Alaska, other than the bonuses received by the State from its September 1969 lease sale at Prudhoe Bay, and other than the rentals resulting from that sale received before ANCSA was passed. 43 U.S.C. §1608 (Supp. III 1973).

16. Through September 26, 1978, \$430,661,399 has been distributed to the Regional Corporations from the Fund, of which \$372,500,000 came from appropriated funds and \$51,157,279 from mineral royalties. Approximately \$90,000,000 remains to be paid out of appropriated funds and more than \$448,842,721 remains to be paid from royalties.

17. In the case of the Fund, section 7(j) of ANCSA, 43 U.S.C. §1606(j) (Supp. III 1973), provided that during the five years following enactment of ANCSA, not less than 10 percent of the funds received by the Regional Corporations under section 6, 43 U.S.C. §1605 (Supp. III 1973), were to be distributed among the stockholders of said Regional Corporations. Not less than 45 percent of such funds, during the first five-year period, and 50 percent thereafter, were to be distributed among

the Village Corporations established in each region and the class of stockholders who are not residents of those villages.

13. The objective of ANCSA was to provide an economic settlement to the Alaska Natives both in terms of cash contributions and patents to land and mineral rights to be used by the Natives as a form of capital for economic development. The Congress intended that the Regional Corporations would become the profit-making arms of the Alaska Natives using Fund receipts as any prudent business corporation would use them and developing the subsurface resources patented to them under ANCSA. Any action of the United States which would impair the ability of the Regional Corporations to use the land to promote their economic development would be contrary to ANCSA and would defeat its objectives.

19. Section 17(d)(2) of ANCSA, 43 U.S.C. §1616(d)(2) (Supp. III 1973), directed the Secretary of the Interior to withdraw from all forms of appropriation under the public land laws, and from selection by the State of Alaska under the Alaska Statehood Act, P.L. 85-508, 72 Stat. 339 (1958), and from selection by the Regional Corporations pursuant to ANCSA, up to but not to exceed 80 million acres of Federal lands in Alaska. Section 17(d)(2) also directed the Secretary of the Interior to report to the Congress by December 18, 1973, his recommendations for administering those withdrawn lands as units of the National Park, Forest, Wildlife Refuge and Wild and Scenic River Systems.

20. Section 17(d)(1) of ANCSA, 43 U.S.C. §1616(d)(1) (Supp. III 1973), authorized the Secretary of the Interior to withdraw, under "existing authority," such public lands as he thought advisable for study and possible classification

for future management, or for State selection, or for opening of public land areas to entry.

21. The Secretary of the Interior withdrew over 103 million acres of Federal lands for classification under section 17(d)(1), including some 45 million acres in withdrawals for Native land selections which will revert to section 17(d)(1) status to the extent that they are not conveyed to Native Corporations pursuant to their ANCSA selections. Most of the "d-1" withdrawals for classification were made under the authority of the Pickett Act, 43 U.S.C. §141 (1970). (P.L.O. No. 5180, 37 Fed. Reg. 5583 (1972); P.L.O. No. 5186, 37 Fed. Reg. 5589 (1972).

22. Beginning in March 1972, Secretary of the Interior Rogers Morton issued a series of Public Land Orders which withdrew approximately 83 million acres of public land in Alaska from the operation of most of the public land laws, pursuant to sections 17(d)(2) of ANCSA, 43 U.S.C. §1616(d)(2) (Supp. III 1973). All lands withdrawn under section 17(d)(2) were simultaneously withdrawn under section 17(d)(1). Additional lands outside the "d-2" boundaries were also withdrawn under section 17(d)(1) at that time.

23. Section 17(d)(2) required that all legislative proposals resulting from the Secretary of the Interior's studies be submitted to the Congress by December 18, 1973. That section also mandated that Congress was to have five years to act on such proposals, after which time the "d-2" withdrawals of such lands were to expire. ANCSA fixed no expiration limit for the "d-1" withdrawals.

24. The "National Interest Lands" withdrawn under sections 17(d)(1) and 17(d)(2) of ANCSA were subsequently studied and inventoried in order to identify those areas which were to be included in a series of legislative pro-

posals submitted to Congress for creation as new units of the four conservation systems (known collectively in the context of ANCSA as the National Conservation Systems).

25. On December 17, 1973, in accordance with the dictates of section 17(d)(2) of ANCSA, Secretary of the Interior Rogers Morton submitted recommendations to the Congress for the legislative protection and classification of approximately 83 million acres of federal public land in Alaska, as new units of the National Conservation Systems. This proposal included boundary and management recommendations for each specific study area.

26. On September 15, 1977, Secretary Andrus submitted proposals for legislation regarding the "d-2" withdrawals, at the request of the Chairman of the House Committee on Interior and Insular Affairs. These proposals would have provided for the creation of and the addition to existing areas of 13 National Parks, 7 National Forest Wilderness Areas, and 14 National Wildlife Refuges, for a total of 92.5 million acres.

27. A bill, H.R. 39, 95th Cong., 2d Sess., was passed by the House of Representatives in May 1978. It would have embraced 122 million acres. The Senate did not pass a bill. A bill (H.R. 39 "Senate Substitute") was reported by the Senate Committee on Energy and Natural Resources. The Senate Committee version of H.R. 39 would have embraced approximately 96 million acres.

28. On October 14, 1978, the Congress adjourned without taking action to resolve the status of lands withdrawn by section 17(d)(2) of ANCSA, and without extending the period during which withdrawals of land under section 17(d)(2) would remain effective.

29. On November 16, 1978, Secretary Andrus, purporting to act under Section 204(e) of the Federal Land Policy and Management Act, 43 U.S.C.A. §1714(e) (Supp. 1978) (withdrawals for emergency purposes), withdrew for three years all lands in Alaska which had been under consideration by the Administration and both the Senate and the House of Representatives for inclusion in the National Conservation Systems. This action encompassed the composite boundaries of various "d-2" proposals, including the Administration's recommendations, H.R.39, the Senate Substitute for H.R.39, and some other lands for a total withdrawal from the Federal public domain in Alaska of 110 million acres. P.L.O. No. 5653, 43 Fed. Reg. 59756 (1978), as amended by P.L.O. No. 5654, 43 Fed. Reg. 59757 (1978).

30. There are approximately 26 million acres of uplands including lakes in the Bristol Bay Region. BBNC and the Village Corporations of the Bristol Bay Region have selected, under ANCSA, approximately 3 million acres. To date, approximately 670,000 acres have been conveyed to the Native Corporations. Approximately 10.6 million acres have been selected by the State of Alaska pursuant to the Alaska Statehood Act. Approximately 12.4 million acres are in Federal ownership, including 2.8 million acres within the Katmai National Monument as established in 1918 and subsequently enlarged in 1931, 1942 and 1969. As a result of the emergency withdrawals by Secretary Andrus, purportedly under the authority of Section 204(e) of the Federal Land Policy and Management Act, 43 U.S.C.A. §1714(e) (Supp. 1978), all Federal lands in the Bristol Bay Region, with the possible exception of about 23,000 acres which have been withdrawn for Native selection, have been withdrawn from the Federal public domain.

DEPENDANTS' ARROGATION OF AUTHORITY

31. On December 1, 1978, the President, claiming to exercise powers under the Act for the Preservation of American Antiquities (hereinafter called the "Antiquities Act.")³⁴ Stat. 225, 16 U.S.C. §431 (1976) issued proclamations purporting to designate 17 National Monuments covering approximately 56 million acres of land in Alaska.

32. On December 5, 1978, the President caused to be published in the Federal Register Proclamation 4612 dated December 1, 1978 (43 Fed. Reg. 57013 (1978)), which proclamation purported to set apart and reserve as the Aniakchak National Monument, 350,000 acres located in the Alaska Peninsula partially within the boundaries of the Bristol Bay Region. The proclamation stated that the Department of the Interior was to be the administering agency. Secretary Andrus has vested in the National Park Service the responsibility to manage the Aniakchak National Monument.

33. On December 5, 1978, the President caused to be published in the Federal Register, Proclamation 4613 dated December 1, 1978 (43 Fed. Reg. 57019 (1978)), which proclamation purported to set apart and reserve as Becharof National Monument, 1,200,000 acres located in the northern end of the Alaska Peninsula partially within the boundaries of the Bristol Bay Region. The proclamation stated that the Department of the Interior was to be the administering agency. Secretary Andrus has vested in the Fish and Wildlife Service the responsibility to manage the Becharof National Monument.

34. On December 5, 1978, the President caused to be published in the Federal Register, Proclamation 4619 dated December 1, 1978 (43 Fed. Reg. 57059 (1978)), which proclamation purported to set apart and reserve for inclusion in the Katmai National Monument, 1,370,000 acres essentially all within the

boundaries of the Bristol Bay Region. The proclamation stated that the Department of the Interior was to be the administering agency. Secretary Andrus has vested in the National Park Service the responsibility to manage the new monument areas of the Katmai National Monument.

35. The Constitution (Art. 4, §3, Cl. 2) vests in the Congress the sole authority to make all needful rules and regulations respecting the lands owned by the United States. Pursuant to that authority the Congress has from time to time authorized the President by specific Acts to set apart and reserve in perpetuity from entry, use or acquisition by the citizenry, certain types of lands. No authority now exists for any perpetual reservation of the lands embraced in Proclamations 4612, 4613, and 4619, except that under the Antiquities Act the President may reserve the smallest areas compatible with the proper care and management of objects of antiquity found on lands owned by the United States. None of the land features identified in said Proclamations as objects of antiquity are objects of antiquity. Hence, the President's conduct constitutes an attempt to arrogate power constitutionally conferred upon the Legislative Branch alone, and is invalid.

THE EFFECTS OF THE PROCLAMATIONS ON PLAINTIFF

36. The reservations made by the Proclamations purport to remain in effect perpetually, and if not restrained by this Court, will have the following injurious effects, among others, upon plaintiff BBNC:

a. They may, in violation of ANCSA, further delay the already substantially delayed process by which the United States will convey to the Village Corporations of the Bristol Bay Region and to BBNC, respectively, title to the surface estate and the subsurface estate of any of the lands selected

by the Village Corporations of the Bristol Bay Region and will convey to BBNC title to those lands selected by BBNC pursuant to sections 12(c) and 14(h) of ANCSA, 43 U.S.C. §§1611(c) (Supp. III 1973) and 43 U.S.C.A. 1613(h) (Supp. 1978).

b. They will obstruct access to and from lands conveyed and to be conveyed to BBNC pursuant to ANCSA, thereby materially interfering with BBNC's opportunity to develop its lands which are thereby isolated.

c. They will obstruct access by other Regional Corporations to and from lands conveyed and to be conveyed to them under ANCSA, thereby materially impairing the utility of such lands, and concomitantly diminishing BBNC's rights, under Section 7(i) of ANCSA, to share in the revenues derived from the development of such lands.

d. They will obstruct access of the State of Alaska to and from lands owned by the State and lands to be conveyed to the State pursuant to the Alaska Statehood Act, P.L. 85-508, 72 Stat. 339 (1958), thereby materially impairing the utility of such lands, and concomitantly diminishing, or extending the time for obtaining, the monies to be paid by the State into the Alaska Native Fund from the development of such lands.

e. They will obstruct access of the United States Government to and from lands owned by the United States Government thereby materially impairing the utility of such lands, and concomitantly diminishing, or extending the time for obtaining, the monies to be paid by the United States Government into the Alaska Native Fund from the development of such lands.

f. They will obstruct access of BBNC to lands owned by the United States Government for the purpose of conducting geological and scientific tests to evaluate the development potential of adjoining lands conveyed or to be conveyed to BBNC.

VIOLATIONS OF DUTIES OWED TO PLAINTIFF

37. Defendants Carter and Andrus owe to plaintiff the following duties:

a. To convey to BBNC lands to which BBNC is entitled by reason of Village Corporations' selections within the Bristol Bay Region.

b. To convey to BBNC lands to which BBNC is entitled by reason of selections made by it within the Bristol Bay Region.

c. To confine each reservation under the Antiquities Act to the smallest area compatible with the proper care and management of the objects to be protected thereby so as to avoid unnecessary obstruction of BBNC's access to and from lands conveyed and to be conveyed to BBNC under ANCSA.

d. To conduct a stewardship of the lands owned by the United States so as to avoid impairing the value of lands conveyed and to be conveyed to BBNC under ANCSA.

e. To conduct themselves vis-a-vis the Native Corporations in accordance with the high standards of trusteeship inherent in the relationship between the United States and the Natives of Alaska, including the trust responsibilities inherent in fulfilling the settlement expressed in ANCSA for Aleuts, Eskimos and Indians of Alaska.

38. The President has violated the aforesaid duties by issuing Proclamations 4612, 4613, and 4619, which Proclamations:

a. Impair BBNC's right to be conveyed lands to which BBNC is entitled by reason of Village Corporations' selections and which are now located within the monument areas designated by said Proclamations;

b. Impair BBNC's right to be conveyed those lands to which BBNC is entitled by reason of selections made by it pursuant to ANCSA and which are now located within the monument areas designated by said Proclamations;

c. Fail to confine the reservation of monument areas under the Antiquities Act to the smallest areas compatible with the proper care and management of bona fide objects of antiquity;

d. Impair the value of lands conveyed and to be conveyed to BBNC under ANCSA and deprive BBNC of opportunities for the beneficial use of such lands;

e. Violate the high standards of trusteeship inherent in the United States Government's relationship with the Natives of Alaska.

PRAYER

WHEREFORE, plaintiff prays for the following relief:

A. That the Court adjudge that the aforesaid conduct of the President constitutes an arrogation of Congressional authority to withdraw and reserve the lands embraced within Proclamations 4612, 4613, and 4619.

B. That the Court adjudge that the aforesaid conduct of defendants Carter and Andrus constitutes a violation of the duties owed BBNC pursuant to ANCSA, and is otherwise unlawful and invalid.

C. That the Court enjoin defendants Carter and Andrus from implementing or giving effect to the aforesaid Proclamations.

D. That BBNC be granted such other and additional relief as the Court may deem just.

COUNT II

ADMIRALTY ISLAND

PUBLIC OFFICIALS' ARROGATION OF AUTHORITY

This count is brought by plaintiffs BBNC and Bristol Resources, Inc., a wholly-owned subsidiary of BBNC.

39. This Count seeks declaratory, injunctive and other relief pursuant to 28 U.S.C. §§2201 (1976) and 28 U.S.C. §1331 (1976), against the named individual defendants to protect rights of plaintiff BBNC provided for in ANCSA, and to protect other property rights of both plaintiffs.

40. Paragraphs 2 through 28, 31 and 35 of Count I above are herein incorporated by reference and thereby realleged here in full.

41. Plaintiff Bristol Resources, Inc. is a wholly-owned subsidiary of BBNC. Bristol Resources, Inc. was originally incorporated as Bristol Recreation, Inc. on January 5, 1978. Amended Articles of Incorporation were filed on May 15, 1978.

42. Admiralty Island is located in the Tongass National Forest south of Juneau. The island is about one hundred miles long and averages twenty-five miles in width.

43. BBNC, through its wholly-owned subsidiary Bristol Resources, Inc., owns fee lands on Hawk Inlet near the mouth of Greens Creek on the northwest side of Admiralty Island.

44. Prior to 1976 a cannery was located on these lands. In May 1976, the cannery was destroyed by fire. Bristol Resources, Inc. plans to reopen the Hawk Inlet property as part of a mining joint venture.

45. In early 1973, the Pan Sound Joint Venture (hereinafter called the "Joint Venture") was formed by Noranda Exploration, Inc., Marietta Resources International Ltd.,

Mitsubishi Corporation and Texas Gas Exploration Corporation to conduct grassroots base metal exploration in southern coastal Alaska. Upon completion of geological reconnaissance of the Prince William Sound/Kenai Peninsula and northern Panhandle area, follow-up work was concentrated on Admiralty Island.

46. The Joint Venture located valuable mineral deposits, including zinc, lead, copper, silver and gold deposits, in the Greens Creek area near the Hawk Inlet property owned by Bristol Resources, Inc. That Joint Venture has approximately 438 valid existing mining claims in an area of approximately 13 square miles in the Greens Creek area. In addition, 138 mill site claims have been staked and recorded. To develop further the deposits located at Greens Creek, the parties have signed a letter of intent to form the Greens Creek Joint Venture. Bristol Resources, Inc. was invited to join, in view of the valuable contribution to the venture which its property at Hawk Inlet would make as a location for mining support facilities and services. Bristol Resources, Inc. has a right to acquire an undivided ten percent interest in the Greens Creek Joint Venture.

47. A mine, if put in production by the Greens Creek Joint Venture, will be underground, employ some 350 persons in Alaska and will reduce United States imports of the metals produced, thus reducing the balance of payments deficit.

48. National Forest Lands differ in status from the "National Interest Lands" withdrawn under sections 17(d)(1) and (d)(2) of ANCSA, 43 U.S.C. §1616(d)(2) (Supp. III 1973). The 80-million acre withdrawal which was authorized under ANCSA and which expired on December 18, 1978 was for unserved public domain lands, and no existing National Forest lands were thereby affected by this withdrawal.

49. On November 28, 1979, Secretary Bergland requested that Secretary Andrus, under the purported authority of section 204(b) of the Federal Land Policy and Management Act, 43 U.S.C.A. §1714(b) (Supp. 1978), withdraw for a period of two years, approximately 11 million acres of land located in the Tongass and Chugach Forests which lands had been included in Administrative and Congressional "d-2" proposals for National Forest Wilderness Areas.

50. As a result of the applications by Secretary Bergland, purportedly under the authority of Section 204(b)(1) of the Federal Land Policy and Management Act, 43 U.S.C.A. §1714(b)(1) (Supp. 1978) all Federal lands on Admiralty Island appear to have been closed to the operation of the public land laws.

51. On December 5, 1978, the President caused to be published in the Federal Register, Proclamation 4611 dated December 1, 1978 (43 Fed. Reg. 57009 (1978)), which purported to set apart and reserve as the Admiralty Island National Monument approximately 1,100,000 acres of Admiralty Island. The Admiralty Island National Monument is to be managed by the United States Forest Service.

52. Proclamation 4611 stated that all lands, submerged lands, and waters within the boundaries of the Admiralty Island National Monument are withdrawn from entry, location, selection, sale or other disposition under the public land laws, other than exchange.

EXTENT OF THE WITHDRAWAL

53. The northern exterior boundary of the Admiralty Island National Monument is located about one mile south of the Hawk Inlet cannery site. Excluded from the Admiralty Island National Monument are the Mansfield Peninsula, the Young's Bay Experimental Forest and Hawk Inlet. All other

lands to the south of the cannery site, including the area of the Greens Creek mining claims, are included within the monument area designated by the President in Proclamation 4611.

EFFECTS OF THE WITHDRAWAL ON PLAINTIFFS

54. The aforesaid Monument withdrawal purports to remain in effect perpetually, and if not restrained by this Court, will have the following injurious effects, among others, upon the plaintiffs:

a. It will obstruct access to and from Bristol Resources, Inc.'s Hawk Inlet property thereby materially interfering with its opportunity to develop that property which is thereby isolated.

b. It will obstruct access to and from Bristol Resources, Inc.'s Hawk Inlet property, thereby impairing opportunities for joint development by the Greens Creek Joint Venture, of those valid existing claims in the Greens Creek area.

c. It will obstruct access to and from valid existing claims located in the Greens Creek area so as to prevent, now and in the future, the development by the Greens Creek Joint Venture of mining properties located in the Greens Creek area.

d. It will prohibit the location of additional mining claims by the Greens Creek Joint Venture in the Greens Creek area.

VIOLATIONS OF DUTIES OWED TO PLAINTIFFS

55. Defendants Carter and Bergland owe to plaintiffs the following duties:

a. To confine any reservations under the Antiquities Act to the smallest area compatible with the proper care and management of the objects to be protected thereby so as

to avoid unnecessary obstruction of Bristol Resources, Inc.'s access to and from its Hawk Inlet property and its valid existing claims.

b. To conduct a stewardship of the lands owned by the United States so as to avoid impairing the value of Bristol Resources, Inc.'s Hawk Inlet property and valid existing claims.

c. To conduct themselves vis-a-vis the Native Corporations in accordance with the high standards of trusteeship inherent in the relationship between the United States and the Natives of Alaska, including the trust responsibilities inherent in fulfilling the settlement expressed in ANCSA for Aleuts, Eskimos and Indians of Alaska.

56. The President violated the aforesaid duties by issuing Proclamation 4611 which:

a. Fails to confine the reservation of the monument area under the Antiquities Act to the smallest area compatible with the proper care and management of bona fide objects of antiquity;

b. Impairs the value of Bristol Resources, Inc.'s Hawk Inlet property and valid existing claims and deprives Bristol Resources, Inc. of opportunities for the beneficial use of such properties;

c. Violates the high standards of trusteeship inherent in the United States Government's relationship with the Natives of Alaska.

PRAYER

WHEREFORE, plaintiffs pray for the following relief:

A. That the Court adjudge that the aforesaid conduct of the President constitutes an arrogation of Congressional authority to withdraw and reserve the lands embraced within Proclamation 4611.

B. That the Court adjudge that the aforesaid conduct of defendants Carter and Bergland constitutes a violation of the duties owed plaintiffs pursuant to ANCSA.

C. That the Court enjoin defendants Carter and Bergland from implementing or giving effect to the aforesaid Proclamation.

D. That plaintiffs be granted such other and additional relief as the Court may deem just.

Respectfully submitted,

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