

CIRI Settlement

TESTIMONY BEFORE THE ALASKA SENATE RESOURCES
COMMITTEE: STATE-CIRI SETTLEMENT

presented by Tom Hawkins, Assistant Commissioner
Alaska Department of Natural Resources
May 5, 1989

Thank you for the opportunity to brief the committee on the litigation settlement we reached with Cook Inlet Region on April 22. The settlement came after several months of difficult negotiations. The financial stakes were significant and the effort extended by the state to analyze and understand the issues involved was extensive. The settlement followed years of dispute over some of the issues and represents an important milestone in the evolution of Alaska's land ownership patterns. I am pleased to be here today to support it and receive your comments.

Background

This committee is particularly familiar with the dramatic Alaska land ownership changes that began with the 1959 Statehood Act and doubled with the passage of the Native Claims Settlement Act in 1971. A particularly difficult area of Alaska in which to satisfy all of the competing entitlements was the region bordering Cook Inlet. By the time ANCSA passed much of the developable land in the region had been homesteaded, deeded to the state, withdrawn for military bases, or reserved by Congress as national forests and refuges.

The inability of Cook Inlet Region to satisfy its land entitlement resulted in litigation against the federal government and eventually in a complex 3 way land exchange between Alaska, CIRI, and the U.S. The T&C (Terms and Conditions) was the 1976 agreement which allowed Alaska and CIRI to receive land otherwise unavailable to them and preserved an earlier U.S.- Alaska settlement which allowed state selection of 44 million acres. Alaska agreed to trade 21.4 townships in 6 land pools and received in exchange 52 townships from the U.S. including land at Willow, Pt Woronzof, Pt. Campbell, Goose Lake, the Campbell Tract, Lake Illiamna, Talkeetna Mts., and Bristol Bay. The T&C increased Alaska's overall land entitlement by 30 townships.

Although the agreement was quickly ratified in Congress it came under closer scrutiny in Alaska and the trade received considerable criticism. A lawsuit was filed to prevent state participation and implementation of the agreement stalled as the case wound its way through the court system. Finally the Alaska Supreme Court ruled in favor of Alaska's position and the U.S. Supreme Court refused to review the matter further.

It was 1978 before the implementation of the agreement began in earnest and context of land management activity had changed considerably. Alaskans were chafing at the bit which had kept land offices closed since the late 1960's. The Beirne initiative sparked interest. A Beaufort sea oil lease sale was prepared.

Municipal land requirements demanded attention. The d-2 debate occupied the resource agencies. At the same time substantial state revenues allowed acquisition of private land interests with important public values.

The 1979 Kachemak MOU followed the repurchase of oil and gas leases previously sold in Kachemak Bay. The MOU was designed to set in motion a program to acquire private lands in the Kachemak Bay State Park. A key concern of state officials was the potential strip mining of the scenic China Poot Bay uplands for their gravel resources. The MOU protected the park by swapping state owned land on the Kenai peninsula for CIRI subsurface gravel rights in the Park.

Historians have advantage of hindsight. The 1976 T&C, the 1979 MOU, and the resulting land ownership pattern could possibly be different if reenacted today. A lot has changed. The legislature has improved the exchange statutes to require better appreciation of value and detailed public and agency review. Land management techniques are more sophisticated, a wider range of state interests are calculated, and land title records have been improved. Most important though is the recognition by state and native land owners that Alaskans should not be set against each other by the federal government. It's a difficult dilemma to avoid. The land entitlements created by ANCSA and the Statehood Act involve an unprecedented volume of acreage. Native corporations and the state naturally seek the best acres and compete with each other in the process. As the final conveyances are completed we must insure that the last best acre is owned by Alaskans.

That recognition was fundamental to the settlement before you. Out lined briefly here are the disputes which are solved by this agreement.

Section 14(g) of ANCSA

Suit by Alaska against the U.S. (CIRI intervened). Alaska sued to recover revenue from 37 federal oil and gas leases in the Kenai, Swanson River/Soldotna Creek, Beaver Creek, Sterling, and Cannery Loop units. The U.S. has interpreted S14(g) to require lease royalties to be divided on the basis of percent of lease owned without regard to unit or participating area boundaries. This interpretation has cost Alaska \$28 million (31 m - 3 m).

Section 6(h) of the Statehood Act

Suit by the U.S. against Alaska seeking reconveyance of 5500 acres of land conveyed to Alaska in 6 patents in 1982. The lands include portions of 9 oil and gas leases in the Kenai and Cannery

Loop units. If the U.S. recovers the land, it plans to convey it to CIRI. CIRI will seek retroactive revenues of \$24 to \$37 million (1976 vs. 1971 date).

Kachemak Litigation

CIRI sued to compel Alaska to convey 4400 acres as identified in the 1979 MOU. Lands are in and adjacent to Cannery Loop and Kenai Units (cover some of same leases as 6(h)). Purpose of MOU was to trade CIRI and Seldovia Native Association out of Kachemak Bay State Park.

Settlement Summary

14(g) Litigation

- * CIRI pays \$3.0 MM to State in full satisfaction of all State claims to retroactive revenues.
- * Section 14(g) continues to be applied through December 31, 1991 on all fields.
- * On January 1, 1992, the method for allocating revenues from the Kenai, Cannery Loop, Beaver Creek and Swanson River oil and gas units will permanently change to reflect the State's position.
- * State dismisses litigation for all leases listed on the State's amended complaint.

Section 6(h) Litigation

- * State retains 3,845 of 5,500 total contested Section 6(h) acres located on Kenai peninsula.
- * CIRI receives 1,655 Section 6(h) acres in partial fulfillment of remaining Kenai Pool entitlement.
- * All monies in the Section 6(h) escrow account on March 31, 1989 are divided equally between CIRI and the State. Thereafter, revenues follow acres.
- * CIRI forgoes claims to Section 6(h) retroactive revenues and relinquishes claims to Section 6(h) land retained by State.
- * U.S. dismisses litigation.

Kachemak Litigation

- * CIRI conveys to State 4,400 acres within Kachemak Bay State Park.

- * CIRI receives 2,135 acres in leases or lands on Kenai peninsula in fulfillment of remaining Kenai State Pool entitlement. State retains standard 12.5% royalty for any unitized oil and gas lands leased to CIRI.
- * CIRI dismisses litigation.

1976 Cook Inlet Land Exchange

- * CIRI relinquishes selections in Interior Alaska and Talkeetna Mountains area.
- * CIRI and State agree all remaining State obligations to convey land to CIRI are fulfilled.

Summary of Benefits to the State

Releases Monies for State and Private Use

- * Disputed oil and gas royalty revenues from lands previously conveyed to the State under Section 6(h) of the Alaska Statehood Act on the Kenai peninsula have been held in escrow pending litigation by the United States challenging the State's title. Escrowed funds are divided equally between the State and CIRI and released immediately.
- * State receives \$3 million payment for past Section 14(g) claims.
- * Under Section 7(i) of the Alaska Native Claims Settlement Act, the majority of revenues received by CIRI under the agreement will be distributed to all other Alaska Native corporations and distributed throughout Alaska's private economy. Section 7(i) distributions by CIRI have been held in escrow pending the outcome of Section 14(g) litigation.

Protects Future State Royalty Interests

- * Under the Kachemak settlement, CIRI receives a lease interest -- not title -- to any lands which are located within oil and gas units. The State retains a standard 12.5% royalty. Even though CIRI receives only a lease, the leased acreage is charged fully against CIRI's land entitlement.
- * Starting January 1, 1992, the long term allocation of revenues from certain oil and gas units on the Kenai peninsula reflects the State's position on Section 14(g).
- * The state retains title to 3,845 of 5,500 acres of Section 6(h) lands subject to the ownership dispute. Many of these acres have production and revenues from the Kenai field.

Assists State Land Management Objectives

- * All the remaining State obligations to convey land to CIRI under the 1976 Cook Inlet Land Exchange are completed and the State land pool accounts are closed.
- * A significant step is taken to further protect Kachemak Bay State Park by completing acquisition of key CIRI lands identified in 1979.
- * CIRI's relinquishment of several hundred thousand acres in interior Alaska and the Talkeetna Mountains area frees these lands for conveyance to the State from the federal government. State selections are presently complicated by approximately 10 million acres of conflicting overselections by various Native corporations. CIRI's relinquishments set the stage for other native corporations to relinquish overselections which conflict with similar State selection interests.

Permanently Settles Multiple "High Risk" Litigation

- * The integrity of federal conveyances of Section 6(h) lands to the State is protected from further challenge, and the State is protected from the financial exposure resulting from the receipt of past Section 6(h) revenues.
- * Four major issues are resolved in one comprehensive settlement. Further years of extremely costly litigation between CIRI, the State and the United States is avoided.
- * Financial risks were so great that neither party could afford to lose. The settlement represents a reasonable compromise regarding very complex issues in which the outcome of litigation was highly uncertain for both parties.



OFFICIAL BUSINESS

Alaska State Legislature

Senate

Office of the Secretary

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JUNEAU, ALASKA 99811

April 24, 1989

TO: Senator Fahrenkamp, Chair
Resources Committee

FROM: Nancy Quinto *NQ*
Secretary of the Senate

SUBJECT: Settlement of disputes with Cook Inlet Region,
Inc. (CIRI)

The President has referred the attached letter from Lennie Gorsuch, Commissioner, Department of Natural Resources regarding negotiations with the State of Alaska and Cook Inlet Region, Inc. (CIRI) for your review.

NQ/hc

w/attachment

CIRI Settlement

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

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April 22, 1989

Honorable Tim Kelly
President
Alaska State Senate
P.O. Box V
Juneau, AK 99811

Re: Settlement of disputes with CIRI

Dear Senator Kelly:

After several months of intense and serious negotiations, the State of Alaska and Cook Inlet Region, Inc. (CIRI) have agreed to a settlement of four major legal disputes between them. The purpose of this letter is to inform you of the significant elements of that agreement and offer such additional information regarding it as you or legislative committees might consider helpful in reviewing it.

The settlement agreement resolves the so-called "14(g)" oil royalty litigation, litigation challenging the state's title to certain oil and gas producing lands conveyed to it under section 6(h) of the Alaska Statehood Act, and a dispute over conveyances of title to properties in Kachemak Bay, and brings to conclusion remaining issues arising out of the 1976 land exchange agreement between CIRI, the state, and the federal government, generally referred to as the "Terms and Conditions":

(1) 14(g) Litigation. This is a lawsuit filed by the State of Alaska against the federal government about two years ago, in which the state challenged the manner in which the United States applied the provisions of section 14(g) of the Alaska Native Claims Settlement Act (ANCSA) to the distribution of oil and gas revenues from producing units on the Kenai Peninsula. The state asserted that the United States improperly paid royalty revenues to CIRI which should have been paid to the state. We requested that the court award the state retroactive royalty entitlements under its interpretation of applicable law and direct the United States to allocate future royalty receipts in accordance with that interpretation. CIRI later intervened as a party defendant in that litigation.

Under the settlement agreement, CIRI will pay \$3.0 million to the state as compensation for the state's retroactive "14(g)" claims. In addition, CIRI has agreed that the method applied to allocate federal royalty receipts will be changed beginning January 1, 1992 to that advocated by the state in its lawsuit. In exchange, the state has agreed to dismiss its lawsuit with prejudice with respect to the four producing units on the Kenai Peninsula to which the federal "14(g)" interpretation has been applied. However, the state reserves its right to challenge that interpretation in the future should it later be applied to any other oil or gas production in the state.

(2) The 6(h) Litigation. In 1982, the United States conveyed title to approximately 5,500 acres of producing lands in the Kenai and Cannery Loop units on the Kenai Peninsula to the state pursuant to the provisions of section 6(h) of the Alaska Statehood Act. In 1986, CIRI sought to select those same lands from the United States as part of its ANCSA entitlements and asserted that the 1982 conveyances to the state were invalid as being inconsistent with section 6(h). In response to CIRI's selection, the United States established an escrow into which it deposited all oil and gas revenues from the disputed lands. At the end of March 1989, that escrow amounted to approximately \$4.4 million. In 1988, the United States filed suit against the state to void the 1982 conveyances. If the U.S. were successful in that suit, those 5,500 acres would be conveyed to CIRI and the escrowed funds would be paid to it, as well. CIRI has also asserted that it was entitled to additional retroactive revenues from those 6(h) lands back as far as 1976, and perhaps 1971. Most of those revenues had been paid by the U.S. to the state over the years under the regular 90/10 mineral revenue sharing formula.

Under the settlement, CIRI receives the right to select 1,655 of the 5,500 6(h) acres and the state retains title to the rest. The \$4.4 million escrow account is divided equally between CIRI and the state. Revenues generated by the respective accounts after March 31, 1989 belong to CIRI and the state accordingly. The U.S. would dismiss its suit challenging the state's title to the 6(h) lands and CIRI would relinquish its retroactive claim to any pre-escrow revenues.

(3) Kachemak Litigation. Last year, CIRI filed suit against the state in an attempt to force it to convey certain lands in the Kachemak Bay area to CIRI under the provisions of a 1979 Memorandum of Understanding (MOU) between CIRI and the state. The state disputed CIRI's right to select the particular lands sought by CIRI and also demanded that CIRI convey to it

lands within Kachemak Bay State Park to which the state was entitled under the MOU.

The settlement brings this dispute to a close by specifying that CIRI will convey to the state 4,400 acres within Kachemak Bay State Park to which it is entitled under the MOU. The state will also fulfill its obligations to CIRI by either leasing or conveying 2,135 acres of land to CIRI. CIRI will be permitted to lease from among specified lands within the Kenai and Cannery Loop units. Such leases will be subject to a retained 12.5 percent state royalty interest. To the extent CIRI does not elect to lease from among the designated lands, it will be able to select, from certain specified tracts, the difference between 2,135 acres and the number of acres leased for conveyance to it from the state. CIRI's suit against the state would be dismissed.

(4) Resolution of Outstanding Terms and Conditions Issues. Despite the fact that the Cook Inlet area land exchange agreement was entered in 1976, it has yet to be fully implemented. The settlement will essentially bring outstanding areas of dispute to a close. Significantly, CIRI and the state both agree that the conveyances made pursuant to this settlement fully satisfy all claims that either party may have regarding the state's obligations to CIRI under the Terms and Conditions. As part of this agreement, CIRI also agrees to relinquish certain significant out-of-region selections (Red Line Pool and Talkeetna Mountains Area), involving several hundreds of thousands of acres, thereby making those lands available for selection by the state.

I believe this settlement is a fair one and is in the best interest of the state. It puts certain substantial and longstanding disputes behind us in a manner which will benefit state government, private economies, and state residents. As a result, all of us -- the state and federal governments and the Native corporations -- will be able to get on with more productive business.

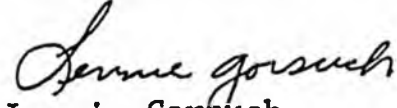
My department is prepared to provide such additional information or briefings as you or various legislative committees may desire. Because of the longstanding interest within the legislature in the state's dealings with CIRI, we have built into the settlement the opportunity for the legislature to review it. If, as a result of that review, the legislature concludes, through the adoption of a concurrent resolution this session, that the settlement is not a satisfactory one, I have retained the authority to withdraw from the settlement within the following five days.

Honorable Tim Kelly, President
Alaska State Senate

April 22, 1989
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I look forward to discussing this very important settlement with you further.

Sincerely yours,


Lennie Gorsuch
Commissioner

LG/pjg

cc: Honorable Sam Cotton
Speaker of the House