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STATE OF ALASKA

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

AT ANCHORAGE

STATE OF ALASKA, Plaintiff, vs. JAMES EARL CARTER, President of the United States, in his official capacity; CECIL D. ANDRUS, Secretary of the Interior, in his official capacity; ROBERT HERBST, Assistant Secretary of the Interior for Fish and Wildlife and Parks, in his official capacity; GUY R. MARTIN, Assistant Secretary of the Interior for Land and Water Resources, in his official capacity; FRANK GREGG, Director, Bureau of Land Management, in his official capacity; CURTIS V. McVEE, Alaska State Director, Bureau of Land Management, in his official capacity; BOB BERGLAND, Secretary of Agriculture, in his official capacity; JOHN A. SANDOR, Regional Forester, U.S. Forest Service, in his official capacity; Defendants.	No. A-78-291 Civil

SECOND AMENDED COMPLAINT

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I.

NATURE OF ACTION

Plaintiff, the State of Alaska, complains of defendants and shows the Court the following:

1. In this action, the State of Alaska asks the Court to (a) declare unconstitutional, illegal and void, any and all actions taken by the President of the United States, the Secretary of the Interior, the Secretary of Agriculture, and their agents that interfere with the rights granted to the State of Alaska to select and receive patent to federal lands in Alaska by virtue of the contractual and legislative commitment and grant contained in the Alaska Statehood Act; (b) declare unconstitutional or void, or suspend or otherwise invalidate all National Monuments designated in the Tongass National Forest; (c) declare illegal, as an abuse of discretion, or invalidate the existing or proposed application to State-selected lands of the Federal land Policy and Management Act and Section 17(d)(1) of the Alaska Native Claims Settlement Act, and the creation and boundaries of the Alaska National Monuments proclaimed on December 1, 1978 under the Antiquities Act; (d) declare that the President and the Secretary of the Interior violated the National Environmental Policy Act as set forth in Section VI; (e) declare that the creation of Alaska National Monuments was both unlawful and void as set forth in Section VII; (f) declare that the plaintiff's land selection rights are exempt from the Wilderness Inventory and Review Provisions of FLPMA; (g) declare that defendants' failure to act on plaintiff's land selections have violated plaintiff's rights under the Statehood Act; declare that (h) defendants' proposed exercise of authority under § 22(c) of ANCSA is unlawful and void if used to create new wildlife refuges; (i) declare that defendants have violated the provisions of the 1972 Memorandum of Understanding; (j) declare that defendants' failure

to promptly convey Native-selected lands and reject overselections has unduly impeded plaintiff's own overselection rights; (k) declare that defendants' use of the Antiquities Act proclamations was null and void as defendants were precluded from so acting by ANCSA; and (l) to grant any and all other relief prayed for in this Complaint.

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II.

JURISDICTION

2. This is a civil suit over which this Court has jurisdiction, pursuant to Title 28 of the United States Code, Sections 1331, 1346, 2201, and 2202, and Title 5 of the United States Code, Sections 701-706.

III.

PARTIES

3. Plaintiff State of Alaska (hereinafter referred to as "plaintiff" or "the State") is the sovereign State of Alaska, one of the fifty United States, admitted to the Federal Union on January 3, 1959, pursuant to P.L. 85-508, 72 Stat. 339 (1958), (hereinafter referred to as the "Alaska Statehood Act" or the "Statehood Act"), and is the legal representative of the people of the State of Alaska (parens patrie).

4. Defendant James Earl Carter (hereinafter referred to as "the President") is the President and Chief Executive Officer of the United States of America, and is sued solely in his official capacity.

5. Defendant Cecil D. Andrus (hereinafter referred to as "the Secretary") is Secretary of the Interior and a member of the Cabinet of the President, and the chief executive officer of the United States Department of the Interior, and is sued solely in his official capacity.

6. Defendant Robert Herbst is the Assistant Secretary of the Interior for Fish and Wildlife and Parks and supervises and determines policy for the National Park Service and the U.S. Fish and Wildlife Service, which are the land managers of fifteen of the seventeen new national monuments in Alaska. He is sued solely in his official capacity.

7. Defendant Guy R. Martin, the Assistant Secretary of the Interior for Land and Water Resources, supervises the Bureau of

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Land Management, which manages the unreserved federal public domain in the State. He is sued solely in his official capacity.

8. Defendant Frank Gregg, the Director of the Bureau of Land Management, determines policy for that agency and supervises the Federal land conveyance process to the State. He is sued solely in his official capacity.

9. Defendant Curtis V. McVee is the Alaska State Director of the Bureau of Land Management, and is charged with the responsibility of implementing the policy decisions of his superiors with respect to the enforcement and implementation of the public land laws and the designation and conveyance of land under the Alaska Statehood Act, the Alaska Native Claims Settlement Act, 16 U.S.C. §§ 1601, et seq. (hereinafter referred to as "ANCSA"), and the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§1701, et seq. (hereinafter referred to as "FLPMA"). He is sued solely in his official capacity.

10. Defendant Bob Bergland (hereinafter referred to as "the Secretary of Agriculture"), is the Secretary of Agriculture and a member of the Cabinet of the President, and is the chief executive officer of the United States Department of Agriculture. He is sued solely in his official capacity.

11. Defendant John A. Sandor, Regional Forester of the U.S. Forest Service in Alaska, implements and enforces the policies determined by the Secretary of Agriculture as they affect the components of the National Forest System in Alaska. He is sued solely in his official capacity.

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IV.

STATEMENT OF FACTS

12. On July 7, 1958 the Alaska Statehood Act was signed by the President of the United States, subsequent to passage by both Houses of the United States Congress. The statute offered admission into the Federal Union to the Territory of Alaska upon certain conditions. Said conditions were accepted by a vote of the people of the Territory on August 26, 1958, thus forming a statehood compact between the United States and the people of the Territory. The State of Alaska was thereafter admitted to the Federal Union by Presidential Proclamation on January 3, 1959.

13. Section 6(b) of the Alaska Statehood Act made a present, vested grant of vacant, unappropriated and unreserved federal lands in Alaska to the State of Alaska totalling 102,550,000 acres, to be selected by the State before January 4, 1984. Section 6(a) of the Alaska Statehood Act also granted to the State 400,000 acres of vacant and unappropriated federal lands from the National Forest System in Alaska, and 400,000 acres to be selected from other vacant, unappropriated, and unreserved Federal lands, both to be selected by the State before January 4, 1984 for community expansion and recreation purposes. Upon acceptance of the terms of statehood by the people of Alaska and admission of Alaska to the Union, a legal compact was formed between the United States on the one hand, and the State and people of Alaska on the other. This compact, whose terms and conditions constitute the Statehood Act, vested certain rights in the State and its citizens at the time of its ratification. Among these vested rights, the compact requires the United States, through the Secretary of Interior, the Secretary of Agriculture, and the employees of the respective departments, to approve and convey to plaintiff in a timely fashion all lands duly selected by plaintiff in fulfillment of said land grants, in accordance

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with the provisions set forth in Section 6 of the Alaska Statehood Act.

14. Prior to November 14, 1978 the State had selected a total of 71,088,418 acres of federal land pursuant to the grant contained in Section 6(b) of the Alaska Statehood Act. Of these selections, 15,074,931 acres have been tentatively approved to the State, and 20,083,452 acres have been patented to the State. The State has selected 371,206 acres of federal land pursuant to the grant contained in Section 6(a) of the Statehood Act. Of these selections, 32,670 acres have been tentatively approved to the State, and 14,919 acres have been patented to the State to date. On November 14, 1978, the State of Alaska filed selections and identifications for selection on 41,544,354 acres of Federal land pursuant to authority contained in Section 6(b) of the Alaska Statehood Act and Section 17(d)(2)(E) of ANCSA.

15. Plaintiff's ability to obtain tentative approval and patent to lands previously selected, and plaintiff's ability to file valid land selections upon other Federal lands so as to fulfill the land grants made to it by the Alaska Statehood Act have been and will be frustrated, delayed and prevented by actions of defendants and their predecessors in office, as is alleged more fully subsequently herein.

16. On December 18, 1971 the Alaska Native Claims Settlement Act was enacted. Said Act granted Alaska Natives certain land and monetary benefits in settlement and extinguishment of all aboriginal land titles, if any, and claims thereto, within the State of Alaska. The land grants made to Alaska Natives included the authority to select Federal lands and lands previously tentatively approved to or selected by plaintiff in certain instances, with the concurrence of the plaintiff, so as to fulfill a total land grant to Alaska Natives of approximately 44 million acres of land.

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17. Section 17(d)(1) of ANCSA further authorized predecessors of the Secretary to make certain withdrawals of public lands to insure protection of the public interest and to classify or reclassify such lands and to open such lands to appropriation under the public lands laws in accordance with the land's classification. Section 17(d)(2)(A) of said Act required predecessors of the Secretary to withdraw up to, but not to exceed, 80 million acres of public lands which the Secretary was to study to determine which lands were suitable for designation by Congress as new or augmented national parks, national wildlife refuges, national forests, and national wild and scenic rivers. The withdrawals pursuant to Section 17(d)(2)(A) were to be in effect for up to five years from the date that the Secretary's recommendations were transmitted to Congress.

18. The Secretary and his predecessors subsequently made certain withdrawals comprising approximately 80 million acres pursuant to Section 17(d)(2)(A) of ANCSA, and certain additional withdrawals pursuant to Section 17(d)(1) of ANCSA, which lands were withdrawn from selection by plaintiff by provisions included in each public land order promulgated pursuant to authority claimed under the above-cited statutes. The provisions of the public land orders issued pursuant to Sections 17(d)(1) and 17(d)(2)(A) purported to withdraw the lands described therein from selection by the State in fulfillment of its entitlement under the Statehood Act.

19. Said withdrawals were transmitted to Congress in the form of recommended legislation for new units and additions to

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existing units of the four conservation systems by the Secretary's predecessor on December 17, 1973. They were accompanied by an Environmental Impact Statement (hereinafter referred to as the "EIS") which was prepared pursuant to the provisions of the National Environmental Policy Act (hereinafter referred to as "NEPA"), 42 U.S.C. §§ 4331, et seq., in 1973 and 1974. The 93rd Congress took no action on this proposal for legislation, and the 94th and 95th Congresses also failed to enact legislation creating units of the four conservation systems in Alaska.

20. The withdrawal authority created in Section 17(d)(2)(A) expired on December 17, 1978. On or about October 14, 1978, the 95th Congress of the United States had adjourned without taking action to resolve the status of lands withdrawn by Section 17(d)(2)(A) of ANCSA, and without extending the period during which withdrawals of land pursuant to Section 17(d)(2)(A) would remain effective.

21. The Secretary and his predecessors have made numerous land withdrawals pursuant to Section 17(d)(1) and most, if not all, of those lands withdrawn under Section 17(d)(2)(A) were also withdrawn under the authority claimed by the Secretary in Section 17(d)(1) of ANCSA. The public land withdrawals made under Section 17(d)(1) of ANCSA have no statutory expiration date and as a result, substantially all of the Federal public lands within the State of Alaska which are not withdrawn for selection by Alaska Native regional and village corporations have been purportedly withdrawn from selection by plaintiff under the Alaska Statehood Act since on or about March 9, 1972, the date of the first Section 17(d)(2) withdrawals. Said Section 17(d)(1) withdrawals continue to the date hereof, and plaintiff, upon information and belief, asserts that the legal significance accorded such withdrawals by the defendants will continue after December 17, 1978. Defendants' interpretation of subsection 17(d)(1) of ANCSA will

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continue to serve as a bar to land selections made by plaintiff, in frustration of the Statehood Act and contrary to Section 17(d)(2)(E) of ANCSA, unless adequate relief, as prayed in this complaint, is granted plaintiff.

22. In April of 1972, plaintiff filed suit against the Secretary's predecessor in an action styled Alaska v. Morton, et al. (Civil Action No. A-48-72) in the U.S. District Court for the District of Alaska, alleging that defendant and its agents had violated, and would continue to violate, provisions of the Alaska Statehood Act and ANCSA in pursuing actions purportedly taken under authority of ANCSA. Said lawsuit was settled, and a stipulation for dismissal was entered, on the basis of the Memorandum of Understanding entered into between the Secretary's predecessor and the Governor of plaintiff State on September 1, 1972. A true copy of said Memorandum of Understanding is attached to this Complaint as plaintiff's Exhibit "1".

23. Several months prior to the adjournment of the 95th Congress, the Secretary and officials of the Department began private discussions and made public statements regarding the actions defendants would take to continue, by executive authority, the withdrawn status of lands which were withdrawn under Section 17(d)(2)(A) and which would purportedly continue to be withdrawn under Section 17(d)(1) if the Congress failed to act prior to its adjournment. Said discussions and statements referred to the use of Secretary's withdrawal authority purportedly delegated to him under Section 204 of FLPMA, 43 U.S.C. § 1714, the President's withdrawal authority claimed under the Antiquities Act (hereinafter referred to as the "Antiquities Act"), 16 U.S.C. §§ 431, et seq., the administrative withdrawal authority provided in Section 22(e) of ANCSA, 43 U.S.C. § 1621(e), the continued reliance upon the withdrawals made pursuant to

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Section 17(d)(1) of ANCSA, 43 U.S.C. § 1616(d)(1), and the inventory and wilderness review requirements of Sections 201 and 603 of FLPMA, 43 U.S.C. §§ 1716, 1782.

24. On or about October 25, 1978 the Office of the Secretary issued a letter, together with a "Draft Environmental Supplement", purporting to set forth alternative administrative and executive actions which would enable the defendants to implement the conservation measures that would have been implemented had the 95th Congress enacted Alaska National Interest Lands legislation. Said letter and "environmental supplement" were issued in an effort to comply with the requirements of Section 102(2)(C) of NEPA, 42 U.S.C. § 4332(2)(C).

25. Mandatory public analysis and comment regarding the draft environmental supplement described in the above paragraph were required by defendants to be submitted on or before November 20, 1978. The deadline was later extended to November 22, 1978, but even that date was less than 30 days subsequent to issuance of the draft environmental supplement, and was less than 25 days from the date upon which copies of said environmental supplement, together with maps, were made available for general review and comment by the affected public in Alaska.

26. The draft environmental supplement and letter issued by defendants stated that administrative or executive action would be taken by defendants, and each of them, within their respective areas of authority prior to December 18, 1978, and would implement, singly or in combination, the various administrative or executive actions and interpretations of statutes set forth in said letter and environmental supplement, and which have been set forth previously herein.

27. On November 16, 1978 the Secretary issued Public Land Order 5653 pursuant to authority claimed under Section 204(e) of

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FLPMA, 43 U.S.C. § 1714(e), which Order purported to withdraw approximately 110 million acres of federal public lands in Alaska, including lands selected and identified for selection by plaintiff, from settlement, mineral location, sale or selection by the State pursuant to Section 6 of the Statehood Act. Said Order was issued on the basis of a claimed "emergency" declared by the Chairman of the Committee on Interior and Insular Affairs of the U.S. House of Representatives. On November 17, 1978 the Secretary issued Public Land Order 5654 pursuant to authority claimed under Section 204(e) of FLPMA, 43 U.S.C. § 1714(e), which Order purported to amend P.L.O. 5653 regarding the basis for the declaration of an "emergency" situation. The Section 204(e) withdrawal orders occurred two and three days, respectively, after the State filed selections and identifications on 41,544,354 acres of federal land, pursuant to Section 6(b) of the Statehood Act and Section 17(d)(2)(E) of ANCSA.

28. On or about November 26, 1978 the Secretary issued the "Final Environmental Supplement", purporting to update the 1974 EIS and the "Draft Environmental Supplement", and also purporting to describe the actions proposed to be taken regarding federal lands in Alaska by the Secretary and the President.

29. On December 1, 1978 the President signed certain Presidential Proclamations pursuant to authority claimed under the Antiquities Act, which Proclamations purport to designate approximately 56 million acres of federal lands in Alaska, including lands selected or identified for selection by plaintiff, as National Monuments under the jurisdiction of the U.S. Forest Service, the National Park Service, and the U.S. Fish and Wildlife Service.

30. On December 1, 1978 the Secretary and the Secretary of Agriculture filed notice of proposed public land orders, subsequently published in the Federal Register on December 5, 1978, which purport to withdraw certain lands in the National Forest System in Alaska

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from mineral location or entry, pursuant to authority claimed in Section 204(b) of FLPMA, 43 U.S.C. § 1714(b), for a period of two years.

31. On or about December 1, 1978 the Secretary announced his intention to withdraw, for a period of up to 20 years, approximately 33 million acres of federal public land in Alaska pursuant to authority claimed under Section 204(c) of FLPMA, 43 U.S.C. § 1714(c), for the purpose of establishing federal wildlife refuges in Alaska. Such lands were to be comprised of some of those lands previously withdrawn under Section 204(c) on November 16, 1978, which were not included in National Monument designations.

32. On or about December 26, 1978 the Secretary promulgated and published final interim regulations for the management of those National Monuments under the jurisdiction of the National Park Service and the U.S. Fish and Wildlife Service. Said regulations variously prohibit hunting, trapping, and the use of airplanes, motorized off-road vehicles and motorboats, upon lands where such activities were permitted without significant Federal restriction prior to the designation of National Monuments as aforesaid.

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V.

FIRST CAUSE OF ACTION: THE ALASKA STATEHOOD ACT IS A COMPACT, CONSTITUTIONALLY PROTECTED BY THE CONTRACT CLAUSE

33. Plaintiff realleges and incorporates herein by reference Paragraphs 1 through 32 of the Complaint.

34. Unlike conventional public laws enacted by the United States Congress, the Alaska Statehood Act would have had no force or effect had it not subsequently been ratified by the voters of the Territory. As such, it is a bilateral compact.

35. The principal obligation of the United States is contained in Section 6 of the Statehood Act. In Section 6(b), the State is "hereby granted and shall be entitled to select, within twenty-five years after admission of Alaska into the Union, not to exceed one hundred two million five hundred and fifty thousand acres from the public lands of the United States in Alaska which are vacant, unappropriated, and unreserved at the time of their selection". Section 6(a) of the Statehood Act provides a similar grant to the State of Alaska of four hundred thousand acres of land from the national forests within Alaska and an additional four hundred thousand acres from the other public lands of the United States in Alaska for community expansion and recreation purposes. The language in the Statehood Act describing each of the four-hundred-thousand-acre grants is nearly identical to the language in Section 6(b) land grant, with one exception. The grant in Section 6(a) states that "such lands shall be selected by the State of Alaska with the approval of the Secretary of Agriculture as to national forests and with the approval of the Secretary of the Interior as to other public lands." No such approval right as to special conditions is provided to either secretary or any other party under the Section 6(b) land grant, except for Department of Defense approval of lands north of the PYK line, as provided in Section 10 of the Statehood Act.

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36. The United States Constitution protects the sanctity of contracts and restricts legislative impairment of the obligation of contracts.

37. No compact entered into by the United States and one of its individual states may be unilaterally repealed or substantially amended by either of the compact parties without the express consent of the other party.

38. The contractual rights, duties and obligations arising out of a compact or contract entered into by the United States and the people of a territory who have voted to ratify the statehood act regarding them and the affected territory may not be unilaterally altered or repealed by either party, nor is breach of such contract permitted without full restitution or compensation to the affected party.

39. Section 6 of the Statehood Act was intended to preserve adequate lands from which the State could select its full entitlement based on criteria determined by it to be in the best interest of the people of Alaska. The Federal Government, through the President, the Secretary of the Interior, and their agents, have taken actions which have effectively denied the State of Alaska the right to select its full entitlement of Federal lands as intended under Section 6 of the Statehood Act.

40. The plaintiff, State of Alaska, is not contesting the validity of the Alaska Native Claims Settlement Act because Section 4 of the Statehood Act protected the rights of aboriginal Alaskans, and the Alaska Native Claims Settlement Act was subsequently passed to settle those rights. The State of Alaska has taken actions pursuant to the terms of ANCSA which ratify the Alaska Native Claims Settlement Act as it relates to the Statehood Act.

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INJURY TO THE PLAINTIFF

41. The actions taken by the President of the United States in creating National Monuments on lands within Alaska which are in conflict with lands selected or identified for selection by the State pursuant to the Alaska Statehood Act, and the actions taken by the Secretaries of the Interior and Agriculture which frustrate, prohibit or deny the State of Alaska's land conveyance rights as to other lands in Alaska under authority claimed in FLPMA and other statutory authority, violate the terms and conditions of the Alaska Statehood Act and the bilateral contractual protections granted to the people of Alaska by the United States Constitution.

42. By reason of the foregoing, the interests of the State of Alaska and its people have been and will continue to be injured by denial and obstruction of their vested land grant rights and the use of said lands for the purposes intended by the Alaska Statehood Act.

43. WHEREFORE, Plaintiff prays as to its First Cause of Action that this Court grant it the following relief:

a. That this Court declare invalid the National Monument designations proclaimed by the President of the United States in each instance in which such designations conflict with lands selected or identified for selection by the State pursuant to the Alaska Statehood Act.

b. That this Court declare invalid any actions taken by the President, the Secretary of the Interior and the Secretary of Agriculture, or any of them, pursuant to the Federal Land Policy and Management Act or other claimed statutory authority if the exercise of said authority violates or infringes upon the contractual obligations, duties and rights provided in the Alaska Statehood Act and other law;

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c. That this Court enter an order suspending the effect of any course of action, public land order proclamation or withdrawal of land in Alaska which affects the State's rights under the Statehood Act until compliance with the requirements of that Act has occurred to the satisfaction of the Court;

d. That this Court enter such additional orders as it may deem necessary to afford Plaintiff complete relief as prayed for in this First Cause of Action.

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VI.

SECOND CAUSE OF ACTION: THE NATIONAL ENVIRONMENTAL POLICY ACT

44. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 43 of the Complaint.

45. The National Environmental Policy Act, 42 U.S.C. §§4321, 4331 et seq., requires all agencies of the Federal government to file an environmental impact statement whenever an agency proposes to take a "major federal action significantly affecting the quality of the human environment". 42 U.S.C. §4332(2)(C). The statute requires that the environmental impact statement be "a detailed statement by the responsible official on --

> (i) the environmental impact of the proposed action,
>
> (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,
>
> (iii) alternatives to the proposed action,
>
> (iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and
>
> (v) any irreversible and irretrievable commitment of resources which would be involved in the proposed action should it be implemented."

46. NEPA requires that adequate disclosure of pertinent primary and secondary environmental impacts be made to the public, and that the affected agency must provide a reasonable discussion of the statutorily required factors sufficient to permit an informed decision to be made by agency decision-makers.

47. The Act requires that "prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved". 42 U.S.C. §4332(2)(C).

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48. In 1974, the Department of Interior issued a 28-volume Environmental Impact Statement (the "1974 EIS") regarding proposed withdrawals of federal land in Alaska for creation or augmentation of lands to be preserved in the national interest, pursuant to Section 17(d)(2) of ANCSA. On or about October 31, 1978, the Department of the Interior issued a "Draft Environmental Supplement" to the 1974 EIS regarding "Alternative Administrative Actions for Alaska National Interests Lands." After a 20-day comment period (which was extended by two days by the Department of the Interior), a "Final Environmental Supplement" was issued on or about November 28, 1978, by the United States Department of the Interior.

49. The 1974 EIS and the "Environmental Supplement" issued by the Secretary and the Department of Interior failed to comply, together or singly, with the substantive requirements imposed by NEPA and the regulations and policies promulgated thereunder in the following particulars, among others:

a. The 1974 EIS considered no cumulative effects of the proposed land actions; while the 1978 "Environmental Supplement" did include a section on cumulative effects, that section is legally inadequate regarding many of the withdrawn land areas and regarding several NEPA requirements.

b. The "Environmental Supplement" contains a section entitled "Mitigating Measures Included in the Alternative Action" and then states that there are "none", which fails to satisfy the requirements of NEPA.

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c. In neither the EIS nor the "Environmental Supplement" is there any effort to coordinate or address the programs of different federal agencies with regard to Alaskan lands. Both statements ignore the U. S. Forest Service and all of Southeast Alaska; they ignore concurrent federal agency programs dealing with Alaska, including Department of Energy mineral surveys, Federal Energy Regulatory Commission oil and gas pipeline surveillance and management programs and responsibilities, and others.

d. Not only do both the EIS and the "Environmental Supplement" ignore and fragment concurrent actions being taken by other federal agencies throughout the withdrawal areas and the rest of the State, neither statement addresses the impact of the multi-million acre withdrawals for the National Wild and Scenic Rivers System to be managed by the Department of the Interior. The EIS's therefore not only fragment concurrent Federal programs being carried on with respect to Alaskan lands by various Federal agencies, but also fragment the programs carried on within the Department of the Interior itself.

e. The lands involved are addressed by the Department of the Interior as "national interest lands"

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(emphasis added), and the term "national interest lands" was used throughout the legislative process engaged in by the Department of the Interior and the United States Congress over the past two years. The two statements, taken together, unlawfully ignore all national impacts--including both primary and secondary environmental impacts--regardless of how probable such impacts are, and further ignore the statewide socio-economic impacts resulting directly from the withdrawal and reduction of public use of approximately 110 million acres of federal land. Much of the sparse secondary impact information is vague, general and conclusory.

f. There is not sufficient cost/benefit analysis included in either statement, nor is the methodology for a sufficient cost/benefit analysis described, nor are the items considered for such analysis enumerated.

g. Neither the 1974 EIS nor the "Environmental Supplement" attempts to define "subsistence", "subsistence-user", or "subsistence uses", and thus as a document in which subsistence environmental impacts are of primary importance, it is legally deficient.

h. Up to 16 million acres of land included in the 1978 Presidential Proclamations and Interior Department withdrawals, and included in the "Environmental Supplement", were not included in the proposed withdrawals discussed in the 1974 EIS. Regarding several million of the acres not described in the 1974 EIS, no description whatsoever appears in the 1978 "Environmental Supplement". For other lands, a legally inadequate description of the environmental impacts and other factors is included in the 1978 "Environmental Supplement".

i. The 1974 EIS did not consider the alternative of National Monument status for any Alaskan lands. The 1978 "Environmental Supplement" (which did discuss National Monument status as an alternative) did not fully consider or disclose all of the environmental impacts associated with National Monument withdrawals in Alaska. Specifically, the 1974 EIS did not consider the prohibition of sport hunting on any national interest lands in Alaska, and the 1978 "Environmental Supplement" gave inadequate treatment to this impact. Neither statement considered the environmental impact of the restrictions which National Monument status imposes on sport and commercial fishing. The environmental impacts of National Monument status upon commercial trapping were inadequately treated.

j. The 1978 "Environmental Supplement" contains no current analysis of the impact upon the human environment that reduced or prohibited oil and gas exploration and development will create in areas designated as "national interest lands". Any reference in the 1974 EIS to environmental and other impact associated with oil and gas reserves in the lands in question as well as oil and gas development restrictions has not been reassessed in the 1978 "Environmental Supplement" to take into account the substantial variations that have occurred since 1974 in oil and gas prices and supplies, and the primary and secondary environmental impacts that oil and gas exploration and developmental restrictions will cause.

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k. The 1974 EIS and the 1978 "Environmental Supplement" fail to adequately analyze the environmental impacts which designation of national monuments and withdrawn areas will have on exploration and development of gold resources and upon the Alaskan and national economies, since gold prices and supplies have risen significantly since 1974.

l. Neither EIS includes an assessment of the actual or estimated costs of the proposed administrative actions, costs which will be borne by the Federal government, the State, and various localities within the State.

m. Neither the EIS nor the "Environmental Supplement" describes the effects the proposed actions will have on the coastal environment in Alaska, including Outer Continental Shelf development or future lease sales within the State, as well as the added pressures which will be imposed on the offshore environment and OCS development throughout the rest of the United States, as a result of the contemplated federal actions.

n. The 1978 "Environmental Supplement" states that the socio-economic impacts of the proposal are nonexistent or extremely low because Congress can override these land designations in the future if it so chooses. This argument is both conclusory and inaccurate since the actions taken by the President and the Secretary are either final on their face or are of substantial duration and Congressional action cannot be guaranteed.

o. The comments received and compiled by the Department of Interior to the draft "Environmental Supplement" (as

found in the appendix to the final "Environmental Supplement") state that many relevant and available sources of information on environmental impacts were not consulted, and that many factual errors exist in the Supplement. Both the factual inaccuracy of the final "Environmental Supplement" and the exclusion of pertinent information sources violate the provisions, purposes, and spirit of NEPA, by denying and disregarding full and accurate public disclosure.

Secondary impacts, such as increased urbanization in Anchorage if bush communities can no longer sustain life due to subsistence or sport hunting restrictions or other land use or economic restrictions, are never adequately addressed, nor are many other required secondary impacts (such as crime, industrialization, population shifts, etc.) addressed.

50. As a direct result of the severely curtailed public comment period, the Secretary and the Department have, in derogation of the provisions of NEPA, denied plaintiff and the interested public an adequate opportunity to review, analyze and comment, in a reasonable and meaningful fashion, upon Defendant's "Environmental Supplement." These actions of defendants violate the substantive and procedural requirements of NEPA, and further violate the regulations and policies issued thereunder by the President's Council on Environmental Quality, the Secretary and the Department.

INJURY TO THE PLAINTIFF

51. As a result of the substantial flaws, inadequacies, and legal and factual deficiencies of the 1974 Environmental Impact Statement and the 1978 "Environmental Supplement", taken individually or together, and as a result of the inadequate comment period provided to plaintiff, plaintiff has suffered substantial injury,

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including but not limited to denial of a proper, adequate and balanced decision-making process within the affected Federal agencies and denial of a proper opportunity to participate in and influence the decision-making process. Said decision-making process has resulted in major federal actions which affect the human environment, and has denied plaintiff its vested rights in certain lands and substantial present and future land use opportunities.

52. The violations of NEPA as aforesaid have abridged plaintiff's due process and equal protection guarantees under the Constitution and laws of the United States, and have further violated the provisions of the Alaskan Native Claims Settlement Act and the Alaska Statehood Act.

53. WHEREFORE, plaintiff prays as to its Second Cause of Action that this Court grant it the following relief:

a. That actions taken pursuant to the Antiquities Act and Section 204 of FLPMA constitute "major federal actions" within the meaning of NEPA;

b. That those actions taken by the President under authority claimed in the Antiquities Act violate the provisions of NEPA;

c. That this Court declare that the requirements imposed by NEPA and the guidelines and regulations promulgated thereunder affording adequate analysis, sufficient disclosure, proper procedure, adequate public comment and adequate facts have been violated by defendants and by each of them, and that plaintiff and its citizens have been injured thereby;

d. That this Court declare void all withdrawals, segregations, or other actions taken by the Department of the Interior and the Department of Agriculture pursuant to Section 204 of FLPMA until said actions have been preceded by a sufficient Environmental Impact Statement;

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e. That this Court enter an order enjoining any course of action, added land use restriction or withdrawal of lands affecting plaintiff's rights under the Alaska Statehood Act or the Alaska Native Claims Settlement Act which have been taken or are intended to be taken by the Secretary of the Interior or the Secretary of Agriculture, or either of them;

f. That the Court enter such additional orders as it may deem necessary to afford plaintiff complete relief from defendants' actions as alleged in this Second Cause of Action.

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VII.

THIRD CAUSE OF ACTION: CREATION OF ALASKA NATIONAL MONUMENTS UNDER THE ANTIQUITIES ACT VIOLATES THE DOCTRINE OF SEPARATION OF POWERS, EXCEEDS THE AUTHORITY DELEGATED TO THE PRESIDENT, AND CONSTITUTES AN ABUSE OF EXECUTIVE POWER.

54. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 53 in this Complaint.

55. The Antiquities Act, 16 U.S.C. §§ 431, et seq., delegates to the President the authority to declare "historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States to be national monuments." This same Act gives the President the authority to reserve as part of a national monument, "parcels of lands, the limits of which in all cases shall be confined to the smallest area compatible with the proper care and management of the objects to be protected."

56. The fifteen new Alaska National Monuments and the two additions to existing Alaska National Monuments and Parks which were proclaimed by the President on December 1, 1978, were created in excess of the legal authority delegated to the President by Congress in the following respects:

a. The Presidential Proclamations purport to protect living plants and animals, or whole ecosystems, none of which are inanimate objects, nor are they individual historical landmarks, historic or prehistoric structures, or other objects of historic or scientific interest, as required by the Antiquities Act;

b. Each reservation of land described in said Proclamations far exceeds the smallest area compatible with the protection and care of the proper objects, if any, to be protected; in fact, the boundaries were designated to conform to pre-existing administrative and legislative

proposals for National Parks and Wildlife Refuges, both of which are land management systems that embody land use purposes and management requirements entirely separate and distinct from the purposes and intent of the Antiquities Act; and

c. Each reservation of land described in said Proclamations purports to offer general protection of vast geological formations, animal and human migration routes, or potential future archaeological sites or discoveries, which are not those objects properly intended for protection under the express statutory requirements of the Antiquities Act.

57. The President's actions in proclaiming fifteen Alaska National Monuments and reserving additional land for two existing Alaska National Monuments and Parks further constitutes an abuse of any proper executive discretion conferred on the President by the Antiquities Act in the following respects:

a. The Presidential Proclamations purport to protect living plants and animals, or whole ecosystems, none of which are inanimate objects, nor are they individual historical landmarks, historic or prehistoric structures or other objects of historic or scientific interest, as required by the Antiquities Act. Such designations constitute an arbitrary and capricious use of Presidential power to reserve land for the protection of living things which are not properly cognizable within the plain meaning of said statute;

b. Said Proclamations purport to reserve tracts of land pursuant to the Antiquities Act, but in fact describe areas of public land far in excess of the smallest area compatible with the protection and management of the proper objects, if any, to be protected; in fact, the

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boundaries were designated to conform to pre-existing administrative and legislative proposals for National Parks and Wildlife Refuges, both of which are land management systems that embody land use purposes and management requirements are entirely separate and distinct from the purposes and intent of the Antiquities Act, thus constituting an abuse of discretion by the President.

c. Said Proclamations arbitrarily and capriciously reserve lands that purport to offer general protection of vast geological formations, animal and human migration routes, or potential future archaeological sites or discoveries, which are not those objects properly intended for protection under the express statutory requirements of the Antiquities Act.

58. The issuance of said Presidential Proclamations on December 1, 1978, further violates the doctrine of separation of powers between the Executive Department and the Congress, because the President's unilateral executive actions withdrawing national monuments enter an area of decision-making which Congress has expressly reserved to itself in Section 17(d)(2) of ANCSA, 43 U.S.C. § 1616(d)(2), when it provided that lands withdrawn under it are withdrawn from "all forms of appropriation under the public land laws." (emphasis added).

INJURY TO PLAINTIFF

59. Prior to December 1, 1978, plaintiff had filed land selection applications and identifications for selection for an amount of land completing plaintiff's land grant entitlement under Section 6 of the Statehood Act.

60. The Presidential Proclamations preserve plaintiff's land selection rights only with respect to tentatively approved

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lands or selections which the Secretary has previously recognized, including those in the 1972 Memorandum of Understanding. Approximately nine million acres of state land selections are contained within National Monument boundaries, and upon information and belief plaintiff asserts that defendants intend to reject those land selections which are within National Monument boundaries.

61. Denial of plaintiff's land selections violates plaintiff's vested rights under the Statehood Act.

62. WHEREFORE, plaintiff prays as to its Third Cause of Action that this Court grant the following relief:

a. That this Court enter an order declaring that the National Monuments created in Alaska on December 1, 1978, by Presidential Proclamation are unlawful under the Antiquities Act as it may apply to lands in Alaska which have been selected by the State pursuant to the Statehood Act;

b. That this Court enter an order declaring each of the Alaska National Monuments proclaimed on December 1, 1978 to be null and void because the President unlawfully exercised executive power not delegated to him under the Antiquities Act;

c. In the alternative, that this Court enter an order declaring null and void those portions of said Monuments which reserve land to protect items or subjects not under the purview of the Antiquities Act;

d. In the alternative, that this Court issue an order reducing the size of said Monuments to those minimum sizes that properly conform to the requirements of the Antiquities Act;

e. That this Court enter an order declaring that the Proclamations creating National Monuments in Alaska on December 1, 1978 constitute an arbitrary and capricious

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act and abuse of Presidential authority, and invalidate or otherwise make void and ineffective said Proclamations;

f. In the alternative, to the extent that the boundaries of said National Monuments have been arbitrarily and capriciously drawn, that this Court order and declare that those improperly included portions of the National Monuments are void and of no effect;

g. That this Court enter an order declaring invalid the Presidential Proclamations creating said National Monuments on December 1, 1978, because the President's actions violate the doctrine of separation of powers, by usurping the authority reserved to Congress in Section 17(d)(2) of ANCSA to determine the ultimate disposition of these lands, and as they conflict with plaintiff's land selection rights under the Alaska Statehood Act.

h. That this Court declare the Proclamations of December 1, 1978 to be invalid and of no force or effect because the lands encompassed in the purported Monuments were not, pursuant to Section 17(d)(2)(A), subject to any form of appropriation under any of the public land laws, including the Antiquities Act.

i. This Court enter such additional orders as it may deem necessary to afford plaintiff compelte relief as prayed for in this Third Cause of Action.

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VIII.

FOURTH CAUSE OF ACTION: NATIONAL MONUMENTS MAY NOT BE PROCLAIMED ON CONGRESSIONALLY DESIGNATED NATIONAL FOREST LANDS

63. Plaintiff realleges and incorporates herein every assertion set forth in paragraphs 1 through 62 in this Complaint.

64. Proclamations 4611, 4618 and 4623 were signed by the President on December 1, 1978, and published in the Federal Register on December 5, 1978.

65. The lands described in the above-mentioned Proclamation are part of the Tongass National Forest, which was created pursuant to a series of executive reservations made under the Organic Act of 1897, 16 U.S.C. § 481.

66. On October 22, 1976, Congress revised the National Forest Management Act of 1976 (hereinafter referred to as the "Forest Management Act"), by enacting 16 U.S.C. §§ 1601, et seq., which amended the Forest Rangeland Renewable Resources Planning Act of 1974, 16 U.S.C. §§1601 et seq.

67. Said Acts consolidated laws governing the National Forest System in order to define and permanently reserve lands for the National Forest System, to dedicate all lands reserved in the National Forests to the principles and goals set forth in the Multiple Use-Sustained Yield Act of 1960, 16 U.S.C. §§ 528, et seq., and to give the U.S. Forest Service specific legislative

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directives to implement the concept of multiple use and sustained yield in the nation's national forests.

68. The last sentence in Section 9(a) of the Forest Management Act, 16 U.S.C. § 1609(a), specifically provides:

> Notwithstanding the provisions of the Act of June 4, 1897, no land now or hereafter reserved or withdrawn from the public domain as national forest pursuant to the Act of March 3, 1891, or any act supplementary to and amendatory thereof, shall be returned to the public domain except by an Act of Congress.

The above section repealed previous laws which had permitted lands to be removed from a National Forest System by executive order, and requires an Act of Congress to remove public lands from the management system Congress has mandated for the National Forest System.

69. The Forest Management Act also gave the U.S. Forest Service specific authority to harvest the forest lands under the Multiple-Use Sustained Yield Act of 1960, in the enactment of 16 U.S.C. § 1604(f). Passage of the Forest Management Act further affirmed the principles of multiple use-sustained yield and specifically defined and dedicated all lands in the National Forest System to those principles.

70. Upon passage of the Forest Management Act, the lands later described in Presidential Proclamations 4611, 4618 and 4623 were dedicated by Congress to the principles of multiple use-sustained yield, and absent an Act of Congress to the contrary, were permanently reserved as units of the National Forest System, to be managed for such purposes.

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71. The above-cited Proclamations were issued pursuant to authority claimed by the President under the Antiquities Act. Under the constitutional doctrine of separation of powers, such executive authority is powerless to change the status or management of such lands, since Congress has required that only an Act of Congress can do so.

72. The President, in proclaiming these National Monuments from land reserved as part of the Tongass National Forest, has acted beyond the legal bounds of executive authority delegated to him under the Antiquities Act because the creation of such national monuments contravenes Congress' specific requirement that lands in the National Forest System be managed for multiple use and sustained yield. The purposes and land management policies applicable to these three purported National Monuments, under the Antiquities Act, are and will continue to be, by regulation, different from those covering these same lands as mandated in the Forest Management Act.

73. The President's actions constitute an arbitrary and capricious act and an abuse of discretion because he has reclassified land for single use, where such land was required by Congress to be managed under the principles of multiple use and sustained yield.

INJURY TO PLAINTIFF

74. The creation of National Monuments out of the Tongass National Forest adversely affects the State of Alaska and its people in the following ways, among others:

a. The restricted use classification under the Antiquities Act purports to withdraw from possible selection by plaintiff approximately four million acres of land, some of which may have been subject to selection by the State pursuant to Section 6(a) of the Statehood Act;

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b. The restricted use classification of the lands described in Proclamations 4611, 4618, and 4623 removes, or will remove, said land from multiple-use management policies and will otherwise restrict uses, including the harvest of timber on these lands, thereby adversely affecting individual businesses and residents of Alaska who directly or indirectly depend on the timber industry for their livelihood;

c. The restricted-use classification further prohibits the removal or management of other natural resources on these lands, including minerals and fish, thus adversely affecting many residents of Alaska who depend on related industries for their livelihood.

d. The restricted-use classification and rules governing National Monuments threatens the continuation of numerous lawful commercial enterprises within the boundaries of those National Monuments, including hunting lodges, hunting and fishing guides, trappers, and other commercial enterprises;

75. WHEREFORE plaintiff asks that this Court grant the following relief with respect to this Fourth Cause of Action:

a. That this Court declare the National Monuments created pursuant to Proclamations 4611, 4618 and 4623 as null, void and without legal effect for each of the following reasons:

(1) The National Forest Management Act of 1976, 16 U.S.C. §§ 1601, et seq., supercedes the Antiquities Act to the extent that the land cannot be removed from general National Forest Management policies without an Act of Congress;

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(2) The creation of National Monuments in Proclamations 4611, 4618 and 4623 places the lands involved under the jurisdiction of a different regulatory and management scheme, including a use classification which contradicts the will of Congress as adopted in the National Forest Management Act, and thus violates the Constitutional doctrine of separation of powers;

(3) The President's actions in reserving as National Monuments the lands described in Proclamations 4611, 4618 and 4623, pursuant to his claimed authority under the Antiquities Act, constitutes an abuse of executive authority because such actions arbitrarily and capriciously purport to remove land from customary National Forest System management, including an end to the Congressionally-established policy of multiple use and sustained yield with respect to the affected lands, when such actions can only be undertaken by an Act of Congress.

(b) That this Court enter an order declaring that the State land selections made, or to be made, pursuant to Section 6(a) of the Statehood Act on any lands in the Tongass and Chugach National Forests which at the time of selection were otherwise vacant and unappropriated, are valid land selections that cannot be superceded or revoked by the subsequent purported reservation of such lands for National Monuments under the Antiquities Act, 16 U.S.C. §§ 431, et seq.; and

(c) That this Court enter such additional orders as it may deem necessary to afford plaintiff complete relief as prayed for in this Fourth Cause of Action.

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IX.

FIFTH CAUSE OF ACTION: PUBLIC LAND ORDERS PROMULGATED PURSUANT TO SECTION 17(d)(1) OF ANCSA CANNOT LAWFULLY PRECLUDE PLAINTIFF FROM FILING LAND SELECTIONS, NOR RECEIVING PATENT TO SAID LAND

76. Plaintiff realleges and incorporates herein every assertion set forth in paragraphs 1 through 75 in this Complaint.

77. The predecessors of the Secretary of Interior, the current Secretary and other officials of the Department of Interior have issued numerous public land orders with respect to public lands in Alaska pursuant to the authority given the Secretary in Section 17(d)(1) of ANCSA, 16 U.S.C. § 1616(d)(1). This Section provides that the Secretary may use his then-existing withdrawal authority to withdraw public lands in Alaska to protect the public lands, to classify and reclassify such lands, and to open them to appropriation under the public land laws in accordance with the classification of such lands.

78. The public land orders issued by the defendants pursuant to Section 17(d)(1) of ANCSA purported to withdraw the affected lands from Statehood Act selection by the plaintiff. The Section 17(d)(1) public land orders affect more than one half of the vacant, unreserved and unappropriated public land in the State. These public land orders thus have dramatically reduced, and continue to reduce, the amount of land the defendants have left open to plaintiff from which to select.

79. The express language of Section 17(d)(1) of ANCSA only closed lands withdrawn under that section to appropriation under the general public land laws, whereas those lands withdrawn under Section 17(d)(2) of ANCSA were withdrawn by express language which also protected such lands from selection under the Alaska Statehood Act.

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80. To the extent that each public land order promulgated pursuant to Section 17(d)(1) of ANCSA purports to withdraw that land from selection by the plaintiff, those public land orders violated, and continue to violate, plaintiff's vested rights of land selection under the Statehood Act; violated, and continue to violate, the express language of Section 17(d)(1) of ANCSA, 16 U.S.C. § 1616(d)(1); violated, and continue to violate the terms and provisions of the Memorandum of Understanding of 1972; and violated, and continue to violate, the legal intent and purpose of enacting Section 17(d)(1) of ANCSA.

81. If the State is not permitted to select on Section 17(d)(1) lands, the cumulative effect of the Section 17(d)(1) withdrawals, the Section 17(d)(2) withdrawals, and other withdrawals by the Secretary of the Interior have had the effect of denying Alaska its lawful entitlement under the Alaska Statehood Act.

82. The Secretary's public land orders pursuant to Section 17(d)(1), which purport to close land to selection by plaintiff, further violate Sections 6(b) and 6(g) of the Statehood Act because the Secretary lacks the authority to impose such conditions on the land grant contained in the Statehood compact. Section 6(b) of the Statehood Act granted to the State and entitled it to select up to one hundred two million five hundred fifty thousand acres of public land, which was vacant, unappropriated and unreserved at the time of selection. No provision in Section 6(b) conditions such selections on the Secretary's approval.

INJURY TO PLAINTIFF

83. The actions of the defendants alleged in this Cause of Action have directly interfered with and have violated the rights of plaintiff to the land grants vested in the State upon its admission to the United States.

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84. These violations on the part of the defendants have precluded plaintiff from making selections on certain lands, have denied plaintiff title to and use of some or all of said lands, and tax revenues from said lands, and have imposed the risk of loss of its pending selections filed on land still subject to Section 17(d)(1) public land orders.

85. WHEREFORE plaintiff prays as to its Fifth Cause of Action that this Court grant it the following relief:

a. That this Court enter an order declaring that all land selections previously filed by plaintiff, and those land selections to be filed in the future, on public lands withdrawn pursuant to Section 17(d)(1) shall, if otherwise valid, be deemed valid selections of the public lands encompassed by such selections, pursuant to the land grant contained in Section 6 of the Alaska Statehood Act;

b. That this Court enter an order declaring that all identifications for selection filed by plaintiff prior to December 17, 1978, pursuant to Section 17(d)(2)(E) of ANCSA, and all land selections filed by plaintiff after December 17, 1978, on lands formerly within withdrawals made pursuant to Section 17(d)(2)(A) of ANCSA, shall, if such selections are otherwise valid, be deemed effective selections of the public lands encompassed by such selections pursuant to the grant contained in Section 6 of the Alaska Statehood Act;

c. That this Court enter an order declaring that all land selections filed or reaffirmed by plaintiff on Section 17(d)(1)-withdrawn lands after December 17, 1978, on lands described in paragraphs 2, 5, 6, and 8 of the

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Memorandum of Understanding dated September 1, 1972, shall, if such selections are otherwise valid, be deemed effective selections of the public lands encompassed by such selections pursuant to the grant contained in Section 6 of the Alaska Statehood Act;

d. That this Court enter such additional orders as it may deem necessary to afford plaintiff complete relief as prayed for in its Fifth Cause of Action.

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X.

SIXTH CAUSE OF ACTION: PLAINTIFF'S LAND SELECTION RIGHTS UNDER THE STATEHOOD ACT ARE EXEMPT FROM THE WILDERNESS INVENTORY AND REVIEW PROVISIONS OF FLPMA

86. Plaintiff realleges and incorporates herein every assertion set forth in paragraphs 1 through 85 in this Complaint.

87. The Secretary, and the officials of the department, have interpreted the provisions of Sections 201 and 603 of FLPMA, 43 U.S.C. §§ 1711, 1782, so as to apply the requirements of said sections to public lands which have been or may be selected by plaintiff, notwithstanding the specific exemption contained in Section 701(g)(6) of FLPMA at 43 U.S.C. Prec. § 1702.

INJURY TO PLAINTIFF

88. The interpretation placed upon Sections 201 and 603 of FLPMA, as aforesaid, if applied to public lands in Alaska in any manner which would make such lands unavailable for selection by plaintiff or unduly delay approval and conveyance of such selections, now constitutes or will constitute a violation of Section 6 of the Alaska Statehood Act, a breach of the compact between the United States and the people of Alaska, and will violate the express Congressional directive that FLPMA not be used to preclude or otherwise affect land grants made to the states.

89. WHEREFORE, plaintiff prays as to its Sixth Cause of Action that this Court grant it the following relief:

a. That this Court enter an order declaring that Sections 201 and 603 of FLPMA, 43 U.S.C. §§ 1711 and 1782, are not applicable to present and future land selections filed by plaintiff;

b. That this Court enter such additional orders as it may deem necessary to afford plaintiff complete relief as prayed for in its Sixth Cause of Action.

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XI.

SEVENTH CAUSE OF ACTION: DEFENDANTS' FAILURE TO ACT ON PLAINTIFF'S LAND SELECTIONS VIOLATES PLAINTIFF'S RIGHTS UNDER THE STATEHOOD ACT

90. Plaintiff realleges and incorporates herein by reference each and every legal assertion and statement of fact set forth in Paragraphs 1 through 89 of this Complaint.

91. Plaintiff has filed land selections describing certain Federal public lands pursuant to the grants made to it in Sections 6(a) and 6(b) of the Alaska Statehood Act. To date the Secretary has failed and refused to timely adjudicate and approve such land selections, with regard to approximately 36,253,652 acres of land selected by Plaintiff prior to November 14, 1978. The Secretary has further failed to implement an administrative program and to hire sufficient personnel to adjudicate and approve such selections.

92. Plaintiff on November 14, 1978, duly selected and identified for selection certain federal public lands pursuant to the land grant made by Section 6(b) of the Alaska Statehood Act and the authority contained in Section 17(d)(2)(E) of ANCSA. Approximately 33 million acres of those selections and identifications for selection filed November 14, 1978 do not conflict with those National Monuments proclaimed by the President, nor with permanent withdrawals proposed by the Secretary pursuant to Section 204(c) of FLPMA, 43 U.S.C. §1714(c).

93. The Secretary and the responsible Interior Department officials have failed and refused to recognize the validity of such selections and identifications for selection of lands not in conflict with National Monuments and proposed permanent Secretarial withdrawals. The Secretary and the responsible Interior Department officials have further refused to initiate the process of adjudication, tentative approval and patent of such lands.

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INJURY TO PLAINTIFF

94. Plaintiff, upon information and belief, alleges that the Defendants will continue to not take any action regarding the above-described land selections, which is in direct violation of Plaintiff's rights under the Statehood Act.

95. WHEREFORE, Plaintiff prays as to its Seventh Cause of Action that this Court grant the following relief:

a. That this Court enter an Order of Mandamus directing the Secretary and the responsible officials of the Interior Department to immediately adjudicate and issue tentative approval to all land selections filed by Plaintiff under Section 6 of the Alaska Statehood Act and which were pending prior to November 14, 1978;

b. That this Court enter an Order of Mandamus directing the Secretary and the responsible officials of the Interior Department to immediately adjudicate and issue tentative approval to all land selections and identifications filed by plaintiff on November 14, 1978 and which are not in conflict with National Monument designations or proposed permanent withdrawals to be made by the Secretary pursuant to Section 204(c) of FLPMA (43 U.S.C. §1714(c)).

c. That this Court enter such additional orders as it may deem necessary to afford plaintiff complete relief as prayed for in its Seventh Cause of Action.

XII.

EIGHTH CAUSE OF ACTION: DEFENDANTS' PROPOSED EXERCISE OF AUTHORITY UNDER SECTION 22(e) OF ANCSA CANNOT LAWFULLY BE USED TO CREATE NEW WILDLIFE REFUGES

96. Plaintiff realleges and incorporates herein every assertion set forth in paragraphs 1 through 95 in this Complaint.

97. The Secretary and the responsible officials of the Department of the Interior are authorized by Section 22(e) of ANCSA, 43 U.S.C. § 1621(e), to replace, with other public lands, those lands within wildlife refuges existing in 1971 in Alaska which have been or will be conveyed to Native village corporations. Upon information and belief, plaintiff alleges that defendants intend to replace those wildlife refuge lands lost by conveyance to Native village corporations,

a. From public lands elsewhere in Alaska which are neither adjacent to nor in proximity to the affected wildlife refuge;

b. On the basis of the number of acres selected by Native village corporations in existing wildlife refuges, regardless of the actual number of acres each corporation is entitled to receive or the lawfulness of such selections; and

c. On the basis of the total acreage of selections by Native village corporations in wildlife refuges, regardless of the actual number of acres conveyed in fact to such corporations.

98. The above-alleged actions by the Secretary and the responsible officials of the Department of Interior will constitute a violation of the requirements and purposes of Section 22(e) of ANCSA.

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INJURY TO PLAINTIFF

99. To the extent that such actions by the Secretary and the responsible officials of the Department of Interior preclude or supercede land selections by the plaintiff, those actions contravene plaintiff's rights to land grants which were vested in plaintiff under the Statehood Act and were recognized in ANCSA, and are therefore unlawful.

100. Such actions by the Secretary and the responsible officials of the Department of Interior as alleged herein, if otherwise lawful, constitute "major federal actions" within the meaning of NEPA.

101. WHEREFORE, plaintiff prays for the following relief under this Cause of Action:

a. That this Court enter an order enjoining the Secretary and officials of the Department of the Interior from implementing Section 22(e) of ANCSA in the manner set forth in the "Environmental Supplement", in the Secretary's public statements, and as alleged in this cause of action.

b. That this Court enter an order declaring that any action proposed to be taken by the Secretary and the responsible officials of the Department of the Interior, or either of them, pursuant to Section 22(e) of ANCSA shall conform to the following requirements:

(1) Refuge replacement lands shall be designated from public lands adjacent to, or in proximity to, the wildlife refuge whose lands require replacement;

(2) Refuge replacement lands shall be designated on an acre-for-acre basis for those wildlife refuge lands which are actually conveyed to Native village corporations from time to time.

c. That this Court enter an order reinstating plaintiff's land selection rights as to any lands withdrawn pursuant to Section 22(e) of ANCSA which were withdrawn by the Secretary under the erroneous interpretation of statutory authority and intention as alleged herein.

d. That this Court enter an order declaring that any action taken by the defendants to implement Section 22(e) of ANCSA, if otherwise lawful, shall constitute a "major federal action" within the meaning of NEPA.

e. That this Court enter such additional orders as it may deem necessary to afford plaintiff complete relief as prayed for in this Cause of Action.

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XIII.

NINTH CAUSE OF ACTION: DEFENDANTS HAVE BREACHED THE PROVISIONS OF THE 1972 MEMORANDUM OF UNDERSTANDING

102. Plaintiff realleges and incorporates herein every assertion set forth in paragraphs 1 through 101 inclusive in this Complaint.

103. The named Department of the Interior defendants have taken, or have failed to take, certain actions more specifically alleged herein which constitute a breach of the Memorandum of Understanding of 1972 which was executed by the predecessor of the Secretary and the Governor of Alaska in settlement of the lawsuit brought by the State and more particularly described in the Statement of Facts.

104. The Memorandum of Understanding of 1972 provided that the defendants would recognize plaintiff's Statehood Act selection of certain lands which were then withdrawn for Native selection pursuant to Section 11(a) of ANCSA, 16 U.S.C. § 1610(a), and other lands previously open to plaintiff for land selection, but which the defendants had refused to recognize before the settlement.

105. Subsequent to the execution of the Memorandum of Understanding, the Secretary and officials of the Department of the Interior have failed to take necessary actions to comply with the terms of the Memorandum of Understanding. Specifically, the defendants have failed to make certain lands available for selection by plaintiff, due to defendants' failure to promptly convey validly-selected lands to Native corporations and defendants' failure to require the Native corporations to place priorities on land selections and to reduce selections in excess of entitlement. As a result of defendants' failure to act, the lands described in the 1972 Memorandum of Understanding have not been made avail-

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to the plaintiff for selection promptly upon completion of Native corporation selections on December 18, 1975, in contravention of the express provisions in the Memorandum of Understanding.

106. After the filing of this lawsuit, the defendants have, upon information and belief, taken certain steps to make some, but not all, of the above-described lands available to plaintiff. To the extent that the defendants refuse to recognize plaintiff's land selections on lands described in the 1972 Memorandum of Understanding which are in excess of lawful selections by Native Corporations, plaintiff alleges that the defendants continue to violate the 1972 Memorandum.

INJURY TO PLAINTIFF

107. As a result of the failure of the defendants to act as alleged in the foregoing paragraphs, plaintiff's land selection rights under Section 6 of the Statehood Act, and which were recognized by predecessors of the defendants in the 1972 Memorandum of Understanding, have been precluded and delayed.

108. Each of defendant's failures to immediately make certain land available to plaintiff and to convey otherwise valid selections as required by the Memorandum of Understanding of 1972 constitutes a separate and independent breach of the Memorandum of Understanding and a separate and independent violation of plaintiff's vested rights to its land grant under Section 6 of the Statehood Act.

109. WHEREFORE, plaintiff asks this Court to grant the following relief with respect to this cause of action:

a. That this Court enter an order declaring that defendants have violated the provisions of the 1972 Memorandum of Understanding and have violated plaintiff's land selection rights under the Alaska Statehood Act.

b. That this Court order and direct the defendants to take all steps necessary and to act expeditiously to place the defendants in full compliance with the provisions

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of the Memorandum of Understanding and to recognize those land selections made by plaintiff.

c. That this Court enter such additional orders as it may deem necessary to afford plaintiff complete relief as prayed for in its Ninth Cause of Action.

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XIV.

TENTH CAUSE OF ACTION: DEFENDANTS' FAILURE TO PROMPTLY CONVEY NATIVE LANDS AND FAILURE TO REJECT NATIVE OVERSELECTIONS UNDULY IMPEDES PLAINTIFF'S SELECTION RIGHTS

110. Plaintiff realleges and incorporates herein every assertion set forth in paragraphs 1 through 109 in this Complaint.

111. ANCSA requires the Secretary and the other named Interior Department agents to immediately convey to eligible Native village and regional corporations those lands validly selected by them in fulfillment of their respective land entitlements pursuant to Sections 14(a), (b), and (e) thereof, 43 U.S.C. §§ 1613, et seq., among others.

112. ANCSA further directs the Secretary to make public lands in Alaska available for selection and identification by plaintiff pursuant to Sections 11 and 17 of ANCSA, 43 U.S.C. §§ 1610, 1616, among others, which lands are comprised of lands not withdrawn under Section 17(d)(1) or Section 17(d)(2)(A) of ANCSA, withdrawn lands in even-odd, odd-even townships, and lands not validly selected by Native village and regional corporations.

113. The Secretary and the responsible Interior Department officials have permitted the Native village and regional corporations to file land selection applications describing lands which far exceed the land entitlements and overselection allowances permitted for fulfillment of lawful entitlements of the respective regional and village corporations.

114. The filing of a land selection application by a regional or village corporation, under current departmental regulations, acts to segregate that land from appropriation under the public land laws and from selection by the plaintiff. Said segregation remains in effect until the land selection application is withdrawn or rejected.

115. The defendants have failed to expeditiously approve and convey the land selections filed by the regional and village corporations. The defendants have further failed to exercise their statutory and regulatory authority to reduce, reject and adjudicate excess Native land selections and as required by the policy decisions announced by the Secretary on March 6, 1978.

INJURY TO PLAINTIFF

116. Plaintiff has been prevented and unduly delayed, by the Secretary's actions and omissions as alleged, from exercising its valid land selection rights granted it by the Alaska Statehood Act and guaranteed to it by ANCSA, with respect to several million acres of Federal lands which are subject to land selection application filed by Native corporations far in excess of their respective entitlements.

117. WHEREFORE plaintiff prays as to its Tenth Cause of Action that this Court grant the following relief:

a. That this Court enter an Order declaring that, until the Secretary conveys validly-selected lands to Native village and regional corporations in fulfillment of their entire respective entitlements, or until the Secretary requires prioritizing, reduction and rejection of all excess Native corporation selections and selection applications to an amount of acreage not greater than 125 per cent of the total remaining land entitlement of each Native corporation which has not been conveyed to it by interim conveyance or patent, whichever first occurs, all land selection applications filed or filed in the future by plaintiff upon any such lands shall, if otherwise valid, be considered valid selections of such lands, subject only to conveyance

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of such lands to the Native Corporation whose land selection predated plaintiff's land selection.

(b) That this Court order the Secretary to immediately implement the policy decisions announced by the Secretary on March 6, 1978, regarding Native overselections under ANCSA.

(c) That this Court enter such additional orders as it may deem necessary to afford plaintiff complete relief as prayed for in its Tenth Cause of Action.

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XV.

ELEVENTH CAUSE OF ACTION: THE DEFENDANTS' ACTIONS UNDER SECTION 204 OF FLPMA TO REVOKE, REJECT OR PRECLUDE PLAINTIFF'S LAND SELECTIONS IN EXCESS OF THEIR AUTHORITY

118. Plaintiff realleges and incorporates herein every assertion set forth in paragraphs 1 through 117 in this Complaint.

119. The Secretary has in the past and will continue to exercise authority purportedly derived from Section 204 of FLPMA, 43 U.S.C. § 1714, to preclude plaintiff from exercising its land selection rights under Section 6 of the Alaska Statehood Act.

120. Plaintiff has filed with the Secretary certain land selections, and identifications for selection, the total acreage of which will fulfill plaintiff's Statehood Act Section 6(b) entitlement. Approximately 41 million acres of said land selections and identifications for selection were filed on November 14, 1978.

121. On and after November 16, 1978, the Secretary exercised authority claimed under Section 204(e) of FLPMA to promulgate Public Land Order 5653, as amended by Public Land Order 5654, which Orders purport to withdraw approximately 110 million acres of public land from selection under Section 6 of the Statehood Act.

122. Plaintiff, upon information and belief, alleges that to the extent its land selections made on or before November 14, 1978 conflict with P.L.O. 5653 and P.L.O. 5454 the defendants will refuse to recognize and will reject those selections.

123. Any action by defendants to refuse to recognize all of plaintiff's land selections filed on or before November 14, 1978 exceeds the Secretary's authority under FLPMA or any other law, and is therefore unlawful, for the following reasons, among others:

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a. The Secretary has no independent discretion to disapprove land selections filed by plaintiff pursuant to Section 6(b) of the Statehood Act, nor any independent authority under FLPMA to appropriate or reserve land in any manner which would deny plaintiff's rights to validly select lands under Section 6(b) of the Statehood Act.

b. Public Land Order 5653 makes an emergency withdrawal of the described lands, subject to valid existing rights. All of plaintiff's pending land selections and identifications for selection constitute valid existing rights and the Secretary cannot revoke them by exercise of his withdrawal powers under FLPMA;

c. The Secretary's Section 204(e) withdrawal which purports to preclude plaintiff from filing land selections or obtaining approval of pending selections is of no legal effect because Section 701(g)(6) of FLPMA exempts state land grants from the provisions of FLPMA.

d. Public Land Orders 5653 and 5654 purport to invoke an emergency withdrawal where in fact no emergency existed since the lands were protected at the time by existing withdrawals, and because conclusory statements regarding the existence of an emergency by a U.S. Representative or by the Secretary, with no basis in fact, are legally insufficient to support such a withdrawal.

e. Any action taken pursuant to § 204(e) is null and void because this section violates the Constitutional doctrine of separation of powers between the executive and legislative branches of the United States Government.

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124. The Secretary has announced that he intends to use his withdrawal authority under Section 204 of FLPMA to effect 20-year withdrawals of federal lands not already designated as new National Monuments or additions thereto, from those lands which were described in Public Land Order 5653, as stated previously in this Complaint. To the extent that such withdrawals may be claimed to preclude, revoke, deny or otherwise delay plaintiff's pending and future Statehood Act selections, said withdrawals exceed the Secretary's lawful authority and violate Section 701(g)(6) of FLPMA.

INJURY TO PLAINTIFF

125. By virtue of the Secretary's unlawful application of Section 204 of FLPMA, plaintiff will be denied its land grant rights under the Alaska Statehood Act.

126. WHEREFORE, plaintiff requests that this Court grant the following relief:

a. That this Court enter an order declaring that to the extent that Public Land Orders 5653 and 5654 purport to preclude plaintiff from filing valid land selections, such orders are null, void, and without legal effect;

b. That this Court enter an order declaring that plaintiff's land grants have vested under Section 6 of the Statehood Act and are saved from revocation or denial by Section 701(g)(6) of FLPMA;

c. That the Court enter an order declaring plaintiff's land selections or identifications for land selection to be valid existing rights;

d. That this Court declare that any withdrawal order previously issued by the Secretary pursuant to authority claimed under Section 204 of FLPMA, 43 U.S.C. § 1714, and particularly under Subsections (b), (c), and (e) thereof, are null, void, and of no effect as they may be claimed to apply to existing or future land selections by plaintiff.

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e. That this Court enter an order declaring Public Land Order 5653, as amended by Public Land Order 5654, is null and void because the Secretary has failed to establish that an emergency existed on November 16, 1978;

f. That this Court enter an order declaring that Section 204(c) of FLPMA, 43 U.S.C. § 1714(c), as implemented by the Secretary, violates the Constitutional doctrine of separation of powers between the executive and legislative branches of government.

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XVI.

TWELFTH CAUSE OF ACTION: VALID EXISTING RIGHTS

126. Plaintiff realleges and incorporates herein every assertion set forth in paragraphs 1 through 125 in this Complaint.

127. As of December 1, 1978, plaintiff had filed land selections or identifications for land selections which, upon conveyance, will complete the State's land grant entitlement under Section 6(b) of the Statehood Act.

128. The Presidential Proclamations, Numbers 4611 through 4627, signed by the President on December 1, 1978, provide that the establishment of each National Monument is "subject to valid existing rights".

129. Plaintiff's pending land selections under Section 6(b) of the Alaska Statehood Act are "valid existing rights" within the meaning of the Presidential Proclamations.

INJURY TO PLAINTIFF

130. Approximately nine million acres of plaintiff's land selections or identifications for land selection lie within the boundaries of the National Monuments created December 1, 1978.

131. Plaintiff, upon information and belief, alleges that the defendants will reject or refuse to convey said land selections despite the recognition of valid existing rights in each of the Proclamations.

132. WHEREFORE plaintiff asks this Court to grant it the following relief:

a. That this Court enter an order declaring all plaintiff's land selections and identifications for land selections filed on or before November 30, 1978 to be valid existing rights, and that they are not defeated by the National Monument withdrawals;

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b. That this Court enter an order directing the defendants to timely and expeditiously approve and convey plaintiff's land selections and identifications for selection without regard to claimed conflicts with National Monument boundaries; and

c. That this Court enter such additional orders as it may deem necessary to afford Plaintiff complete relief as prayed for in this Twelfth Cause of Action.

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XVII.

THIRTEENTH CAUSE OF ACTION: ANTIQUITIES ACT PROCLAMATIONS PRECLUDED BY SECTION 17(d)(2)(A) OF ANCSA

133. Plaintiff realleges and incorporates herein every assertion set forth in paragraphs 1 through 132 in this Complaint.

134. Section 17(d)(2)(A) of ANCSA directs the Secretary to withdraw "from all forms of appropriations under the public land laws" up to 80 million acres in Alaska, pending Congressional Resolution of the permanent status of the lands or until December 18, 1978, whichever was sooner.

135. Approximately 80 million acres were in fact withdrawn pursuant to this Subsection.

136. On December 1, 1978, the President of the United States by Proclamation under the Antiquities Act withdrew approximately 56 million acres into National Monuments from lands already withdrawn by the Secretary under Section 17(d)(2)(A).

137. The Antiquities Act is a public land law of the United States and the designation of National Monument lands by the President is a "form of appropriation" not permitted by Section 17(d)(2)(A).

INJURY TO PLAINTIFF

138. As a result of the withdrawals for National Monuments wrongfully made by the President of the United States on December 1, 1978, the plaintiff has been denied certain uses of those lands and the ability to select and receive title to the lands chosen by the plaintiff pursuant to the Alaska Statehood Act that conflict with the National Monuments designated by the President, and has suffered certain other injuries.

139. WHEREFORE plaintiff prays as to its Thirteenth Cause of Action that this Court grant it the following relief:

a. That this Court enter an order declaring the Presidential Proclamations of December 1, 1978, purportedly creating the Alaska National Monuments in question, to be null and void, without force and effect, and otherwise invalid;

b. That this Court enjoin the President and the Department of Interior from taking any course of action, issuing any order, promulgating any regulations, or undertaking any other activities purporting to treat the designated National Monument areas under the requirements of the Antiquities Act, and ordering the Secretary to re-establish and continue prior use regulations;

c. That this Court enter such additional orders as it may deem necessary to afford plaintiff complete relief as prayed for in its thirteenth [illegible] of Action.

XVIII.

FOURTEENTH CAUSE OF ACTION: COSTS AND FEES

140. Plaintiff realleges and reincorporates herein by reference every assertion set forth in paragraphs 1 through 139 of this Complaint.

141. Plaintiff has incurred certain costs and fees in the filing of this action.

142. WHEREFORE plaintiff prays as to its Fourteenth Cause of Action that this Court enter an order awarding it costs and fees against defendants, and each of them.

DATED at Anchorage, Alaska this _____ day of January, 1979.

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

STATE OF ALASKA, Plaintiff, v. JAMES EARL CARTER, President of the United States, et al., Defendants.	NO. A78-291 Civil FEDERAL DEFENDANTS' OPPOSITION TO THE MUNICIPALITY'S MOTION TO INTERVENE AS PARTY PLAINTIFF

Federal defendants oppose the motion of the Municipality of Anchorage, (hereinafter "Anchorage") to intervene in the above-captioned action. They submit that Anchorage does not meet the requirements for intervention of right set forth in F.R.Civ. P. 24(a), and that Anchorage has likewise failed to present circumstances justifying permissive intervention under F.R.Civ. P. 24(b).

The Ninth Circuit has established a four-pronged test which must be satisfied for intervention under F.R.Civ.P. 24(a)(2). The applicant must have a cognizable interest in the subject matter of the action; the applicant's interest must be impaired by a disposition of the action without its intervention; the applicant's interest cannot be adequately represented by existing parties;

1/ Rule 24(a)(2) F.R.Civ.P. provides: "(a) Intervention of Right. Upon timely application anyone shall be permitted to intervene in an action: . . . (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practial matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties."

and the application for intervention must be timely. Blake v. Pallan, 554 F.2d 947, 951 (9th Cir. 1977); Stockton v. United States, 493 F.2d 1021, 1023 (9th Cir. 1974).

Anchorage argues that its alleged interests in the property which is the subject matter of this action are threefold. It claims an interest in lands within the Chugach Forest; it seeks to assert, in the capacity of parens patriae, the interests of its residents in federal lands throughout Alaska; and it claims a pecuniary interest in properties within its boundaries which it taxes, which, it alleges, will be affected by the outcome of this lawsuit. Federal defendants maintain that to the extent Anchorage possesses sufficient and affected interests for purposes of F.R.Civ.P.24(a)(2), those interests are adequately represented by the existing parties.

Specifically, Anchorage first asserts that, under Section 6(a) of the Alaska Statehood Act, 48 U.S.C. Prec. §21, and AS 29.18.210 et seq, it possesses a cognizable interest in those portions of the Chugach National Forest which lie within its boundaries. However, neither act grants to Anchorage an enforceable right to lands within the National Forest. Anchorage possesses nothing more than a mere expectancy with respect to said lands. Section 6(a) only provides the State a quantity grant of 400,000 acres which it may select for community purposes from National Forest lands throughout the State. Nothing in Section 6(a) of the Statehood Act prevents the State of Alaska from selecting its entitlement thereunder from lands entirely outside the boundaries of Anchorage. Furthermore, nothing in Section 6(a) requires the State to make Section 6(a) lands available to local governments for their selection. Under the terms of Section 6(a) and AS 29.18.210 et seq., the State could conceivably select lands in the Chugach National Forest within Anchorage's boundaries, and then include them in the state park system if it deems that use would be in the State's best interests, rather than making the lands

available for Anchorage's selection. AS 29.18.210 sets state policy regarding municipal land selection of State lands, but it is not a "grant" of land to Municipalities, and ultimately it leaves final land allocation determinations to the State. 2/

Anchorage claims its purported property interest in National Forest lands is "beneficial". However, it admits that there is no "trust document" delineating its rights, or defining the State's alleged duties. Since neither Section 6(a) nor AS 29.18.210 grants Anchorage any enforceable rights of a legal or equitable nature, Anchorage has simply not established the existence of a trustee-beneficiary relationship between the State and itself. Moreover, if such a fiduciary relationship exists, the trustee (Alaska) would be entitled to represent the interests of its beneficiary (Anchorage) in this action, precluding intervention of right by Anchorage. Peterson v. United States, 41 F.R.D. 131,133 (D.Minn. 1966); Kind v. Markham, 7 F.R.D. 265 (S.D.N.Y 1945). Anchorage's arguments regarding the adequacy of the State's representation with respect to this issue belies its claims of a trust relationship, since if the latter obtained the interests of the State and Anchorage would be identical.

Given the speculative nature of Anchorage's interest in National Forest lands, federal defendants submit that said interest is insufficient to support intervention of right. While Anchorage's ability to obtain National Forest lands might conceivably be

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2/ AS 29.19.210(a) provides: "(a) Consistent with the best interests of the state, if a municipality does not contain and cannot reasonably acquire sufficient nonfederal land within its boundaries to meet its legitimate needs for public or private settlement or development, it shall be the policy of the state to select federal land reasonably necessary to meet the needs of the municipality and to make the land selected available to the municipality under AS 38.05.315 or (b) of this section."
The phrase "consistent with the best interests of the state" has been interpreted to mean in the context of the previous Municipal Selection Act, AS 29.18.190, that the State has the discretion to reject a municipal government's selection of land within its boundaries, when the State determines it would be in its own best interests to do so. North Slope Borough v. LeResche, 581 P.2d 1112,1115 (Alaska 1978). The same reasoning applies to the newly enacted §210. Thus AS 29.18.210 provides Anchorage with no more than an expectancy with respect to Section 6(a) lands.

affected by the outcome of the litigation, the Court of Appeals requires more to justify intervention under F.R.Civ.P. 24(a)(2). Spangler v. Pasadena City Bd. of Education, 427 F.2d 1352, 1354 n.3 (9th Cir. 1970), cert. denied, 402 U.S. 943 (1971).

Furthermore, the only interests in National Forest land which will be directly affected by the outcome of the litigation are the State's, and they are already a party to the action. Anchorage has not asserted that the State has not had adequate representation of counsel in this regard. 3/ Since Anchorage's interests here derive solely from the State, Anchorage should be bound by the State's litigation of this issue, and accordingly, intervention on this issue should be denied.

Anchorage's Seventh Claim for Relief is the sole claim asserted by Anchorage which relates to lands which lie within the Chugach National Forest. If the Court should find that Anchorage's interest in National Forest lands is sufficient to justify intervention of right and the circumstances otherwise justify such intervention, federal defendants urge that intervention be limited to the Seventh Claim for Relief as set forth in the proposed Complaint.

The second interest claimed by Anchorage for purposes of intervention under F.R.Civ.P. 24(a)(2) is the combined interests of its citizens in the outcome of the suit, which it seeks to assert as parens patriae. Acknowledging that the State already purports to represent those same individuals in this suit in its role as parens patriae of all Alaskans, Anchorage nevertheless argues that it also has the prerogative of representing those individuals in that capacity. The abstract question of whether Anchorage has the constitutional power to represent its citizens in litigation as

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3/ Anchorage does assert that the State's concern over the issue may be minimal, because Anchorage believes any benefits arising from successful litigation of the issue will inure to itself, not the State. However, federal defendants dispute this premise, as explained supra.

parens patriae is not determinative of whether it can intervene of right in their behalf in this lawsuit.

Anchorage has not demonstrated that the State's representation of the interests of the citizens of Anchorage is inadequate for purposes of F.R.Civ.P. 24(a)(2). It has not pointed out any concrete differences between the interests of its citizens and those of the citizens of the State as a whole with respect to this suit. Its argument that the Alaska Constitution recognizes regionalized interests by the authorization of local governments is irrelevant. That the political views of Mayor Sullivan and Governor Hammond may differ is also irrelevant. Anchorage's proposed Complaint, with the exception of its Seventh Claim for Relief, does not purport to vindicate regionalized interests. Neither does the State's Complaint.

Even if Anchorage showed that differences exist between the interests of its citizens and the interests of all Alaskans with respect to the outcome of this litigation, the existence of those differences per se would not demonstrate a lack of adequate representation. Blake v. Pallan, 554 F.2d at 954. Three factors must be considered in determining whether Anchorage has met its burden of showing the State does not adequately represent the interests of its citizens. They are:

> (1) Are the interests of the present party in the suit sufficiently similar to that of the absentee such that the legal arguments of the latter would undoubtedly be made by the former; (2) is that present party capable and willing to make such arguments; and (3) if permitted to intervene, would the intervenor add some necessary element to the proceedings which would not be covered by the parties in the suit? 554 F.2d at 954-55.

Anchorage cites United States v. Reserve Mining Co., 56 F.R.D. 408, 412-15 (D.Minn. 1972) on the issue of the burden of persuasion with respect to adequacy of representation. However, in this circuit, it is clear that the party seeking intervention bears that burden. Blake v. Pallan, 554 F.2d at 954. Anchorage has utterly failed to demonstrate with respect to the three factors listed above that the State's representation is inadequate. Therefore, its intervention in parens patriae should be denied.

The third alleged interest Anchorage seeks to protect is its own financial interest in preserving its tax base. Anchorage argues that the properties it taxes are owned by individuals and businesses whose taxable incomes are affected by the availability of federal lands for utilization by said individuals and businesses. In essence, Anchorage contends that if plaintiffs do not prevail in this suit, its tax base will be diminished. However, Anchorage fails to support this contention by more than vague and speculative allegation. It has proffered no evidence that its tax base is affected by the availability of federal lands. Nor has it provided proof or discussion showing that plaintiffs' success in this suit will enhance or maintain its tax base.

Furthermore, the interest Anchorage seeks to protect is not sufficient to justify intervention of right. Anchorage argues that its residents are akin to the "consumers" whose interests were represented by the State of California in intervention in Cascade Natural Gas Corp. v. El Paso Natural Gas Co. 386 U.S. 129 (1967). However, this argument does not obtain where Anchorage seeks to protect its own pecuniary interests. Moreover, the Ninth Circuit has construed Cascade narrowly and has limited its holding to the specific facts of that case. Blake v. Pallan, 554 F.2d at 954; Spangler v. Pasadena City Bd. of Education, 427 F.2d at 1354 n.3. The financial interests the Municipality seeks to protect here are more tenuous and speculative than those asserted in Cascade, being one-step removed of the "consumer" interests of Anchorage

residents, whose financial interests, in turn, are likewise more tenuous and speculative than those asserted in Cascade. A fortiori, the interests asserted here are insufficient. Furthermore, their impairment has not been demonstrated, and therefore the third prong of the Ninth Circuit test has not been met.

Anchorage has also failed to meet the fourth prong of that test, for it has failed to demonstrate how the plaintiffs' litigation of this suit will not protect the general economic interests of it and its citizens, in light of the criteria utilized in this circuit. The general economic interests of the State and all Alaskans are sufficiently similar to those of Anchorage and its residents that legal arguments of the latter will undoubtedly be made by the former. In fact, since the State enjoys the dual role of (1) protector of its citizens' economic interests and (2) holder of legal rights to land entitlements under the Statehood Act which will be determined by the outcome of this litigation, it has a far greater interest than Anchorage in actively pursuing this suit. Anchorage has, in addition, failed to demonstrate that it will add "some necessary element to the proceedings which would not be covered by the parties in the suit," Blake v. Pallan, 554 F.2d at 955, with respect to its interests in insuring that federal lands in Alaska serve as "a major industry supporting Anchorage and its residents." (Municipality's Memo of Points and Authorities in Support of Motion to Intervene, p.8). For the foregoing reasons, the federal defendants urge the Court to deny in its entirety Anchorage's request for intervention under F.R.Civ.P. 24(a)(2).

Anchorage has also requested permission to intervene under F.R.Civ.P. 24(b). If there is no right to intervene under F.R.Civ.P. 24(a), intervention under F.R.Civ.P. 24(b) is wholly discretionary with the Court, even though there may be a common question of law or fact, or the requirements of F.R.Civ.P. 24(b) are otherwise satisfied. 7A Wright & Miller, Federal Practice & Procedure § 1913 p. 551 (1973).

With the exception of the claims based upon the National Environmental Policy Act, Anchorage has no enforceable rights to litigate in this action. The remaining issues in the suit concern grants and withdrawals of lands in which Anchorage possesses no legal or equitable interest. Its role as a party in parens patriae has already been assumed by the State. Representation of the same interests by two separate parties will impose an undue burden on other parties in the action, as well as to the Court. It will unduly cloud the issues, and make more complex what is already a very complex suit. The intervention of another party will undoubtedly hinder future settlement negotiations, 4/ and therefore hinder resolution of this controversy. Moreover if Anchorage is permitted to intervene, other local governments will be encouraged to seek intervention, rendering the litigation entirely unmanageable. Therefore, federal defendants respectfully request that Anchorage's request for permissive intervention be denied. Federal defendants would not object to the participation of Anchorage in this action as amicus curiae, and suggest that the role of amicus would be more appropriate under the circumstances.

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4/ Anchorage's Memorandum In Support clearly indicates that Anchorage may wish to take a different posture with respect to certain issues than the State, for essentially political issues.

CERTIFICATE OF SERVICE BY MAIL

STATE OF ALASKA, et al.,

v.

JAMES EARL CARTER, et al.

No. A78-291 Civil

The undersigned hereby certifies that she is an employee in the Office of the United States Attorney for the District of Alaska and is a person of such age and discretion as to be competent to serve papers.

That on February 5, 1979 she served a copy of the attached: Federal Defendants' Opposition To The Municipality's Motion To Intervene As Party Plaintiff

by placing said copy in a postpaid envelope addressed to the person(s) hereinafter named, at the place(s) and address(es) stated below, which is/are the last known address(es), and by depositing said envelope and contents in the United States Mail at Anchorage, Alaska.

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STATE OF ALASKA

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

AT ANCHORAGE

STATE OF ALASKA, Plaintiff, vs. JAMES EARL CARTER, President of the United States, in his official capacity; CECIL D. ANDRUS, Secretary of the Interior, in his official capacity; ROBERT HERBST, Assistant Secretary of the Interior for Fish and Wildlife and Parks, in his official capacity; GUY R. MARTIN, Assistant Secretary of the Interior for Land and Water Resources, in his official capacity; FRANK GREGG, Director, Bureau of Land Management, in his official capacity; CURTIS V. McVEE, Alaska State Director, Bureau of Land Management, in his official capacity; BOB BERGLAND, Secretary of Agriculture, in his official capacity; JOHN A. SANDOR, Regional Forester, U.S. Forest Service, in his official capacity; Defendants.	No. A-78-291 Civil

SECOND AMENDED COMPLAINT

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I.

NATURE OF ACTION

Plaintiff, the State of Alaska, complains of defendants and shows the Court the following:

1. In this action, the State of Alaska asks the Court to (a) declare unconstitutional, illegal and void, any and all actions taken by the President of the United States, the Secretary of the Interior, the Secretary of Agriculture, and their agents that interfere with the rights granted to the State of Alaska to select and receive patent to federal lands in Alaska by virtue of the contractual and legislative commitment and grant contained in the Alaska Statehood Act; (b) declare unconstitutional or void, or suspend or otherwise invalidate all National Monuments designated in the Tongass National Forest; (c) declare illegal, as an abuse of discretion, or invalidate the existing or proposed application to State-selected lands of the Federal land Policy and Management Act and Section 17(d)(1) of the Alaska Native Claims Settlement Act, and the creation and boundaries of the Alaska National Monuments proclaimed on December 1, 1978 under the Antiquities Act; (d) declare that the President and the Secretary of the Interior violated the National Environmental Policy Act as set forth in Section VI; (e) declare that the creation of Alaska National Monuments was both unlawful and void as set forth in Section VII; (f) declare that the plaintiff's land selection rights are exempt from the Wilderness Inventory and Review Provisions of FLPMA; (g) declare that defendants' failure to act on plaintiff's land selections have violated plaintiff's rights under the Statehood Act; declare that (h) defendants' proposed exercise of authority under § 22(c) of ANCSA is unlawful and void if used to create new wildlife refuges; (i) declare that defendants have violated the provisions of the 1972 Memorandum of Understanding; (j) declare that defendants' failure

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to promptly convey Native-selected lands and reject overselections has unduly impeded plaintiff's own overselection rights; (k) declare that defendants' use of the Antiquities Act proclamations was null and void as defendants were precluded from so acting by ANCSA; and (l) to grant any and all other relief prayed for in this Complaint.

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II.

JURISDICTION

2. This is a civil suit over which this Court has jurisdiction, pursuant to Title 28 of the United States Code, Sections 1331, 1346, 2201, and 2202, and Title 5 of the United States Code, Sections 701-706.

III.

PARTIES

3. Plaintiff State of Alaska (hereinafter referred to as "plaintiff" or "the State") is the sovereign State of Alaska, one of the fifty United States, admitted to the Federal Union on January 3, 1959, pursuant to P.L. 85-508, 72 Stat. 339 (1958), (hereinafter referred to as the "Alaska Statehood Act" or the "Statehood Act"), and is the legal representative of the people of the State of Alaska (parens patrie).

4. Defendant James Earl Carter (hereinafter referred to as "the President") is the President and Chief Executive Officer of the United States of America, and is sued solely in his official capacity.

5. Defendant Cecil D. Andrus (hereinafter referred to as "the Secretary") is Secretary of the Interior and a member of the Cabinet of the President, and the chief executive officer of the United States Department of the Interior, and is sued solely in his official capacity.

6. Defendant Robert Herbst is the Assistant Secretary of the Interior for Fish and Wildlife and Parks and supervises and determines policy for the National Park Service and the U.S. Fish and Wildlife Service, which are the land managers of fifteen of the seventeen new national monuments in Alaska. He is sued solely in his official capacity.

7. Defendant Guy R. Martin, the Assistant Secretary of the Interior for Land and Water Resources, supervises the Bureau of

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Land Management, which manages the unreserved federal public domain in the State. He is sued solely in his official capacity.

8. Defendant Frank Gregg, the Director of the Bureau of Land Management, determines policy for that agency and supervises the Federal land conveyance process to the State. He is sued solely in his official capacity.

9. Defendant Curtis V. McVee is the Alaska State Director of the Bureau of Land Management, and is charged with the responsibility of implementing the policy decisions of his superiors with respect to the enforcement and implementation of the public land laws and the designation and conveyance of land under the Alaska Statehood Act, the Alaska Native Claims Settlement Act, 16 U.S.C. §§ 1601, et seq. (hereinafter referred to as "ANCSA"), and the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§1701, et seq. (hereinafter referred to as "FLPMA"). He is sued solely in his official capacity.

10. Defendant Bob Bergland (hereinafter referred to as "the Secretary of Agriculture"), is the Secretary of Agriculture and a member of the Cabinet of the President, and is the chief executive officer of the United States Department of Agriculture. He is sued solely in his official capacity.

11. Defendant John A. Sandor, Regional Forester of the U.S. Forest Service in Alaska, implements and enforces the policies determined by the Secretary of Agriculture as they affect the components of the National Forest System in Alaska. He is sued solely in his official capacity.

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IV.

STATEMENT OF FACTS

12. On July 7, 1958 the Alaska Statehood Act was signed by the President of the United States, subsequent to passage by both Houses of the United States Congress. The statute offered admission into the Federal Union to the Territory of Alaska upon certain conditions. Said conditions were accepted by a vote of the people of the Territory on August 26, 1958, thus forming a statehood compact between the United States and the people of the Territory. The State of Alaska was thereafter admitted to the Federal Union by Presidential Proclamation on January 3, 1959.

13. Section 6(b) of the Alaska Statehood Act made a present, vested grant of vacant, unappropriated and unreserved federal lands in Alaska to the State of Alaska totalling 102,550,000 acres, to be selected by the State before January 4, 1984. Section 6(a) of the Alaska Statehood Act also granted to the State 400,000 acres of vacant and unappropriated federal lands from the National Forest System in Alaska, and 400,000 acres to be selected from other vacant, unappropriated, and unreserved Federal lands, both to be selected by the State before January 4, 1984 for community expansion and recreation purposes. Upon acceptance of the terms of statehood by the people of Alaska and admission of Alaska to the Union, a legal compact was formed between the United States on the one hand, and the State and people of Alaska on the other. This compact, whose terms and conditions constitute the Statehood Act, vested certain rights in the State and its citizens at the time of its ratification. Among these vested rights, the compact requires the United States, through the Secretary of Interior, the Secretary of Agriculture, and the employees of the respective departments, to approve and convey to plaintiff in a timely fashion all lands duly selected by plaintiff in fulfillment of said land grants, in accordance

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with the provisions set forth in Section 6 of the Alaska Statehood Act.

14. Prior to November 14, 1978 the State had selected a total of 71,088,418 acres of federal land pursuant to the grant contained in Section 6(b) of the Alaska Statehood Act. Of these selections, 15,074,931 acres have been tentatively approved to the State, and 20,083,452 acres have been patented to the State. The State has selected 371,206 acres of federal land pursuant to the grant contained in Section 6(a) of the Statehood Act. Of these selections, 32,670 acres have been tentatively approved to the State, and 14,919 acres have been patented to the State to date. On November 14, 1978, the State of Alaska filed selections and identifications for selection on 41,544,354 acres of Federal land pursuant to authority contained in Section 6(b) of the Alaska Statehood Act and Section 17(d)(2)(E) of ANCSA.

15. Plaintiff's ability to obtain tentative approval and patent to lands previously selected, and plaintiff's ability to file valid land selections upon other Federal lands so as to fulfill the land grants made to it by the Alaska Statehood Act have been and will be frustrated, delayed and prevented by actions of defendants and their predecessors in office, as is alleged more fully subsequently herein.

16. On December 18, 1971 the Alaska Native Claims Settlement Act was enacted. Said Act granted Alaska Natives certain land and monetary benefits in settlement and extinguishment of all aboriginal land titles, if any, and claims thereto, within the State of Alaska. The land grants made to Alaska Natives included the authority to select Federal lands and lands previously tentatively approved to or selected by plaintiff in certain instances, with the concurrence of the plaintiff, so as to fulfill a total land grant to Alaska Natives of approximately 44 million acres of land.

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17. Section 17(d)(1) of ANCSA further authorized predecessors of the Secretary to make certain withdrawals of public lands to insure protection of the public interest and to classify or reclassify such lands and to open such lands to appropriation under the public lands laws in accordance with the land's classification. Section 17(d)(2)(A) of said Act required predecessors of the Secretary to withdraw up to, but not to exceed, 80 million acres of public lands which the Secretary was to study to determine which lands were suitable for designation by Congress as new or augmented national parks, national wildlife refuges, national forests, and national wild and scenic rivers. The withdrawals pursuant to Section 17(d)(2)(A) were to be in effect for up to five years from the date that the Secretary's recommendations were transmitted to Congress.

18. The Secretary and his predecessors subsequently made certain withdrawals comprising approximately 80 million acres pursuant to Section 17(d)(2)(A) of ANCSA, and certain additional withdrawals pursuant to Section 17(d)(1) of ANCSA, which lands were withdrawn from selection by plaintiff by provisions included in each public land order promulgated pursuant to authority claimed under the above-cited statutes. The provisions of the public land orders issued pursuant to Sections 17(d)(1) and 17(d)(2)(A) purported to withdraw the lands described therein from selection by the State in fulfillment of its entitlement under the Statehood Act.

19. Said withdrawals were transmitted to Congress in the form of recommended legislation for new units and additions to

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existing units of the four conservation systems by the Secretary's predecessor on December 17, 1973. They were accompanied by an Environmental Impact Statement (hereinafter referred to as the "EIS") which was prepared pursuant to the provisions of the National Environmental Policy Act (hereinafter referred to as "NEPA"), 42 U.S.C. §§ 4331, et seq., in 1973 and 1974. The 93rd Congress took no action on this proposal for legislation, and the 94th and 95th Congresses also failed to enact legislation creating units of the four conservation systems in Alaska.

20. The withdrawal authority created in Section 17(d)(2)(A) expired on December 17, 1978. On or about October 14, 1978, the 95th Congress of the United States had adjourned without taking action to resolve the status of lands withdrawn by Section 17(d)(2)(A) of ANCSA, and without extending the period during which withdrawals of land pursuant to Section 17(d)(2)(A) would remain effective.

21. The Secretary and his predecessors have made numerous land withdrawals pursuant to Section 17(d)(1) and most, if not all, of those lands withdrawn under Section 17(d)(2)(A) were also withdrawn under the authority claimed by the Secretary in Section 17(d)(1) of ANCSA. The public land withdrawals made under Section 17(d)(1) of ANCSA have no statutory expiration date and as a result, substantially all of the Federal public lands within the State of Alaska which are not withdrawn for selection by Alaska Native regional and village corporations have been purportedly withdrawn from selection by plaintiff under the Alaska Statehood Act since on or about March 9, 1972, the date of the first Section 17(d)(2) withdrawals. Said Section 17(d)(1) withdrawals continue to the date hereof, and plaintiff, upon information and belief, asserts that the legal significance accorded such withdrawals by the defendants will continue after December 17, 1978. Defendants' interpretation of subsection 17(d)(1) of ANCSA will

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continue to serve as a bar to land selections made by plaintiff, in frustration of the Statehood Act and contrary to Section 17(d)(2)(E) of ANCSA, unless adequate relief, as prayed in this complaint, is granted plaintiff.

22. In April of 1972, plaintiff filed suit against the Secretary's predecessor in an action styled Alaska v. Morton, et al. (Civil Action No. A-48-72) in the U.S. District Court for the District of Alaska, alleging that defendant and its agents had violated, and would continue to violate, provisions of the Alaska Statehood Act and ANCSA in pursuing actions purportedly taken under authority of ANCSA. Said lawsuit was settled, and a stipulation for dismissal was entered, on the basis of the Memorandum of Understanding entered into between the Secretary's predecessor and the Governor of plaintiff State on September 1, 1972. A true copy of said Memorandum of Understanding is attached to this Complaint as plaintiff's Exhibit "1".

23. Several months prior to the adjournment of the 95th Congress, the Secretary and officials of the Department began private discussions and made public statements regarding the actions defendants would take to continue, by executive authority, the withdrawn status of lands which were withdrawn under Section 17(d)(2)(A) and which would purportedly continue to be withdrawn under Section 17(d)(1) if the Congress failed to act prior to its adjournment. Said discussions and statements referred to the use of Secretary's withdrawal authority purportedly delegated to him under Section 204 of FLPMA, 43 U.S.C. § 1714, the President's withdrawal authority claimed under the Antiquities Act (hereinafter referred to as the "Antiquities Act"), 16 U.S.C. §§ 431, et seq., the administrative withdrawal authority provided in Section 22(e) of ANCSA, 43 U.S.C. § 1621(e), the continued reliance upon the withdrawals made pursuant to

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Section 17(d)(1) of ANCSA, 43 U.S.C. § 1616(d)(1), and the inventory and wilderness review requirements of Sections 201 and 603 of FLPMA, 43 U.S.C. §§ 1716, 1782.

24. On or about October 25, 1978 the Office of the Secretary issued a letter, together with a "Draft Environmental Supplement", purporting to set forth alternative administrative and executive actions which would enable the defendants to implement the conservation measures that would have been implemented had the 95th Congress enacted Alaska National Interest Lands legislation. Said letter and "environmental supplement" were issued in an effort to comply with the requirements of Section 102(2)(C) of NEPA, 42 U.S.C. § 4332(2)(C).

25. Mandatory public analysis and comment regarding the draft environmental supplement described in the above paragraph were required by defendants to be submitted on or before November 20, 1978. The deadline was later extended to November 22, 1978, but even that date was less than 30 days subsequent to issuance of the draft environmental supplement, and was less than 25 days from the date upon which copies of said environmental supplement, together with maps, were made available for general review and comment by the affected public in Alaska.

26. The draft environmental supplement and letter issued by defendants stated that administrative or executive action would be taken by defendants, and each of them, within their respective areas of authority prior to December 18, 1978, and would implement, singly or in combination, the various administrative or executive actions and interpretations of statutes set forth in said letter and environmental supplement, and which have been set forth previously herein.

27. On November 16, 1978 the Secretary issued Public Land Order 5653 pursuant to authority claimed under Section 204(c) of

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FLPMA, 43 U.S.C. § 1714(e), which Order purported to withdraw approximately 110 million acres of federal public lands in Alaska, including lands selected and identified for selection by plaintiff, from settlement, mineral location, sale or selection by the State pursuant to Section 6 of the Statehood Act. Said Order was issued on the basis of a claimed "emergency" declared by the Chairman of the Committee on Interior and Insular Affairs of the U.S. House of Representatives. On November 17, 1978 the Secretary issued Public Land Order 5654 pursuant to authority claimed under Section 204(e) of FLPMA, 43 U.S.C. § 1714(e), which Order purported to amend P.L.O. 5653 regarding the basis for the declaration of an "emergency" situation. The Section 204(e) withdrawal orders occurred two and three days, respectively, after the State filed selections and identifications on 41,544,354 acres of federal land, pursuant to Section 6(b) of the Statehood Act and Section 17(d)(2)(E) of ANCSA.

28. On or about November 26, 1978 the Secretary issued the "Final Environmental Supplement", purporting to update the 1974 EIS and the "Draft Environmental Supplement", and also purporting to describe the actions proposed to be taken regarding federal lands in Alaska by the Secretary and the President.

29. On December 1, 1978 the President signed certain Presidential Proclamations pursuant to authority claimed under the Antiquities Act, which Proclamations purport to designate approximately 56 million acres of federal lands in Alaska, including lands selected or identified for selection by plaintiff, as National Monuments under the jurisdiction of the U.S. Forest Service, the National Park Service, and the U.S. Fish and Wildlife Service.

30. On December 1, 1978 the Secretary and the Secretary of Agriculture filed notice of proposed public land orders, subsequently published in the Federal Register on December 5, 1978, which purport to withdraw certain lands in the National Forest System in Alaska

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from mineral location or entry, pursuant to authority claimed in Section 204(b) of FLPMA, 43 U.S.C. § 1714(b), for a period of two years.

31. On or about December 1, 1978 the Secretary announced his intention to withdraw, for a period of up to 20 years, approximately 33 million acres of federal public land in Alaska pursuant to authority claimed under Section 204(c) of FLPMA, 43 U.S.C. § 1714(c), for the purpose of establishing federal wildlife refuges in Alaska. Such lands were to be comprised of some of those lands previously withdrawn under Section 204(e) on November 16, 1978, which were not included in National Monument designations.

32. On or about December 26, 1978 the Secretary promulgated and published final interim regulations for the management of those National Monuments under the jurisdiction of the National Park Service and the U.S. Fish and Wildlife Service. Said regulations variously prohibit hunting, trapping, and the use of airplanes, motorized off-road vehicles and motorboats, upon lands where such activities were permitted without significant Federal restriction prior to the designation of National Monuments as aforesaid.

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V.

FIRST CAUSE OF ACTION: THE ALASKA STATEHOOD ACT IS A COMPACT, CONSTITUTIONALLY PROTECTED BY THE CONTRACT CLAUSE

33. Plaintiff realleges and incorporates herein by reference Paragraphs 1 through 32 of the Complaint.

34. Unlike conventional public laws enacted by the United States Congress, the Alaska Statehood Act would have had no force or effect had it not subsequently been ratified by the voters of the Territory. As such, it is a bilateral compact.

35. The principal obligation of the United States is contained in Section 6 of the Statehood Act. In Section 6(b), the State is "hereby granted and shall be entitled to select, within twenty-five years after admission of Alaska into the Union, not to exceed one hundred two million five hundred and fifty thousand acres from the public lands of the United States in Alaska which are vacant, unappropriated, and unreserved at the time of their selection". Section 6(a) of the Statehood Act provides a similar grant to the State of Alaska of four hundred thousand acres of land from the national forests within Alaska and an additional four hundred thousand acres from the other public lands of the United States in Alaska for community expansion and recreation purposes. The language in the Statehood Act describing each of the four-hundred-thousand-acre grants is nearly identical to the language in Section 6(b) land grant, with one exception. The grant in Section 6(a) states that "such lands shall be selected by the State of Alaska with the approval of the Secretary of Agriculture as to national forests and with the approval of the Secretary of the Interior as to other public lands." No such approval right as to special conditions is provided to either secretary or any other party under the Section 6(b) land grant, except for Department of Defense approval of lands north of the PYK line, as provided in Section 10 of the Statehood Act.

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36. The United States Constitution protects the sanctity of contracts and restricts legislative impairment of the obligation of contracts.

37. No compact entered into by the United States and one of its individual states may be unilaterally repealed or substa: ially amended by either of the compact parties without the express consent of the other party.

38. The contractual rights, duties and obligations arising out of a compact or contract entered into by the United States and the people of a territory who have voted to ratify the statehood act regarding them and the affected territory may not be unilaterally altered or repealed by either party, nor is breach of such contract permitted without full restitution or compensation to the affected party.

39. Section 6 of the Statehood Act was intended to preserve adequate lands from which the State could select its full entitlement based on criteria determined by it to be in the best interest of the people of Alaska. The Federal Government, through the President, the Secretary of the Interior, and their agents, have taken actions which have effectively denied the State of Alaska the right to select its full entitlement of Federal lands as intended under Section 6 of the Statehood Act.

40. The plaintiff, State of Alaska, is not contesting the validity of the Alaska Native Claims Settlement Act because Section 4 of the Statehood Act protected the rights of aboriginal Alaskans, and the Alaska Native Claims Settlement Act was subsequently passed to settle those rights. The State of Alaska has taken actions pursuant to the terms of ANCSA which ratify the Alaska Native Claims Settlement Act as it relates to the Statehood Act.

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INJURY TO THE PLAINTIFF

41. The actions taken by the President of the United States in creating National Monuments on lands within Alaska which are in conflict with lands selected or identified for selection by the State pursuant to the Alaska Statehood Act, and the actions taken by the Secretaries of the Interior and Agriculture which frustrate, prohibit or deny the State of Alaska's land conveyance rights as to other lands in Alaska under authority claimed in FLPMA and other statutory authority, violate the terms and conditions of the Alaska Statehood Act and the bilateral contractual protections granted to the people of Alaska by the United States Constitution.

42. By reason of the foregoing, the interests of the State of Alaska and its people have been and will continue to be injured by denial and obstruction of their vested land grant rights and the use of said lands for the purposes intended by the Alaska Statehood Act.

43. WHEREFORE, Plaintiff prays as to its First Cause of Action that this Court grant it the following relief:

a. That this Court declare invalid the National Monument designations proclaimed by the President of the United States in each instance in which such designations conflict with lands selected or identified for selection by the State pursuant to the Alaska Statehood Act.

b. That this Court declare invalid any actions taken by the President, the Secretary of the Interior and the Secretary of Agriculture, or any of them, pursuant to the Federal Land Policy and Management Act or other claimed statutory authority if the exercise of said authority violates or infringes upon the contractual obligations, duties and rights provided in the Alaska Statehood Act and other law;

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c. That this Court enter an order suspending the effect of any course of action, public land order proclamation or withdrawal of land in Alaska which affects the State's rights under the Statehood Act until compliance with the requirements of that Act has occurred to the satisfaction of the Court;

d. That this Court enter such additional orders as it may deem necessary to afford Plaintiff complete relief as prayed for in this First Cause of Action.

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VI.

SECOND CAUSE OF ACTION: THE NATIONAL ENVIRONMENTAL POLICY ACT

44. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 43 of the Complaint.

45. The National Environmental Policy Act, 42 U.S.C. §§4321, 4331 et seq., requires all agencies of the Federal government to file an environmental impact statement whenever an agency proposes to take a "major federal action significantly affecting the quality of the human environment". 42 U.S.C. §4332(2)(C). The statute requires that the environmental impact statement be "a detailed statement by the responsible official on --

> (i) the environmental impact of the proposed action,
>
> (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,
>
> (iii) alternatives to the proposed action,
>
> (iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and
>
> (v) any irreversible and irretrievable commitment of resources which would be involved in the proposed action should it be implemented."

46. NEPA requires that adequate disclosure of pertinent primary and secondary environmental impacts be made to the public, and that the affected agency must provide a reasonable discussion of the statutorily required factors sufficient to permit an informed decision to be made by agency decision-makers.

47. The Act requires that "prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved". 42 U.S.C. §4332(2)(C).

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48. In 1974, the Department of Interior issued a 28-volume Environmental Impact Statement (the "1974 EIS") regarding proposed withdrawals of federal land in Alaska for creation or augmentation of lands to be preserved in the national interest, pursuant to Section 17(d)(2) of ANCSA. On or about October 31, 1978, the Department of the Interior issued a "Draft Environmental Supplement" to the 1974 EIS regarding "Alternative Administrative Actions for Alaska National Interests Lands." After a 20-day comment period (which was extended by two days by the Department of the Interior), a "Final Environmental Supplement" was issued on or about November 28, 1978, by the United States Department of the Interior.

49. The 1974 EIS and the "Environmental Supplement" issued by the Secretary and the Department of Interior failed to comply, together or singly, with the substantive requirements imposed by NEPA and the regulations and policies promulgated thereunder in the following particulars, among others:

a. The 1974 EIS considered no cumulative effects of the proposed land actions; while the 1978 "Environmental Supplement" did include a section on cumulative effects, that section is legally inadequate regarding many of the withdrawn land areas and regarding several NEPA requirements.

b. The "Environmental Supplement" contains a section entitled "Mitigating Measures Included in the Alternative Action" and then states that there are "none", which fails to satisfy the requirements of NEPA.

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c. In neither the EIS nor the "Environmental Supplement" is there any effort to coordinate or address the programs of different federal agencies with regard to Alaskan lands. Both statements ignore the U. S. Forest Service and all of Southeast Alaska; they ignore concurrent federal agency programs dealing with Alaska, including Department of Energy mineral surveys, Federal Energy Regulatory Commission oil and gas pipeline surveillance and management programs and responsibilities, and others.

d. Not only do both the EIS and the "Environmental Supplement" ignore and fragment concurrent actions being taken by other federal agencies throughout the withdrawal areas and the rest of the State, neither statement addresses the impact of the multi-million acre withdrawals for the National Wild and Scenic Rivers System to be managed by the Department of the Interior. The EIS's therefore not only fragment concurrent Federal programs being carried on with respect to Alaskan lands by various Federal agencies, but also fragment the programs carried on within the Department of the Interior itself.

e. The lands involved are addressed by the Department of the Interior as "national interest lands"

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(emphasis added), and the term "national interest lands" was used throughout the legislative process engaged in by the Department of the Interior and the United States Congress over the past two years. The two statements, taken together, unlawfully ignore all national impacts--including both primary and secondary environmental impacts--regardless of how probable such impacts are, and further ignore the statewide socio-economic impacts resulting directly from the withdrawal and reduction of public use of approximately 110 million acres of federal land. Much of the sparse secondary impact information is vague, general and conclusory.

f. There is not sufficient cost/benefit analysis included in either statement, nor is the methodology for a sufficient cost/benefit analysis described, nor are the items considered for such analysis enumerated.

g. Neither the 1974 EIS nor the "Environmental Supplement" attempts to define "subsistence", "subsistence-user", or "subsistence uses", and thus as a document in which subsistence environmental impacts are of primary importance, it is legally deficient.

h. Up to 16 million acres of land included in the 1978 Presidential Proclamations and Interior Department withdrawals, and included in the "Environmental Supplement", were not included in the proposed withdrawals discussed in the 1974 EIS. Regarding several million of the acres not described in the 1974 EIS, no description whatsoever appears in the 1978 "Environmental Supplement". For other lands, a legally inadequate description of the environmental impacts and other factors is included in the 1978 "Environmental Supplement".

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i. The 1974 EIS did not consider the alternative of National Monument status for any Alaskan lands. The 1978 "Environmental Supplement" (which did discuss National Monument status as an alternative) did not fully consider or disclose all of the environmental impacts associated with National Monument withdrawals in Alaska. Specifically, the 1974 EIS did not consider the prohibition of sport hunting on any national interest lands in Alaska, and the 1978 "Environmental Supplement" gave inadequate treatment to this impact. Neither statement considered the environmental impact of the restrictions which National Monument status imposes on sport and commercial fishing. The environmental impacts of National Monument status upon commercial trapping were inadequately treated.

j. The 1978 "Environmental Supplement" contains no current analysis of the impact upon the human environment that reduced or prohibited oil and gas exploration and development will create in areas designated as "national interest lands". Any reference in the 1974 EIS to environmental and other impact associated with oil and gas reserves in the lands in question as well as oil and gas development restrictions has not been reassessed in the 1978 "Environmental Supplement" to take into account the substantial variations that have occurred since 1974 in oil and gas prices and supplies, and the primary and secondary environmental impacts that oil and gas exploration and developmental restrictions will cause.

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k. The 1974 EIS and the 1978 "Environmental Supplement" fail to adequately analyze the environmental impacts which designation of national monuments and withdraw areas will have on exploration and development of gold resources and upon the Alaskan and national economies, since gold prices and supplies have risen significantly since 1974.

l. Neither EIS includes an assessment of the actual or estimated costs of the proposed administrative actions, costs which will be borne by the Federal government, the State, and various localities within the State.

m. Neither the EIS nor the "Environmental Supplement" describes the effects the proposed actions will have on the coastal environment in Alaska, including Outer Continental Shelf development or future lease sales within the State, as well as the added pressures which will be imposed on the offshore environment and OCS development throughout the rest of the United States, as a result of the contemplated federal actions.

n. The 1978 "Environmental Supplement" states that the socio-economic impacts of the proposal are nonexistent or extremely low because Congress can override these land designations in the future if it so chooses. This argument is both conclusory and inaccurate since the actions taken by the President and the Secretary are either final on their face or are of substantial duration and Congressional action cannot be guaranteed.

o. The comments received and compiled by the Department of Interior to the draft "Environmental Supplement" (as

found in the appendix to the final "Environmental Supplement") state that many relevant and available sources of information on environmental impacts were not consulted, and that many factual errors exist in the Supplement. Both the factual inaccuracy of the final "Environmental Supplement" and the exclusion of pertinent information sources violate the provisions, purposes, and spirit of NEPA, by denying and disregarding full and accurate public disclosure.

p. Secondary impacts, such as increased urbanization in Anchorage if bush communities can no longer sustain life due to subsistence or sport hunting restrictions or other land use or economic restrictions, are never adequately addressed, nor are many other required secondary impacts (such as crime, industrialization, population shifts, etc.) addressed.

50. As a direct result of the severely curtailed public comment period, the Secretary and the Department have, in derogation of the provisions of NEPA, denied plaintiff and the interested public an adequate opportunity to review, analyze and comment, in a reasonable and meaningful fashion, upon Defendant's "Environmental Supplement." These actions of defendants violate the substantive and procedural requirements of NEPA, and further violate the regulations and policies issued thereunder by the President's Council on Environmental Quality, the Secretary and the Department.

INJURY TO THE PLAINTIFF

51. As a result of the substantial flaws, inadequacies, and legal and factual deficiencies of the 1974 Environmental Impact Statement and the 1978 "Environmental Supplement", taken individually or together, and as a result of the inadequate comment period provided to plaintiff, plaintiff has suffered substantial injury,

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including but not limited to denial of a proper, adequate and balanced decision-making process within the affected Federal agencies and denial of a proper opportunity to participate in and influence the decision-making process. Said decision-making process has resulted in major federal actions which affect the human environment, and has denied plaintiff its vested rights in certain lands and substantial present and future land use opportunities.

52. The violations of NEPA as aforesaid have abridged plaintiff's due process and equal protection guarantees under the Constitution and laws of the United States, and have further violated the provisions of the Alaskan Native Claims Settlement Act and the Alaska Statehood Act.

53. WHEREFORE, plaintiff prays as to its Second Cause of Action that this Court grant it the following relief:

a. That actions taken pursuant to the Antiquities Act and Section 204 of FLPMA constitute "major federal actions" within the meaning of NEPA;

b. That those actions taken by the President under authority claimed in the Antiquities Act violate the provisions of NEPA;

c. That this Court declare that the requirements imposed by NEPA and the guidelines and regulations promulgated thereunder affording adequate analysis, sufficient disclosure, proper procedure, adequate public comment and adequate facts have been violated by defendants and by each of them, and that plaintiff and its citizens have been injured thereby;

d. That this Court declare void all withdrawals, segregations, or other actions taken by the Department of the Interior and the Department of Agriculture pursuant to Section 204 of FLPMA until said actions have been preceded by a sufficient Environmental Impact Statement;

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e. That this Court enter an order enjoining any course of action, added land use restriction or withdrawal of lands affecting plaintiff's rights under the Alaska Statehood Act or the Alaska Native Claims Settlement Act which have been taken or are intended to be taken by the Secretary of the Interior or the Secretary of Agriculture, or either of them;

f. That the Court enter such additional orders as it may deem necessary to afford plaintiff complete relief from defendants' actions as alleged in this Second Cause of Action.

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VII.

THIRD CAUSE OF ACTION: CREATION OF ALASKA NATIONAL MONUMENTS UNDER THE ANTIQUITIES ACT VIOLATES THE DOCTRINE OF SEPARATION OF POWERS, EXCEEDS THE AUTHORITY DELEGATED TO THE PRESIDENT, AND CONSTITUTES AN ABUSE OF EXECUTIVE POWER.

54. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 53 in this Complaint.

55. The Antiquities Act, 16 U.S.C. §§ 431, et seq., delegates to the President the authority to declare "historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States to be national monuments." This same Act gives the President the authority to reserve as part of a national monument, "parcels of lands, the limits of which in all cases shall be confined to the smallest area compatible with the proper care and management of the objects to be protected."

56. The fifteen new Alaska National Monuments and the two additions to existing Alaska National Monuments and Parks which were proclaimed by the President on December 1, 1978, were created in excess of the legal authority delegated to the President by Congress in the following respects:

a. The Presidential Proclamations purport to protect living plants and animals, or whole ecosystems, none of which are inanimate objects, nor are they individual historical landmarks, historic or prehistoric structures, or other objects of historic or scientific interest, as required by the Antiquities Act;

b. Each reservation of land described in said Proclamations far exceeds the smallest area compatible with the protection and care of the proper objects, if any, to be protected; in fact, the boundaries were designated to conform to pre-existing administrative and legislative

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proposals for National Parks and Wildlife Refuges, both of which are land management systems that embody land use purposes and management requirements entirely separate and distinct from the purposes and intent of the Antiquities Act; and

c. Each reservation of land described in said Proclamations purports to offer general protection of vast geological formations, animal and human migration routes, or potential future archaeological sites or discoveries, which are not those objects properly intended for protection under the express statutory requirements of the Antiquities Act.

57. The President's actions in proclaiming fifteen Alaska National Monuments and reserving additional land for two existing Alaska National Monuments and Parks further constitutes an abuse of any proper executive discretion conferred on the President by the Antiquities Act in the following respects:

a. The Presidential Proclamations purport to protect living plants and animals, or whole ecosystems, none of which are inanimate objects, nor are they individual historical landmarks, historic or prehistoric structures or other objects of historic or scientific interest, as required by the Antiquities Act. Such designations constitute an arbitrary and capricious use of Presidential power to reserve land for the protection of living things which are not properly cognizable within the plain meaning of said statute;

b. Said Proclamations purport to reserve tracts of land pursuant to the Antiquities Act, but in fact describe areas of public land far in excess of the smallest area compatible with the protection and management of the proper objects, if any, to be protected; in fact, the

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boundaries were designated to conform to pre-existing administrative and legislative proposals for National Parks and Wildlife Refuges, both of which are land management systems that embody land use purposes and management requirements are entirely separate and distinct from the purposes and intent of the Antiquities Act, thus constituting an abuse of discretion by the President.

c. Said Proclamations arbitrarily and capriciously reserve lands that purport to offer general protection of vast geological formations, animal and human migration routes, or potential future archaeological sites or discoveries, which are not those objects properly intended for protection under the express statutory requirements of the Antiquities Act.

58. The issuance of said Presidential Proclamations on December 1, 1978, further violates the doctrine of separation of powers between the Executive Department and the Congress, because the President's unilateral executive actions withdrawing national monuments enter an area of decision-making which Congress has expressly reserved to itself in Section 17(d)(2) of ANCSA, 43 U.S.C. § 1616(d)(2), when it provided that lands withdrawn under it are withdrawn from "all forms of appropriation under the public land laws." (emphasis added).

INJURY TO PLAINTIFF

59. Prior to December 1, 1978, plaintiff had filed land selection applications and identifications for selection for an amount of land completing plaintiff's land grant entitlement under Section 6 of the Statehood Act.

60. The Presidential Proclamations preserve plaintiff's land selection rights only with respect to tentatively approved

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lands or selections which the Secretary has previously recognized, including those in the 1972 Memorandum of Understanding. Approximately nine million acres of state land selections are contained within National Monument boundaries, and upon information and belief plaintiff asserts that defendants intend to reject those land selections which are within National Monument boundaries.

61. Denial of plaintiff's land selections violates plaintiff's vested rights under the Statehood Act.

62. WHEREFORE, plaintiff prays as to its Third Cause of Action that this Court grant the following relief:

a. That this Court enter an order declaring that the National Monuments created in Alaska on December 1, 1978, by Presidential Proclamation are unlawful under the Antiquities Act as it may apply to lands in Alaska which have been selected by the State pursuant to the Statehood Act;

b. That this Court enter an order declaring each of the Alaska National Monuments proclaimed on December 1, 1978 to be null and void because the President unlawfully exercised executive power not delegated to him under the Antiquities Act;

c. In the alternative, that this Court enter an order declaring null and void those portions of said Monuments which reserve land to protect items or subjects not under the purview of the Antiquities Act;

d. In the alternative, that this Court issue an order reducing the size of said Monuments to those minimum sizes that properly conform to the requirements of the Antiquities Act;

e. That this Court enter an order declaring that the Proclamations creating National Monuments in Alaska on December 1, 1978 constitute an arbitrary and capricious

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act and abuse of Presidential authority, and invalidate or otherwise make void and ineffective said Proclamations;

f. In the alternative, to the extent that the boundaries of said National Monuments have been arbitrarily and capriciously drawn, that this Court order and declare that those improperly included portions of the National Monuments are void and of no effect;

g. That this Court enter an order declaring invalid the Presidential Proclamations creating said National Monuments on December 1, 1978, because the President's actions violate the doctrine of separation of powers, by usurping the authority reserved to Congress in Section 17(d)(2) of ANCSA to determine the ultimate disposition of these lands, and as they conflict with plaintiff's land selection rights under the Alaska Statehood Act.

h. That this Court declare the Proclamations of December 1, 1978 to be invalid and of no force or effect because the lands encompassed in the purported Monuments were not, pursuant to Section 17(d)(2)(A), subject to any form of appropriation under any of the public land laws, including the Antiquities Act.

i. This Court enter such additional orders as it may deem necessary to afford plaintiff compelte relief as prayed for in this Third Cause of Action.

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VIII.

FOURTH CAUSE OF ACTION: NATIONAL MONUMENTS MAY NOT BE PROCLAIMED ON CONGRESSIONALLY DESIGNATED NATIONAL FOREST LANDS

63. Plaintiff realleges and incorporates herein every assertion set forth in paragraphs 1 through 62 in this Complaint.

64. Proclamations 4611, 4618 and 4623 were signed by the President on December 1, 1978, and published in the Federal Register on December 5, 1978.

65. The lands described in the above-mentioned Proclamation are part of the Tongass National Forest, which was created pursuant to a series of executive reservations made under the Organic Act of 1897, 16 U.S.C. § 481.

66. On October 22, 1976, Congress revised the National Forest Management Act of 1976 (hereinafter referred to as the "Forest Management Act"), by enacting 16 U.S.C. §§ 1601, et seq., which amended the Forest Rangeland Renewable Resources Planning Act of 1974, 16 U.S.C. §§1601 et seq.

67. Said Acts consolidated laws governing the National Forest System in order to define and permanently reserve lands for the National Forest System, to dedicate all lands reserved in the National Forests to the principles and goals set forth in the Multiple Use-Sustained Yield Act of 1960, 16 U.S.C. §§ 528, et seq., and to give the U.S. Forest Service specific legislative

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directives to implement the concept of multiple use and sustained yield in the nation's national forests.

68. The last sentence in Section 9(a) of the Forest Management Act, 16 U.S.C. § 1609(a), specifically provides:

> Notwithstanding the provisions of the Act of June 4, 1897, no land now or hereafter reserved or withdrawn from the public domain as national forest pursuant to the Act of March 3, 1891, or any act supplementary to and amendatory thereof, shall be returned to the public domain except by an Act of Congress.

The above section repealed previous laws which had permitted lands to be removed from a National Forest System by executive order, and requires an Act of Congress to remove public lands from the management system Congress has mandated for the National Forest System.

69. The Forest Management Act also gave the U.S. Forest Service specific authority to harvest the forest lands under the Multiple-Use Sustained Yield Act of 1960, in the enactment of 16 U.S.C. § 1604(f). Passage of the Forest Management Act further affirmed the principles of multiple use-sustained yield and specifically defined and dedicated all lands in the National Forest System to those principles.

70. Upon passage of the Forest Management Act, the lands later described in Presidential Proclamations 4611, 4618 and 4623 were dedicated by Congress to the principles of multiple use-sustained yield, and absent an Act of Congress to the contrary, were permanently reserved as units of the National Forest System, to be managed for such purposes.

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71. The above-cited Proclamations were issued pursuant to authority claimed by the President under the Antiquities Act. Under the constitutional doctrine of separation of powers, such executive authority is powerless to change the status or management of such lands, since Congress has required that only an Act of Congress can do so.

72. The President, in proclaiming these National Monuments from land reserved as part of the Tongass National Forest, has acted beyond the legal bounds of executive authority delegated to him under the Antiquities Act because the creation of such national monuments contravenes Congress' specific requirement that lands in the National Forest System be managed for multiple use and sustained yield. The purposes and land management policies applicable to these three purported National Monuments, under the Antiquities Act, are and will continue to be, by regulation, different from those covering these same lands as mandated in the Forest Management Act.

73. The President's actions constitute an arbitrary and capricious act and an abuse of discretion because he has reclassified land for single use, where such land was required by Congress to be managed under the principles of multiple use and sustained yield.

INJURY TO PLAINTIFF

74. The creation of National Monuments out of the Tongass National Forest adversely affects the State of Alaska and its people in the following ways, among others:

a. The restricted use classification under the Antiquities Act purports to withdraw from possible selection by plaintiff approximately four million acres of land, some of which may have been subject to selection by the State pursuant to Section 6(a) of the Statehood Act;

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b. The restricted use classification of the lands described in Proclamations 4611, 4618, and 4623 removes, or will remove, said land from multiple-use management policies and will otherwise restrict uses, including the harvest of timber on these lands, thereby adversely affecting individual businesses and residents of Alaska who directly or indirectly depend on the timber industry for their livelihood;

c. The restricted-use classification further prohibits the removal or management of other natural resources on these lands, including minerals and fish, thus adversely affecting many residents of Alaska who depend on related industries for their livelihood.

d. The restricted-use classification and rules governing National Monuments threatens the continuation of numerous lawful commercial enterprises within the boundaries of those National Monuments, including hunting lodges, hunting and fishing guides, trappers, and other commercial enterprises;

75. WHEREFORE plaintiff asks that this Court grant the following relief with respect to this Fourth Cause of Action:

a. That this Court declare the National Monuments created pursuant to Proclamations 4611, 4618 and 4623 as null, void and without legal effect for each of the following reasons:

(1) The National Forest Management Act of 1976, 16 U.S.C. §§ 1601, et seq., supercedes the Antiquities Act to the extent that the land cannot be removed from general National Forest Management policies without an Act of Congress;

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(2) The creation of National Monuments in Proclamations 4611, 4618 and 4623 places the lands involved under the jurisdiction of a different regulatory and management scheme, including a use classification which contradicts the will of Congress as adopted in the National Forest Management Act, and thus violates the Constitutional doctrine of separation of powers;

(3) The President's actions in reserving as National Monuments the lands described in Proclamations 4611, 4618 and 4623, pursuant to his claimed authority under the Antiquities Act, constitutes an abuse of executive authority because such actions arbitrarily and capriciously purport to remove land from customary National Forest System management, including an end to the Congressionally-established policy of multiple use and sustained yield with respect to the affected lands, when such actions can only be undertaken by an Act of Congress.

(b) That this Court enter an order declaring that the State land selections made, or to be made, pursuant to Section 6(a) of the Statehood Act on any lands in the Tongass and Chugach National Forests which at the time of selection were otherwise vacant and unappropriated, are valid land selections that cannot be superceded or revoked by the subsequent purported reservation of such lands for National Monuments under the Antiquities Act, 16 U.S.C. §§ 431, et seq.; and

(c) That this Court enter such additional orders as it may deem necessary to afford plaintiff complete relief as prayed for in this Fourth Cause of Action.

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IX.

FIFTH CAUSE OF ACTION: PUBLIC LAND ORDERS PROMULGATED PURSUANT TO SECTION 17(d)(1) OF ANCSA CANNOT LAWFULLY PRECLUDE PLAINTIFF FROM FILING LAND SELECTIONS, NOR RECEIVING PATENT TO SAID LAND

76. Plaintiff realleges and incorporates herein every assertion set forth in paragraphs 1 through 75 in this Complaint.

77. The predecessors of the Secretary of Interior, the current Secretary and other officials of the Department of Interior have issued numerous public land orders with respect to public lands in Alaska pursuant to the authority given the Secretary in Section 17(d)(1) of ANCSA, 16 U.S.C. § 1616(d)(1). This Section provides that the Secretary may use his then-existing withdrawal authority to withdraw public lands in Alaska to protect the public lands, to classify and reclassify such lands, and to open them to appropriation under the public land laws in accordance with the classification of such lands.

78. The public land orders issued by the defendants pursuant to Section 17(d)(1) of ANCSA purported to withdraw the affected lands from Statehood Act selection by the plaintiff. The Section 17(d)(1) public land orders affect more than one half of the vacant, unreserved and unappropriated public land in the State. These public land orders thus have dramatically reduced, and continue to reduce, the amount of land the defendants have left open to plaintiff from which to select.

79. The express language of Section 17(d)(1) of ANCSA only closed lands withdrawn under that section to appropriation under the general public land laws, whereas those lands withdrawn under Section 17(d)(2) of ANCSA were withdrawn by express language which also protected such lands from selection under the Alaska Statehood Act.

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80. To the extent that each public land order promulgated pursuant to Section 17(d)(1) of ANCSA purports to withdraw that land from selection by the plaintiff, those public land orders violated, and continue to violate, plaintiff's vested rights of land selection under the Statehood Act; violated, and continue to violate, the express language of Section 17(d)(1) of ANCSA, 16 U.S.C. § 1616(d)(1); violated, and continue to violate the terms and provisions of the Memorandum of Understanding of 1972; and violated, and continue to violate, the legal intent and purpose of enacting Section 17(d)(1) of ANCSA.

81. If the State is not permitted to select on Section 17(d)(1) lands, the cumulative effect of the Section 17(d)(1) withdrawals, the Section 17(d)(2) withdrawals, and other withdrawals by the Secretary of the Interior have had the effect of denying Alaska its lawful entitlement under the Alaska Statehood Act.

82. The Secretary's public land orders pursuant to Section 17(d)(1), which purport to close land to selection by plaintiff, further violate Sections 6(b) and 6(g) of the Statehood Act because the Secretary lacks the authority to impose such conditions on the land grant contained in the Statehood compact. Section 6(b) of the Statehood Act granted to the State and entitled it to select up to one hundred two million five hundred fifty thousand acres of public land, which was vacant, unappropriated and unreserved at the time of selection. No provision in Section 6(b) conditions such selections on the Secretary's approval.

INJURY TO PLAINTIFF

83. The actions of the defendants alleged in this Cause of Action have directly interfered with and have violated the rights of plaintiff to the land grants vested in the State upon its admission to the United States.

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84. These violations on the part of the defendants have precluded plaintiff from making selections on certain lands, have denied plaintiff title to and use of some or all of said lands, and tax revenues from said lands, and have imposed the risk of loss of its pending selections filed on land still subject to Section 17(d)(1) public land orders.

85. WHEREFORE plaintiff prays as to its Fifth Cause of Action that this Court grant it the following relief:

a. That this Court enter an order declaring that all land selections previously filed by plaintiff, and those land selections to be filed in the future, on public lands withdrawn pursuant to Section 17(d)(1) shall, if otherwise valid, be deemed valid selections of the public lands encompassed by such selections, pursuant to the land grant contained in Section 6 of the Alaska Statehood Act;

b. That this Court enter an order declaring that all identifications for selection filed by plaintiff prior to December 17, 1978, pursuant to Section 17(d)(2)(E) of ANCSA, and all land selections filed by plaintiff after December 17, 1978, on lands formerly within withdrawals made pursuant to Section 17(d)(2)(A) of ANCSA, shall, if such selections are otherwise valid, be deemed effective selections of the public lands encompassed by such selections pursuant to the grant contained in Section 6 of the Alaska Statehood Act;

c. That this Court enter an order declaring that all land selections filed or reaffirmed by plaintiff on Section 17(d)(1)-withdrawn lands after December 17, 1978, on lands described in paragraphs 2, 5, 6, and 8 of the

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Memorandum of Understanding dated September 1, 1972, shall, if such selections are otherwise valid, be deemed effective selections of the public lands encompassed by such selections pursuant to the grant contained in Section 6 of the Alaska Statehood Act;

d. That this Court enter such additional orders as it may deem necessary to afford plaintiff complete relief as prayed for in its Fifth Cause of Action.

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X.

SIXTH CAUSE OF ACTION: PLAINTIFF'S LAND SELECTION RIGHTS UNDER THE STATEHOOD ACT ARE EXEMPT FROM THE WILDERNESS INVENTORY AND REVIEW PROVISIONS OF FLPMA

86. Plaintiff realleges and incorporates herein every assertion set forth in paragraphs 1 through 85 in this Complaint.

87. The Secretary, and the officials of the department, have interpreted the provisions of Sections 201 and 603 of FLPMA, 43 U.S.C. §§ 1711, 1782, so as to apply the requirements of said sections to public lands which have been or may be selected by plaintiff, notwithstanding the specific exemption contained in Section 701(g)(6) of FLPMA at 43 U.S.C. Prec. § 1702.

INJURY TO PLAINTIFF

88. The interpretation placed upon Sections 201 and 603 of FLPMA, as aforesaid, if applied to public lands in Alaska in any manner which would make such lands unavailable for selection by plaintiff or unduly delay approval and conveyance of such selections, now constitutes or will constitute a violation of Section 6 of the Alaska Statehood Act, a breach of the compact between the United States and the people of Alaska, and will violate the express Congressional directive that FLPMA not be used to preclude or otherwise affect land grants made to the states.

89. WHEREFORE, plaintiff prays as to its Sixth Cause of Action that this Court grant it the following relief:

a. That this Court enter an order declaring that Sections 201 and 603 of FLPMA, 43 U.S.C. §§ 1711 and 1732, are not applicable to present and future land selections filed by plaintiff;

b. That this Court enter such additional orders as it may deem necessary to afford plaintiff complete relief as prayed for in its Sixth Cause of Action.

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XI.

SEVENTH CAUSE OF ACTION: DEFENDANTS' FAILURE TO ACT ON PLAINTIFF'S LAND SELECTIONS VIOLATES PLAINTIFF'S RIGHTS UNDER THE STATEHOOD ACT

90. Plaintiff realleges and incorporates herein by reference each and every legal assertion and statement of fact set forth in Paragraphs 1 through 89 of this Complaint.

91. Plaintiff has filed land selections describing certain Federal public lands pursuant to the grants made to it in Sections 6(a) and 6(b) of the Alaska Statehood Act. To date the Secretary has failed and refused to timely adjudicate and approve such land selections, with regard to approximately 36,253,652 acres of land selected by Plaintiff prior to November 14, 1978. The Secretary has further failed to implement an administrative program and to hire sufficient personnel to adjudicate and approve such selections.

92. Plaintiff on November 14, 1978, duly selected and identified for selection certain federal public lands pursuant to the land grant made by Section 6(b) of the Alaska Statehood Act and the authority contained in Section 17(d)(2)(E) of ANCSA. Approximately 33 million acres of those selections and identifications for selection filed November 14, 1978 do not conflict with those National Monuments proclaimed by the President, nor with permanent withdrawals proposed by the Secretary pursuant to Section 204(c) of FLPMA, 43 U.S.C. §1714(c).

93. The Secretary and the responsible Interior Department officials have failed and refused to recognize the validity of such selections and identifications for selection of lands not in conflict with National Monuments and proposed permanent Secretarial withdrawals. The Secretary and the responsible Interior Department officials have further refused to initiate the process of adjudication, tentative approval and patent of such lands.

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INJURY TO PLAINTIFF

94. Plaintiff, upon information and belief, alleges that the Defendants will continue to not take any action regarding the above-described land selections, which is in direct violation of Plaintiff's rights under the Statehood Act.

95. WHEREFORE, Plaintiff prays as to its Seventh Cause of Action that this Court grant the following relief:

a. That this Court enter an Order of Mandamus directing the Secretary and the responsible officials of the Interior Department to immediately adjudicate and issue tentative approval to all land selections filed by Plaintiff under Section 6 of the Alaska Statehood Act and which were pending prior to November 14, 1978;

b. That this Court enter an Order of Mandamus directing the Secretary and the responsible officials of the Interior Department to immediately adjudicate and issue tentative approval to all land selections and identifications filed by plaintiff on November 14, 1978 and which are not in conflict with National Monument designations or proposed permanent withdrawals to be made by the Secretary pursuant to Section 204(c) of FLPMA (43 U.S.C. §1714(c)).

c. That this Court enter such additional orders as it may deem necessary to afford plaintiff complete relief as prayed for in its Seventh Cause of Action.

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XII.

EIGHTH CAUSE OF ACTION: DEFENDANTS' PROPOSED EXERCISE OF AUTHORITY UNDER SECTION 22(e) OF ANCSA CANNOT LAWFULLY BE USED TO CREATE NEW WILDLIFE REFUGES

96. Plaintiff realleges and incorporates herein every assertion set forth in paragraphs 1 through 95 in this Complaint.

97. The Secretary and the responsible officials of the Department of the Interior are authorized by Section 22(e) of ANCSA, 43 U.S.C. § 1621(e), to replace, with other public lands, those lands within wildlife refuges existing in 1971 in Alaska which have been or will be conveyed to Native village corporations. Upon information and belief, plaintiff alleges that defendants intend to replace those wildlife refuge lands lost by conveyance to Native village corporations,

a. From public lands elsewhere in Alaska which are neither adjacent to nor in proximity to the affected wildlife refuge;

b. On the basis of the number of acres selected by Native village corporations in existing wildlife refuges, regardless of the actual number of acres each corporation is entitled to receive or the lawfulness of such selections; and

c. On the basis of the total acreage of selections by Native village corporations in wildlife refuges, regardless of the actual number of acres conveyed in fact to such corporations.

98. The above-alleged actions by the Secretary and the responsible officials of the Department of Interior will constitute a violation of the requirements and purposes of Section 22(e) of ANCSA.

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INJURY TO PLAINTIFF

99. To the extent that such actions by the Secretary and the responsible officials of the Department of Interior preclude or supercede land selections by the plaintiff, those actions contravene plaintiff's rights to land grants which were vested in plaintiff under the Statehood Act and were recognized in ANCSA, and are therefore unlawful.

100. Such actions by the Secretary and the responsible officials of the Department of Interior as alleged herein, if otherwise lawful, constitute "major federal actions" within the meaning of NEPA.

101. WHEREFORE, plaintiff prays for the following relief under this Cause of Action:

a. That this Court enter an order enjoining the Secretary and officials of the Department of the Interior from implementing Section 22(e) of ANCSA in the manner set forth in the "Environmental Supplement", in the Secretary's public statements, and as alleged in this cause of action.

b. That this Court enter an order declaring that any action proposed to be taken by the Secretary and the responsible officials of the Department of the Interior, or either of them, pursuant to Section 22(e) of ANCSA shall conform to the following requirements:

(1) Refuge replacement lands shall be designated from public lands adjacent to, or in proximity to, the wildlife refuge whose lands require replacement;

(2) Refuge replacement lands shall be designated on an acre-for-acre basis for those wildlife refuge lands which are actually conveyed to Native village corporations from time to time.

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c. That this Court enter an order reinstating plaintiff's land selection rights as to any lands withdrawn pursuant to Section 22(e) of ANCSA which were withdrawn by the Secretary under the erroneous interpretation of statutory authority and intention as alleged herein.

d. That this Court enter an order declaring that any action taken by the defendants to implement Section 22(e) of ANCSA, if otherwise lawful, shall constitute a "major federal action" within the meaning of NEPA.

e. That this Court enter such additional orders as it may deem necessary to afford plaintiff complete relief as prayed for in this Cause of Action.

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XIII.

NINTH CAUSE OF ACTION: DEFENDANTS HAVE BREACHED THE PROVISIONS OF THE 1972 MEMORANDUM OF UNDERSTANDING

102. Plaintiff realleges and incorporates herein every assertion set forth in paragraphs 1 through 101 inclusive in this Complaint.

103. The named Department of the Interior defendants have taken, or have failed to take, certain actions more specifically alleged herein which constitute a breach of the Memorandum of Understanding of 1972 which was executed by the predecessor of the Secretary and the Governor of Alaska in settlement of the lawsuit brought by the State and more particularly described in the Statement of Facts.

104. The Memorandum of Understanding of 1972 provided that the defendants would recognize plaintiff's Statehood Act selections of certain lands which were then withdrawn for Native selection pursuant to Section 11(a) of ANCSA, 16 U.S.C. § 1610(a), and other lands previously open to plaintiff for land selection, but which the defendants had refused to recognize before the settlement.

105. Subsequent to the execution of the Memorandum of Understanding, the Secretary and officials of the Department of the Interior have failed to take necessary actions to comply with the terms of the Memorandum of Understanding. Specifically, the defendants have failed to make certain lands available for selection by plaintiff, due to defendants' failure to promptly convey validly-selected lands to Native corporations and defendants' failure to require the Native corporations to place priorities on land selections and to reduce selections in excess of entitlement. As a result of defendants' failure to act, the lands described in the 1972 Memorandum of Understanding have not been made available

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to the plaintiff for selection promptly upon completion of Native corporation selections on December 18, 1975, in contravention of the express provisions in the Memorandum of Understanding.

106. After the filing of this lawsuit, the defendants have, upon information and belief, taken certain steps to make some, but not all, of the above-described lands available to plaintiff. To the extent that the defendants refuse to recognize plaintiff's land selections on lands described in the 1972 Memorandum of Understanding which are in excess of lawful selections by Native Corporations, plaintiff alleges that the defendants continue to violate the 1972 Memorandum.

INJURY TO PLAINTIFF

107. As a result of the failure of the defendants to act as alleged in the foregoing paragraphs, plaintiff's land selection rights under Section 6 of the Statehood Act, and which were recognized by predecessors of the defendants in the 1972 Memorandum of Understanding, have been precluded and delayed.

108. Each of defendant's failures to immediately make certain land available to plaintiff and to convey otherwise valid selections as required by the Memorandum of Understanding of 1972 constitutes a separate and independent breach of the Memorandum of Understanding and a separate and independent violation of plaintiff's vested rights to its land grant under Section 6 of the Statehood Act.

109. WHEREFORE, plaintiff asks this Court to grant the following relief with respect to this cause of action:

a. That this Court enter an order declaring that defendants have violated the provisions of the 1972 Memorandum of Understanding and have violated plaintiff's land selection rights under the Alaska Statehood Act.

b. That this Court order and direct the defendants to take all steps necessary and to act expeditiously to place the defendants in full compliance with the provisions

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of the Memorandum of Understanding and to recognize those land selections made by plaintiff.

c. That this Court enter such additional orders as it may deem necessary to afford plaintiff complete relief as prayed for in its Ninth Cause of Action.

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XIV.

TENTH CAUSE OF ACTION: DEFENDANTS' FAILURE TO PROMPTLY CONVEY NATIVE LANDS AND FAILURE TO REJECT NATIVE OVERSELECTIONS UNDULY IMPEDES PLAINTIFF'S SELECTION RIGHTS

110. Plaintiff realleges and incorporates herein every assertion set forth in paragraphs 1 through 109 in this Complaint.

111. ANCSA requires the Secretary and the other named Interior Department agents to immediately convey to eligible Native village and regional corporations those lands validly selected by them in fulfillment of their respective land entitlements pursuant to Sections 14(a), (b), and (e) thereof, 43 U.S.C. §§ 1613, et seq., among others.

112. ANCSA further directs the Secretary to make public lands in Alaska available for selection and identification by plaintiff pursuant to Sections 11 and 17 of ANCSA, 43 U.S.C. §§ 1610, 1616, among others, which lands are comprised of lands not withdrawn under Section 17(d)(1) or Section 17(d)(2)(A) of ANCSA, withdrawn lands in even-odd, odd-even townships, and lands not validly selected by Native village and regional corporations.

113. The Secretary and the responsible Interior Department officials have permitted the Native village and regional corporations to file land selection applications describing lands which far exceed the land entitlements and overselection allowances permitted for fulfillment of lawful entitlements of the respective regional and village corporations.

114. The filing of a land selection application by a regional or village corporation, under current departmental regulations, acts to segregate that land from appropriation under the public land laws and from selection by the plaintiff. Said segregation remains in effect until the land selection application is withdrawn or rejected

THE FOLLOWING DOCUMENT(S) MAY NOT FILM LEGIBLY BECAUSE OF POOR QUALITY OF THE ORIGINAL.

c. That this Court grant such additional orders as may be necessary to afford plaintiff complete relief as prayed for herein, including Cause of Action [illegible].

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114. The defendants have failed to expeditiously approve and convey the land selections filed by the regional and village corporations. The defendants have further failed to exercise their statutory and regulatory authority to reduce, reject and adjudicate excess Native land selections and as required by the policy decisions announced by the Secretary on March 6, 1978.

INJURY TO PLAINTIFF

115. Plaintiff has been prevented and unduly delayed, by the Secretary's actions and omissions as alleged, from exercising its valid land selection rights granted it by the Alaska Statehood Act and now vested to it by ANCSA, with respect to several million acres of federal lands which are subject to land selection applications filed by Native corporations far in excess of their respective entitlements.

116. WHEREFORE plaintiff prays as to its Tenth Cause of Action that this Court grant the following relief:

a. That this Court enter an Order declaring that, until the Secretary conveys validly-selected lands to Native village and regional corporations in fulfillment of their entire respective entitlements, or until the Secretary requires prioritizing, reduction and rejection of all excess Native corporation selections and selection applications to an amount of acreage not greater than 25 per cent of the total remaining land entitlement of each Native corporation which has not been conveyed to it by interim conveyance or patent, whichever first occurs, all land selection applications hereafter filed in the future by plaintiff upon any such lands shall, if otherwise valid, be considered valid selections of such lands, subject only to conveyance

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of such lands to the Native Corporation whose land selection predated plaintiff's land selection.

(b) That this Court order the Secretary to immediately implement the policy decisions announced by the Secretary on March 6, 1978, regarding Native overselections under ANCSA.

(c) That this Court enter such additional orders as it may deem necessary to afford plaintiff complete relief as prayed for in its Tenth Cause of Action.

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XV.

ELEVENTH CAUSE OF ACTION: THE DEFENDANTS' ACTIONS UNDER SECTION 204 OF FLPMA TO REVOKE, REJECT OR PRECLUDE PLAINTIFF'S LAND SELECTIONS IN EXCESS OF THEIR AUTHORITY

118. Plaintiff realleges and incorporates herein every assertion set forth in paragraphs 1 through 117 in this Complaint.

119. The Secretary has in the past and will continue to exercise authority purportedly derived from Section 204 of FLPMA, 43 U.S.C. § 1714, to preclude plaintiff from exercising its land selection rights under Section 6 of the Alaska Statehood Act.

120. Plaintiff has filed with the Secretary certain land selections, and identifications for selection, the total acreage of which will fulfill plaintiff's Statehood Act Section 6(b) entitlement. Approximately 41 million acres of said land selections and identifications for selection were filed on November 14, 1978.

121. On and after November 16, 1978, the Secretary exercised authority claimed under Section 204(e) of FLPMA to promulgate Public Land Order 5653, as amended by Public Land Order 5654, which Orders purport to withdraw approximately 110 million acres of public land from selection under Section 6 of the Statehood Act.

122. Plaintiff, upon information and belief, alleges that to the extent its land selections made on or before November 14, 1978 conflict with P.L.O. 5653 and P.L.O. 5454 the defendants will refuse to recognize and will reject those selections.

123. Any action by defendants to refuse to recognize all of plaintiff's land selections filed on or before November 14, 1978 exceeds the Secretary's authority under FLPMA or any other law, and is therefore unlawful, for the following reasons, among others:

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a. The Secretary has no independent discretion to disapprove land selections filed by plaintiff pursuant to Section 6(b) of the Statehood Act, nor any independent authority under FLPMA to appropriate or reserve land in any manner which would deny plaintiff's rights to validly select lands under Section 6(b) of the Statehood Act.

b. Public Land Order 5653 makes an emergency withdrawal of the described lands, subject to valid existing rights. All of plaintiff's pending land selections and identifications for selection constitute valid existing rights and the Secretary cannot revoke them by exercise of his withdrawal powers under FLPMA;

c. The Secretary's Section 204(e) withdrawal which purports to preclude plaintiff from filing land selections or obtaining approval of pending selections is of no legal effect because Section 701(g)(6) of FLPMA exempts state land grants from the provisions of FLPMA.

d. Public Land Orders 5653 and 5654 purport to invoke an emergency withdrawal where in fact no emergency existed since the lands were protected at the time by existing withdrawals, and because conclusory statements regarding the existence of an emergency by a U.S. Representative or by the Secretary, with no basis in fact, are legally insufficient to support such a withdrawal.

e. Any action taken pursuant to § 204(e) is null and void because this section violates the Constitutional doctrine of separation of powers between the executive and legislative branches of the United States Government.

124. The Secretary has announced that he intends to use his withdrawal authority under Section 204 of FLPMA to effect 20-year withdrawals of federal lands not already designated as new National Monuments or additions thereto, from those lands which were described in Public Land Order 5653, as stated previously in this Complaint. To the extent that such withdrawals may be claimed to preclude, revoke, deny or otherwise delay plaintiff's pending and future Statehood Act selections, said withdrawals exceed the Secretary's lawful authority and violate Section 701(g)(6) of FLPMA.

INJURY TO PLAINTIFF

125. By virtue of the Secretary's unlawful application of Section 204 of FLPMA, plaintiff will be denied its land grant rights under the Alaska Statehood Act.

126. WHEREFORE, plaintiff requests that this Court grant the following relief:

a. That this Court enter an order declaring that to the extent that Public Land Orders 5653 and 5654 purport to preclude plaintiff from filing valid land selections, such orders are null, void, and without legal effect;

b. That this Court enter an order declaring that plaintiff's land grants have vested under Section 6 of the Statehood Act and are saved from revocation or denial by Section 701(g)(6) of FLPMA;

c. That the Court enter an order declaring plaintiff's land selections or identifications for land selection to be valid existing rights;

d. That this Court declare that any withdrawal order previously issued by the Secretary pursuant to authority claimed under Section 204 of FLPMA, 43 U.S.C. § 1714, and particularly under Subsections (b), (c), and (e) thereof, are null, void, and of no effect as they may be claimed to apply to existing or future land selections by plaintiff.

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e. That this Court enter an order declaring Public Land Order 5653, as amended by Public Land Order 5654, is null and void because the Secretary has failed to establish that an emergency existed on November 16, 1978;

f. That this Court enter an order declaring that Section 204(e) of FLPMA, 43 U.S.C. § 1714(e), as implemented by the Secretary, violates the Constitutional doctrine of separation of powers between the executive and legislative branches of government.

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XVI.

TWELFTH CAUSE OF ACTION: VALID EXISTING RIGHTS

126. Plaintiff realleges and incorporates herein every assertion set forth in paragraphs 1 through 125 in this Complaint.

127. As of December 1, 1978, plaintiff had filed land selections or identifications for land selections which, upon conveyance, will complete the State's land grant entitlement under Section 6(b) of the Statehood Act.

128. The Presidential Proclamations, Numbers 4611 through 4627, signed by the President on December 1, 1978, provide that the establishment of each National Monument is "subject to valid existing rights".

129. Plaintiff's pending land selections under Section 6(b) of the Alaska Statehood Act are "valid existing rights" within the meaning of the Presidential Proclamations.

INJURY TO PLAINTIFF

130. Approximately nine million acres of plaintiff's land selections or identifications for land selection lie within the boundaries of the National Monuments created December 1, 1978.

131. Plaintiff, upon information and belief, alleges that the defendants will reject or refuse to convey said land selections despite the recognition of valid existing rights in each of the Proclamations.

132. WHEREFORE plaintiff asks this Court to grant it the following relief:

a. That this Court enter an order declaring all plaintiff's land selections and identifications for land selections filed on or before November 30, 1978 to be valid existing rights, and that they are not defeated by the National Monument withdrawals;

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b. That this Court enter an order directing the defendants to timely and expeditiously approve and convey plaintiff's land selections and identifications for selection without regard to claimed conflicts with National Monument boundaries; and

c. That this Court enter such additional orders as it may deem necessary to afford Plaintiff complete relief as prayed for in this Twelfth Cause of Action.

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XVII.

THIRTEENTH CAUSE OF ACTION: ANTIQUITIES ACT PROCLAMATIONS PRECLUDED BY SECTION 17(d)(2)(A) OF ANCSA

133. Plaintiff realleges and incorporates herein every assertion set forth in paragraphs 1 through 132 in this Complaint.

134. Section 17(d)(2)(A) of ANCSA directs the Secretary to withdraw "from all forms of appropriations under the public land laws" up to 80 million acres in Alaska, pending Congressional Resolution of the permanent status of the lands or until December 18, 1978, whichever was sooner.

135. Approximately 80 million acres were in fact withdrawn pursuant to this Subsection.

136. On December 1, 1978, the President of the United States by Proclamation under the Antiquities Act withdrew approximately 56 million acres into National Monuments from lands already withdrawn by the Secretary under Section 17(d)(2)(A).

137. The Antiquities Act is a public land law of the United States and the designation of National Monument lands by the President is a "form of appropriation" not permitted by Section 17(d)(2)(A).

INJURY TO PLAINTIFF

138. As a result of the withdrawals for National Monuments wrongfully made by the President of the United States on December 1, 1978, the plaintiff has been denied certain uses of those lands and the ability to select and receive title to the lands chosen by the plaintiff pursuant to the Alaska Statehood Act that conflict with the National Monuments designated by the President, and has suffered certain other injuries.

139. WHEREFORE plaintiff prays as to its Thirteenth Cause of Action that this Court grant it the following relief:

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a. That this Court enter an order declaring the Presidential Proclamations of December 1, 1978, purportedly creating the Alaska National Monuments in question, to be null and void, without force and effect, and otherwise invalid;

b. That this Court enjoin the President and the Department of Interior from taking any course of action, issuing any order, promulgating any regulations, or undertaking any other activities purporting to treat the designated National Monument areas under the requirements of the Antiquities Act, and ordering the Secretary to re-establish and continue prior use regulations;

c. That this Court enter such additional orders as it may deem necessary to afford plaintiff complete relief as prayed for in its thirteenth Cause of Action.

XVIII.

FOURTEENTH CAUSE OF ACTION: COSTS AND FEES

140. Plaintiff realleges and reincorporates herein by reference every assertion set forth in paragraphs 1 through 139 of this Complaint.

141. Plaintiff has incurred certain costs and fees in the filing of this action.

142. WHEREFORE plaintiff prays as to its Fourteenth Cause of Action that this Court enter an order awarding it costs and fees against defendants, and each of them.

DATED at Anchorage, Alaska this _____ day of January, 1979.

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