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*Amended
Complaint*

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STATE OF ALASKA

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9
10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE DISTRICT OF ALASKA
12 AT ANCHORAGE

13 STATE OF ALASKA,)
14)
Plaintiff,)
15)
vs.)
16)
17 JAMES EARL CARTER, President)
of the United States, in his)
18 official and individual)
capacities; CECIL D. ANDRUS,)
19 Secretary of the Interior,)
in his official and individual)
20 capacities; ROBERT HERBST,)
Assistant Secretary of the)
Interior for Fish and Wildlife)
21 and Parks, in his official)
and individual capacities;)
22 GUY R. MARTIN, Assistant)
Secretary of the Interior)
for Land and Water Resources,)
23 in his official and individual)
capacities; FRANK GREGG,)
24 Director, Bureau of Land)
Management, in his official)
25 and individual capacities;)
CURTIS V. McVEE, Alaska State)
26 Director, Bureau of Land)
Management, in his official)
27 and individual capacities;)
BOB BERGLAND, Secretary of)
28 Agriculture, in his official)
and individual capacities;)
29 JOHN A. SANDOR, Regional)
Forester, U.S. Forest)
30 Service, in his official)
and individual)
31 capacities; UNITED STATES)
DEPARTMENT OF THE INTERIOR;)
32 UNITED STATES DEPARTMENT OF)
AGRICULTURE:)
33)
34 Defendants.)

No. A-78-291 Civil

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1 before January 4, 1984. Section 6(a) of the Alaska Statehood
2 Act also granted to the State 400,000 acres of vacant and
3 unappropriated Federal lands from the National Forest System
4 in Alaska, to be selected by the State before January 4, 1984.
5 Upon acceptance of the terms of statehood by the people of
6 Alaska and admission of Alaska to the Union, a legal compact
7 was formed between the United States on the one hand, and the
8 State and people of Alaska on the other, which compact requires
9 the United States, through the Secretary and the Department,
10 and through the Secretary of Agriculture and the Department of
11 Agriculture, to convey to plaintiff all lands duly selected
12 by plaintiff in fulfillment of said land grants, pursuant
13 to the procedures set forth in Section 6 of the Alaska
14 Statehood Act.

15 11. Plaintiff has selected certain lands in partial
16 fulfillment of the federal land grants made to it in the Alaska
17 Statehood Act. Portions of such selected lands have been
18 patented to plaintiff by the Department, and other portions
19 have been tentatively approved for patent to plaintiff by the
20 Secretary pursuant to the procedures set forth in Section 6
21 of the Alaska Statehood Act. Portions of lands selected by
22 the State from the National Forest System have been approved
23 for conveyance by the Secretary of Agriculture. Lands tenta-
24 tively approved and lands patented to plaintiff comprise, in
25 acreage, less than one-half of the total quantity of Federal
26 lands granted plaintiff by the Alaska Statehood Act.

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

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1 13. On December 18, 1971 the Alaska Native Claims
2 Settlement Act, 43 U.S.C. § 1601, 855 Stat. 688 (hereinafter
3 referred to as "ANCSA") was enacted. Said Act granted Alaskan
4 Natives certain land and monetary benefits in settlement and
5 extinguishment of all aboriginal land titles, if any, and claims
6 thereto, within the State of Alaska. The land grants made to
7 Alaskan Natives included the authority to select federal lands
8 and lands previously tentatively approved to or selected by
9 plaintiff in certain instances, with the concurrence of the
10 plaintiff, so as to fulfill a total land grant to Alaskan
11 Natives of approximately 44 million acres of land. Section
12 17(d)(1) of said Act authorized predecessors of the Secretary
13 to make certain withdrawals of public lands to insure protection
14 of the public interest, and Section 17(d)(2) of said Act
15 required predecessors of the Secretary to withdraw up to,
16 but not to exceed, 80 million acres of public lands which
17 the Secretary deemed suitable for designation by Congress as
18 new or augmented national parks, national wildlife refuges,
19 national forests, and national wild and scenic rivers.

20 14. The Secretary and his predecessors subsequently
21 made certain withdrawals comprising 80 million acres pursuant
22 to Section 17(d)(2) of ANCSA, which lands were withdrawn from
23 selection by plaintiff pursuant to the requirements of said
24 section. Such withdrawals, which were finally recommended to
25 Congress by the Secretary's predecessor on December 17, 1973,
26 were accompanied in 1973 and 1974 by an Environmental Impact
27 Statement (hereinafter referred to as the "EIS") compiled at the
28 direction of the National Environmental Policy Act (hereinafter
29 referred to as "NEPA"), 42 U.S.C. § 4331. Such withdrawals will
30 expire on December 17, 1978 absent a Congressional delay of
31 expiration of the Section 17(d)(2) withdrawal, which expiration
32 is presently required by Section 17(d)(2)(D) of ANCSA.

33 15. The Secretary and his predecessors also
34 made certain withdrawals, including the withdrawals
as stated in paragraph 14 above, under the discretionary

1 as stated in paragraph 14 above, under the discretionary
2 authority granted by Section 17(d)(1) of ANCSA in such a
3 manner as to purport to classify substantially all of the
4 federal public lands within the State of Alaska as withdrawn
5 from selection by plaintiff under the Alaska Statehood Act.
6 Said withdrawals continue to the date hereof, and plaintiff,
7 upon information and belief, asserts that the legal significance
8 accorded such withdrawals by defendants will continue after
9 December 18, 1978 so as to purport to prevent selection by
10 plaintiff unless adequate relief, as prayed in this complaint,
11 is granted plaintiff.

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

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

30 18. Several months prior to October 14, 1978 the
31 Secretary and officials of the Department began private
32 discussions and made public statements regarding those actions
33 defendants would take to continue, by executive authority, the
34 withdrawn status of lands now withdrawn under Section 17(d)(2)

1 if the Congress failed to act prior to its adjournment. Said
2 discussions and statements have variously involved application
3 of Secretarial withdrawal authority claimed under Section 204
4 of the Federal Land Policy and Management Act, (hereinafter
5 referred to as "FLPMA"), 43 U.S.C. § 1714, Presidential with-
6 drawal authority claimed under the Antiquities Act (hereinafter
7 referred to as the "Antiquities Act"), 16 U.S.C. § 43, withdrawal
8 under Section 22(e) of ANCSA, 43 U.S.C. § 1621(e), and continued
9 reliance upon the purported effect of withdrawals made pursuant
10 to Section 17(d)(1) of ANCSA, 43 U.S.C. § 1615(d)(1), and the
11 wilderness review requirements of Section 603 of FLPMA, 43 U.S.C.
12 § 1792.

13 19. On or about October 25, 1978 the office of
14 the Secretary issued a letter, together with a draft "environ-
15 mental supplement", purporting to set forth alternative admini-
16 strative actions for treating the question of public lands in
17 Alaska upon expiration of the Section 17(d)(2) withdrawals
18 under ANCSA. Said letter and "environmental supplement" were
19 issued in an effort to comply with the requirements of NEPA,
20 though defendants claimed that some administrative actions
21 being considered were not subject to the provisions of NEPA.

22 20. Public analysis and comment regarding the
23 "environmental supplement" described in paragraph 19 above
24 are required by defendants on or before November 20, 1978,
25 which date is less than 30 days subsequent to issuance of
26 the "environmental supplement", and is less than 25 days
27 from the date upon which copies of said "supplement", together
28 with maps, were made available for general review and comment
29 by the affected public in Alaska.

30 21. The "environmental supplement" and letter issued
31 by defendants, as aforesaid, state that action will be taken by
32 defendants, and each of them, within their respective areas of
33 authority prior to December 18, 1978, implementing, singly or in
34 combination, the various administrative actions and interpreta-

1 a. That this Court find that the requirements
2 for public review, analysis and comment as required by NEPA
3 and the regulations and policies promulgated thereunder have
4 been, and will continue to be, violated by defendants, and that
5 plaintiff and its citizens have been and will be harmed thereby;

6 b. That this Court enter an order enjoining the
7 President from finally deciding upon any course of action,
8 making any proclamation or issuing any order affecting Alaska
9 pursuant to any otherwise lawful authority vested in him by
10 the Antiquities Act, until compliance with the requirements
11 of NEPA and regulations and policies promulgated thereunder
12 has occurred to the satisfaction of the Court;

13 c. That this Court enter an order enjoining
14 the Secretary the named Interior Department defendants and the
15 Department, or any of them, from finally deciding upon any
16 course of action, issuing any order, or making any withdrawal
17 of lands affecting Alaska under ANCSA, FLPMA or the Antiquities
18 Act, or any of them, until compliance with the requirements
19 of NEPA and regulations and policies promulgated thereunder
20 has occurred to the satisfaction of the Court;

21 d. That this Court enter such additional
22 orders as it may deem necessary to afford plaintiff complete
23 relief from defendants' actions as alleged in its First Cause
24 of Action.

25 VI.
26 SECOND CAUSE OF ACTION

27 27. Plaintiff realleges and incorporates herein by
28 reference each and every legal assertion and statement of fact
29 set forth in paragraphs 1 through 26 of this Complaint.

30 28. The original EIS issued by the Secretary's
31 predecessors, as stated in paragraph 14 of this Complaint, and
32 the letter and "environmental supplement" issued by the Secre-
33 tary and the Department as stated in paragraph 19 of this
34 Complaint, fail to comply, together or singly, with the

1 substantive requirements imposed by NEPA and regulations and
2 policies promulgated thereunder in the following particulars,
3 among others:

4 a. The EIS was written as an aid to Congressional
5 action, and is insufficient to support unilateral executive
6 action by defendants, or any of them.

7 b. The EIS is a substantially out-dated document,
8 having been compiled more than five years prior to the date
9 upon which actions are threatened to be taken by defendants.

10 c. The EIS fails to discuss, analyze, or
11 present alternatives for actions as to some lands which were
12 not finally withdrawn by the Secretary's predecessors in 1973,
13 but which are included within the scope of the "environmental
14 supplement" and the actions threatened by defendants on or
15 before December 17, 1978. The "environmental supplement",
16 standing alone, is legally and factually inadequate to meet
17 the requirements of NEPA and applicable regulations as to
18 such lands.

19 d. Neither the EIS nor the "environmental
20 supplement" discuss, analyze or present alternatives for actions
21 which, upon information and belief, the Secretary or the
22 Secretary of Agriculture, or their agents, intend to take
23 with regard to lands within the National Forest System in
24 Alaska, as will be more fully set forth subsequently in this
25 Complaint.

26 e. The EIS fails to discuss, analyze or present
27 those alternative executive actions now proposed to be taken by
28 defendants, and by each of them.

29 f. The "environmental supplement" fails to
30 present for public review, analysis and comment any preferred
31 alternative course of action or any definite combination of
32 actions which defendants, and each of them, are contemplating
33 to take; defendants have thus failed to offer a focus for
34 meaningful analysis and comment by plaintiff and by the affected
public.

1 g. The "environmental supplement", together
2 with the EIS, fail to fulfill the requirements of NEPA in the
3 fact that defendants, and each of them, are determining, and
4 have already determined, which course of action or combination
5 of actions will be taken, independent of the "environmental
6 assessment" and provision for the abbreviated comment period
7 for plaintiff and the affected public.

8 h. The EIS and the "environmental assessment",
9 taken together, are insufficient to fulfill the factual and
10 legal requirements of NEPA, as a matter of law.

11 29. Wherefore, plaintiff prays as to its Second
12 Cause of Action that this Court grant it the following relief:

13 a. That this Court find that defendants' EIS
14 and "environmental supplement" violate the substantive
15 requirements of NEPA and applicable guidelines and regulations;

16 b. That this Court find that defendants'
17 EIS and "environmental supplement" are inadequate to support
18 the proposed administrative actions, or any of them, as a matter
19 of law;

20 c. That this Court enter an order enjoining
21 defendants, and each of them, from finally determining any
22 course of action, issuing any order or proclamation, or
23 making any withdrawal of lands affecting Alaska until defendants
24 have cured each of those defects found to exist in the EIS
25 and the "environmental supplement", and have offered such
26 revised and supplemented documents for adequate public
27 review, analysis and comment.

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

31 VII.
32 THIRD CAUSE OF ACTION

33 30. Plaintiff realleges and incorporates herein by
34 reference each and every legal assertion and statement of

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1 fact set forth in paragraphs 1 through 29 of this Complaint.

2 31. Any action proposed to be taken by the President
3 pursuant to the Antiquities Act, as set forth in defendants'
4 "environmental supplement" and as alleged in this Complaint,

5 a. is in excess of lawful authority delegated
6 the President by Congress;

7 b. will usurp a power and function vested in
8 Congress by ANCSA and other law;

9 c. will not, and is not intended to, provide
10 only interim protection to the affected lands;

11 d. will constitute an arbitrary and capricious
12 exercise of authority by the President.

13 32. Any action proposed to be taken by the President
14 pursuant to the Antiquities Act, as alleged herein, if otherwise
15 lawful, constitutes a "major Federal action" within the meaning
16 of NEPA.

17 33. Wherefore, plaintiff prays as to its Third Cause
18 of Action that this Court grant it the following relief:

19 a. That this Court enter an order declaring
20 that any action proposed to be taken by the President pursuant
21 to the Antiquities Act will be, and is, unlawful under that Act
22 and as applied to the public lands in Alaska at issue in this
23 lawsuit.

24 b. That this Court enter an order declaring
25 that any action proposed to be taken by the President pursuant
26 to the Antiquities Act, if otherwise lawful, shall constitute
27 a "major Federal action" within the meaning of NEPA.

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

31 VIII.

32 FOURTH CAUSE OF ACTION

33 34. Plaintiff realleges and incorporates herein by
34 reference each and every legal assertion and statement of fact

1 set forth in paragraphs 1 through 33 of this Complaint.

2 35. The Secretary and the Department are authorized
3 by Section 22(e) of ANCSA (43 U.S.C. § 1621(e)) to replace, with
4 other public lands, those lands within existing wildlife refuges
5 in Alaska which are conveyed to Native village corporations.
6 Upon information and belief, plaintiff alleges that defendants
7 intend to replace those wildlife refuge lands lost by conveyance
8 to Native village corporation,

9 a. from public lands elsewhere in Alaska which
10 are not adjacent to or in close proximity with the affected
11 wildlife refuge;

12 b. on the basis of the acreage of wildlife
13 refuge lands selected by Native village corporations, regardless
14 of the amount of lawful land entitlement of each corporation
15 to such lands or the lawfulness of such selections;

16 c. on the basis of the entire amount of acreage
17 of wildlife refuge lands selected by Native village corporations,
18 regardless of the acreage of such lands which has actually been
19 conveyed to such corporations to the date hereof.

20 36. Such actions by the Secretary and the Department
21 as alleged herein will constitute a violation of the require-
22 ments and purposes of Section 22(e) of ANCSA.

23 37. Such actions by the Secretary and the Department,
24 as alleged herein, if otherwise lawful, constitute "major
25 Federal actions" within the meaning of NEPA.

26 38. Wherefore, plaintiff prays as to its Fourth Cause
27 of Action as follows:

28 a. That this Court enter an order enjoining
29 the Secretary and the Department from implementing Section
30 22(e) or ANCSA in the manner set forth in the "environmental
31 supplement", and as alleged in paragraph 35 of this
32 Complaint.

33 b. That this Court enter an order declaring
34 that any action proposed to be taken by the Secretary and the

1 Department, or either of them, pursuant to Section 22(e) of
2 ANCSA shall conform to the following requirements:

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

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

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

15 d. That this Court enter an order declaring
16 that any action taken by the defendants to implement Section
17 22(e) of ANCSA, if otherwise lawful, shall constitute a "major
18 Federal action" within the meaning of NEPA.

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

22 IX.
23 FIFTH CAUSE OF ACTION

24 38. Plaintiff realleges and incorporates herein by
25 reference each and every legal assertion and statement of fact
26 set forth in paragraphs 1 through 37 of this Complaint.

27 40. The Secretary, the named Interior Department
28 defendants, and the Department, and each of them, threaten
29 certain actions as alleged in this Complaint which, if under-
30 taken, would breach the Memorandum of Agreement between the
31 Secretary's predecessor and plaintiff, and particularly those
32 provisions of said Agreement which provide for exercise of
33 plaintiff's land selection rights as to certain lands formerly
34 withdrawn pursuant to Section 11(a)(3) of ANCSA, 43 U.S.C.
§ 1610(a)(3), among others.

1 41. The Secretary, the named Interior Department
2 defendants, and the Department, and each of them, have
3 failed to take certain actions required of them by the Memorandum
4 of Agreement between the Secretary's predecessor and plaintiff,
5 and in particular have failed to make certain lands available
6 for state selection after completion of lawful selections by
7 the village corporations and regional corporations for whose
8 benefit the lands were first withdrawn, said failure is a direct
9 result of defendants' failure to promptly adjudicate and
10 reject all Native corporation selections in excess of lawful
11 entitlement, and their failure to promptly convey lawfully
12 selected lands to Native corporations in any priority specified
13 by such corporations, which listings of land conveyance pri-
14 orities the defendants have failed to require of such Native
15 corporations.

16 42. Wherefore, plaintiff prays as to its Fifth
17 Cause of Action that this Court grant it the following relief:

18 a. That this Court enter an order enjoining
19 defendants, and each of them, from taking or withholding any
20 action whose effect would constitute a breach of the provisions
21 of the aforesaid Memorandum of Agreement.

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

25 X.
26 SIXTH CAUSE OF ACTION

27 43. Plaintiff realleges and incorporates herein by
28 reference each and every legal assertion and statement of fact
29 set forth in paragraphs 1 through 42 of this Complaint.

30 44. The Secretary and the Department have interpreted
31 the provisions of Section 603 of FLPMA (43 U.S.C. § 1782) so as
32 to apply the requirements of said section to public lands which
33 have been or may be selected by plaintiff, notwithstanding the
34 specific exemption of plaintiff from the requirements of FLPMA

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1 contained in Section 701(g)(6) of that Act, at 43 U.S.C.
2 note prec. § 1702.

3 45. The interpretation placed upon Section 603 of
4 FLPMA, as aforesaid, if applied to public lands in any manner
5 which would make such lands unavailable for selection by plain-
6 tiff, constitute a violation of Section 6 of the Alaska
7 Statehood Act and a breach of the compact between the United
8 States and the people of Alaska.

9 46. Wherefore, plaintiff prays as to its Sixth Cause
10 of Action that this Court grant it the following relief:

11 a. That this Court enter an order declaring
12 that section 603 of FLPMA (43 U.S.C. § 1782) is not applicable
13 to present and future land selections filed by plaintiff.

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

17 XI.
18 SEVENTH CAUSE OF ACTION

19 47. Plaintiff realleges and incorporates herein by
20 reference each and every legal assertion and statement of fact
21 set forth in paragraphs 1 through 46 of this Complaint.

22 48. The Secretary and the Department have proposed
23 to take certain actions pursuant to Section 204 of FLPMA, 43
24 U.S.C. § 1714, and particularly pursuant to subsections (b)
25 through (e) thereof, to withdraw lands for various purposes,
26 thus purportedly making such lands unavailable for selection
27 by plaintiff, notwithstanding the specific exemption of
28 plaintiff from the requirements of FLPMA contained in Section
29 701(g)(6) of that Act, as aforesaid.

30 49. Any action by the Secretary or the Department
31 to withdraw lands under authority of Section 204 of FLPMA, if
32 otherwise valid, constitutes a "major Federal action" within
33 the meaning of NEPA.

34 50. Wherefore, plaintiff prays as to its Seventh
Cause of Action that this Court grant it the following relief:

1 a. That this Court enter an order declaring
2 that section 204(b) of FLPMA (43 U.S.C. § 1714(b)) cannot be
3 applied in any manner which would segregate or withdraw lands
4 from selection by plaintiff, and that any land selections
5 filed by plaintiff on any lands so segregated or withdrawn
6 shall be treated, if otherwise valid, as valid land selections.

7 b. That this Court enter an order declaring
8 that section 204(c) of FLPMA (43 U.S.C. § 1714(c)) cannot be
9 applied in any manner which would withdraw lands from selection
10 by plaintiff, and that any land selections filed by plaintiff
11 on any lands so withdrawn shall be treated, if otherwise valid,
12 as valid land selections.

13 c. That this Court enter an order declaring
14 that section 204(d) of FLPMA (43 U.S.C. § 1714(d)) cannot be
15 applied in any manner which would withdraw lands from selection
16 by plaintiff, and that any land selections filed by plaintiff
17 on any lands so withdrawn shall be treated, if otherwise valid
18 as valid land selections.

19 d. That this Court enter an order declaring
20 that section 204(e) of FLPMA (43 U.S.C. § 1714(e)) cannot be
21 applied in any manner which would withdraw lands from selection
22 by plaintiff, and that any land selections filed by plaintiff on
23 on any lands so withdrawn shall be treated, if otherwise valid,
24 as valid land selections.

25 e. That this Court enter an order declaring
26 that any withdrawal made, or to be made, by defendants pursuant
27 to Section 204 of FLPMA (43 U.S.C. § 1714), if otherwise
28 valid, shall constitute a "major Federal action" within the
29 meaning of NEPA.

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

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XII.
EIGHTH CAUSE OF ACTION.

51. Plaintiff realleges and incorporates herein by reference each and every legal assertion and statement of fact set forth in paragraphs 1 through 50 of this Complaint.

52. The Secretary and the Department, and each of them, have classified and withdrawn certain public lands in Alaska from selection by plaintiff pursuant to authority claimed to reside in Section 17(d)(1) of ANCSA, 43 U.S.C. § 1616(d)(1). Said withdrawals were imposed on or about March 15, 1972 and comprise substantially all of the Federal public lands in Alaska which would otherwise be available for selection by plaintiff under authority of Section 6 of the Alaska Statehood Act, as alleged elsewhere in this Complaint, and in addition also comprising those lands also withdrawn pursuant to Section 17(d)(2) of ANCSA, which withdrawal expires on December 17, 1978.

53. Insofar as said withdrawals pursuant to Section 17(d)(1) of ANCSA purport to prevent selection by plaintiff of lands not also withdrawn pursuant to Section 17(d)(2) of ANCSA and lands not described in paragraphs 2, 5, 6 and 8 of the Memorandum of Understanding dated September 1, 1972, said withdrawals constitute a violation of Section 6 of the Alaska Statehood Act and a breach of the compact between the United States and the people of Alaska.

54. Insofar as said withdrawals pursuant to Section 17(d)(1) of ANCSA purport to prevent selection by plaintiff after December 17, 1978 of lands described in paragraphs 2, 5, 6 and 8 of the Memorandum of Understanding dated September 1, 1972, said withdrawals constitute a violation of Section 6 of the Alaska Statehood Act and a breach of the compact between the United States and the people of Alaska.

55. Insofar as said withdrawals pursuant to Section 17(d)(1) of ANCSA purport to prevent selection by plaintiff

1 after December 17, 1978 of lands presently withdrawn pursuant
2 to Section 17(d)(2) of ANCSA, said withdrawals constitute a
3 violation of Section 6 of the Alaska Statehood Act and a breach
4 of the compact between the United States and the people of
5 Alaska.

6 56. Wherefore, plaintiff prays as to its Eighth
7 Cause of Action that this Court grant it the following relief:

8 a. That this Court enter an order declaring
9 that all land selections previously filed by plaintiff, and
10 those filed in the future, on public lands withdrawn pursuant
11 to Section 17(d)(1) only, shall, if such selections are other-
12 wise valid, be deemed valid selections of the public lands
13 encompassed by such selections pursuant to the grant contained
14 in Section 6 of the Alaska Statehood Act.

15 b. That this Court enter an order declaring
16 that all land selections filed by plaintiff after December 17,
17 1978 on lands formerly within withdrawals made pursuant to
18 Section 17(d)(2) of ANCSA, shall if such selections are other-
19 wise valid, be deemed effective selections of the public
20 lands encompassed by such selections pursuant to the grant
21 contained in Section 6 of the Alaska Statehood Act.

22 c. That this Court enter an order declaring
23 that all land selections filed by plaintiff after December 17,
24 1978 on lands described in paragraphs 2, 5, 6 and 8 of the
25 Memorandum of Understanding dated September 1, 1972, shall if
26 such selections are otherwise valid be deemed effective
27 selections of the public lands encompassed by such selections
28 pursuant to the grant contained in Section 6 of the Alaska
29 Statehood Act.

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

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1 XIII.
2 NINTH CAUSE OF ACTION

3 57. Plaintiff realleges and incorporates herein by
4 reference to each and every legal assertion and statement of
5 fact set forth in paragraphs 1 through 56 of this Complaint.

6 58. Upon information and belief, plaintiff alleges
7 that the Secretary and the Secretary of Agriculture, or their
8 agents, intend to impose certain segregations and withdrawals
9 upon lands, including subsurface lands, contained within the
10 National Forest System in Alaska under authority claimed to
11 reside in Section 204(b)(1) of FLPMA, 43 U.S.C. § 1714(b)(1),
12 which withdrawals, if imposed, will purport to preclude land
13 selections by plaintiff pursuant to Section 6(a) of the
14 Alaska Statehood Act, notwithstanding the specific exemption
15 of plaintiff from the requirements of FLPMA contained in
16 Section 701(g)(6) of that Act, as aforesaid.

17 59. The threatened actions by the Secretary and the
18 Secretary of Agriculture, as alleged herein, if applied to lands
19 within the National Forest System in Alaska in any manner
20 which would make such lands unavailable for selection by
21 plaintiff, constitute, together and separately, violations
22 of Section 6 of the Alaska Statehood Act and a breach of
23 the compact between the United States and the people of
24 Alaska.

25 60. No environmental analysis or negative declaration
26 has been issued by the Secretary or the Secretary of Agriculture,
27 or either of them or their agents, regarding actions which
28 plaintiff alleges are to be taken by such defendants pursuant
29 to Section 204(b)(1) of FLPMA; nor were such actions or any
30 alternatives to such actions addressed, considered or proposed
31 in the EIS or the "environmental supplement".

32 61. Any action or application by the Secretary and
33 the Secretary of Agriculture, or either of them, and their
34 agents, to segregate or withdraw lands, including subsurface

1 lands, within the National Forest System in Alaska, if
2 otherwise valid, constitutes a "major Federal action" within
3 the meaning of NEPA.

4 62. Wherefore, plaintiff prays as to its Ninth
5 Cause of Action that this Court grant it the following relief:

6 a. That this Court enter an order declaring
7 that any application for segregation or withdrawal of National
8 Forest System lands in Alaska by the Secretary or the Secretary
9 of Agriculture, or either of them or their agents, shall not
10 have segregative effect as to any such lands selected by, or
11 to be selected by, plaintiff pursuant to Section 6(a) of the
12 Alaska Statehood Act, and that any land selections filed, or
13 to be filed, by plaintiff on any National Forest System lands
14 shall, if otherwise valid, be treated as valid land selections.

15 b. That this Court enter an order declaring
16 that any withdrawal of National Forest System lands in Alaska
17 by the Secretary or the Secretary of Agriculture, or either of
18 them or their agents, pursuant to Section 204(b)(1) of
19 FLPMA shall not prevent existing or future selections of
20 any of such lands by plaintiff under authority of Section
21 6(a) of the Alaska Statehood Act, and that any land selections
22 filed, or to be filed, by plaintiff on any lands so withdrawn,
23 shall, if otherwise valid, be treated as valid land selections.

24 c. That this Court enter an order declaring
25 that any application for withdrawal, or any withdrawal made
26 or to be made, by the Secretary or the Secretary of Agriculture,
27 or either of them or their agents, pursuant to Section 204(b)(1)
28 of FLPMA, if otherwise valid, shall be deemed to be a "major
29 Federal action" within the meaning of NEPA.

30 d. That this Court find that defendants' EIS
31 and "environmental supplement" violate the substantive
32 requirements of NEPA and applicable regulations with regard
33 to actions intended or threatened to be taken pursuant to
34 Section 204(b)(1) of FLPMA, and that no other lawful and

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ANCHORAGE BRANCH
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1 adequate environmental assessment of the proposed actions
2 exists which is sufficient to meet the substantive require-
3 ments of NEPA.

4 e. That this Court find that defendants' EIS
5 and "environmental supplement" are inadequate to support the
6 proposed administrative actions pursuant to Section 204(b)(1)
7 of FLPMA as a matter of law;

8 f. That this Court enter an order enjoining
9 defendants, and each of them, from finally determining any
10 course of action, issuing any application or order for with-
11 drawal, or making any withdrawal of National Forest System
12 lands in Alaska until defendants have cured each of those
13 defects regarding proposed actions upon National Forest System
14 lands, and have offered adequate original, revised and
15 supplemented documents for reasonable public review, analysis
16 and comment.

17 g. That this Court enter such additional
18 orders as it may deem necessary to afford plaintiff complete
19 relief as prayed for in its Second Cause of Action.

20 XIV.
21 TENTH CAUSE OF ACTION

22 63. Plaintiff realleges and incorporates herein by
23 reference each and every legal assertion and statement of fact
24 set forth in paragraphs 1 through 62 of this Complaint.

25 64. ANCSA requires the Secretary, the other named
26 Interior Department agents, and the Department to immediately
27 convey to eligible Native village and regional corporations
28 these lands validly selected by them in fulfillment of the
29 land entitlements granted them by said Act, until those lands
30 validly selected have been conveyed in their entirety to said
31 corporations in the amount of their respective land entitle-
32 ments, pursuant to Sections 14(a), (b), and (e) thereof,
33 (43 U.S.C. ____,) among others.

34 65. ANCSA requires the Secretary to make public lands
in Alaska available for selection by plaintiff pursuant to

1 Sections 11 and 17 of the Act, among others, which lands are
2 comprised of lands not withdrawn under Section 17(d) (1)
3 of Section 17(d) (2) (A) of ANCSA, withdrawn lands in even-odd,
4 odd-even townships, and lands not validly selected by Native
5 village and regional corporations.

6 66. The Secretary has permitted Native village and
7 regional corporations to file selection applications, with
8 segregative effect, upon land amounts far in excess of their
9 respective land entitlements, together with any reasonable
10 overselection amount necessary for selection adjustments;
11 and the Secretary has conveyed selected lands to Native
12 corporations neither immediately nor expeditiously; and
13 the Secretary has failed to enforce existing statutory and
14 regulatory authority to reduce, reject and adjudicate excess
15 land selection applications filed by Native corporations.

16 67. Plaintiff has been prevented, by the Secretary's
17 actions and omissions as aforesaid, from exercising valid
18 land selection rights granted it by the Alaska Statehood
19 Act and guaranteed to it by ANCSA, as to several millions of
20 acres of federal lands upon which Native corporations have
21 filed land selection applications in excess of their respective
22 entitlements, due to the segregative effect of such selection
23 applications and regardless of their ultimate invalidity.

24 68. WHEREFORE, plaintiff prays as to its Tenth
25 Cause of Action that this Court grant it the following relief:

26 a. That this Court enter an Order declaring
27 that, until the Secretary conveys validly-selected lands to
28 Native village and regional corporations in fulfillment of
29 their entire respective entitlements, or until the Secretary
30 requires prioritizing, reduction and rejection of all excess
31 Native corporation selections and selection applications to an
32 amount of acreage not greater than 125 per cent of the total
33 remaining land entitlement of each Native corporation which
34 has not been conveyed to it by interim conveyance or patent,

1 whichever first occurs, all land selection applications filed
2 or filed in the future by plaintiff upon any such lands shall, if
3 otherwise valid, be considered valid selections of such lands,
4 subject only to conveyance of such lands to the Native Corpora-
5 tion whose land selection predated plaintiff's land selection.

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

9 XV.
10 ELEVENTH CAUSE OF ACTION

11 69. Plaintiff realleges and reincorporates herein
12 by reference each and every legal assertion and statement of
13 fact set forth in paragraphs 1 through 68 of this Complaint.

14 70. Plaintiff has incurred certain costs and fees
15 in the filing of this action.

16 71. Wherefore, plaintiff prays as to its Eleventh
17 Cause of Action that this Court enter an Order awarding it
18 costs and fees against defendants, and each of them.

19 DATED at Anchorage, Alaska this 9th day of
20 November, 1978.

21 AVRUM M. GROSS
22 ATTORNEY GENERAL

23 By: Thomas E. Meacham
24 Thomas E. Meacham
25 Assistant Attorney General

26 DEPARTMENT OF LAW
27 OFFICE OF THE ATTORNEY GENERAL
28 ANCHORAGE BRANCH
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30 ANCHORAGE, ALASKA 99501
31 PHONE: 27C-3550
32
33
34

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE STATE OF ALASKA AND THE UNITED STATES

Whereas, the State of Alaska and the United States are both committed to the maintenance of a viable economy in Alaska, the preservation of Alaska's natural resources, including its wildlife and scenic values, the protection of the Alaskan environment, and the planned and orderly development of those lands required by the people of Alaska; and

Whereas, the State of Alaska and the United States both recognize the need to delineate the final boundaries of those lands which the Secretary of the Interior wishes to withdraw under §17(d)(2) of the Alaska Native Claims Settlement Act before September 18, 1972; and

Whereas the United States, acting through the Department of the Interior, the State of Alaska, and the Federal-State Land Use Planning Commission have each been studying the lands of Alaska and their resources, and the problems and conflicts involved in the use of these resources; and

Whereas, the State of Alaska, the Federal-State Land Use Planning Commission, and various members of the public, have each made a number of recommendations to the Secretary of the Interior concerning the final boundaries of those lands which the Secretary of the Interior wishes to withdraw under §17(d)(2) of the Alaska Native Claims Settlement Act, based upon their views of the resource values and human needs associated with these lands, and

Whereas, these recommendations have resulted in extended deliberations within the Department of the Interior and discussions with the representatives of the State of Alaska and various members of the public; and

Whereas, the United States and the State of Alaska both acknowledge the right of the State of Alaska to select up to 103,350,000 acres of federal lands as provided in the Alaska Statehood Act, and further recognize that the State of Alaska has made land selections under this authority to serve a broad range of state objectives including settlement, mineral and timber development, fish and wildlife management, public parks and recreation; and

Whereas, the State of Alaska and the United States both recognize that the litigation entitled State of Alaska v. Rogers C. B. Morton, et al. raises difficult and complex legal issues, and that the protracted litigation of those issues could delay the progress of land management programs of vital importance both to the State of Alaska and the United States; and

Whereas, the State of Alaska and the United States both agree that a program of cooperation, mutual study and planning will be of greater benefit to the people of Alaska and to the nation as a whole than will the continuation of the present litigation;

NOW, THEREFORE, the State of Alaska and the United States acting through the Secretary of the Interior enter into the following agreement:

1. DEFINITIONS

For the purposes of this memorandum: "State" will mean the State of Alaska. "Secretary" will mean the United States acting through the Secretary of the Interior. "Act" will mean the Alaska Native Claims Settlement Act of December 18, 1971, 85 Stat. 699. "Planning Commission" will mean the Federal-State Land Use Planning Commission.

2. STATE SELECTIONS

The Secretary will take the necessary steps, including the issuance of or the amendment of public land orders, to make the following lands available for State selection:

Gates of the Arctic Area

Fairbanks Meridian

- T. 29 N, R. 24 W, SW 1/4 and E 1/2
- T. 30 N, R. 24 W, E 1/2
- T. 31 N, Rs. 19 through 24 W
- T. 27 N, Rs. 1 and 2 E

Kateel River Meridian

- T. 18 N, Rs. 23 through 26 E, R. 27 E (fractional)
- T. 19 N, Rs. 23 through 26 E, R. 27 E (fractional)
- T. 20 N, Rs. 23 E (E 1/2), RS. 24 through 26 E, and 27 E (fractional)
- T. 21 N, Rs. 24 through 26 E
- T. 22 N, R. 25 E (E 1/2), R. 26 E

Yakatoga Area

Copper River Meridian

- T. 19 S, Rs. 14 through 16 E, R. 18 E
- T. 20 S, Rs. 18 and 19 E
- T. 21 S, R. 20 E

Nowitna Area

Kateel River Meridian

- T. 12 S, R. 21 E

Innoko Area

Kateel River Meridian

- T. 25 S, Rs. 7 through 9 E
- T. 26 S, Rs. 7 through 9 E
- T. 27 S, R. 7 E
- T. 28 S, R. 7 E
- T. 29 S, R. 7 E (fractional)

Seward Meridian

- T. 31 N, Rs. 44 and 45 W
- T. 32 N, Rs. 44 and 45 W
- T. 33 N, Rs. 43 and 44 W
- T. 34 N, Rs. 43 and 44 W (fractional)

Wood River Area

Seward Meridian

T. 1 N, R. 58 W
T. 2 N, R. 58 W

Mt. McKinley Area

Seward Meridian

T. 25 N, Rs. 9 through 19 W
T. 26 N, Rs. 9 through 13 W
T. 27 N, Rs. 9 through 13 W
T. 28 N, R. 9 W
T. 28 N, R. 10 W Section 1 through 4, 9 through 16,
21 through 28, 33 through 36
T. 28 N, Rs. 12 and 13 W
T. 29 N, Rs. 7 and 8 W
T. 29 N, R. 9 W Sections 1 through 4, 8 through 36
T. 29 N, R. 10 W. Sections 25, 35, and 36
T. 30 N, R. 17 W
T. 30 N, R. 18 W
T. 31 N, R. 17 W
T. 31 N, R. 16 W
T. 31 N, R. 15 W, Sections 4 through 9, and 18
T. 32 N, R. 15 W, (W 1/2)
T. 32 N, R. 16 W
T. 33 N, R. 15 W (fractional) W 1/2
T. 33 N, R. 16 W

3. SECTION 17(d)(1) LANDS

The Secretary will withdraw the following lands under Section 17(d)
(1) of the Act for further study of their public values and for classification:

Yakutat Area

Copper River Meridian

T. 22 S, R. 38 E (fractional)
T. 23 S, R. 37 E (fractional)
T. 24 S, R. 37 E (fractional)
T. 25 S, R. 40 E (fractional)
T. 25 S, R. 41 E (fractional)
T. 27 S, R. 42 E (fractional)
T. 27 S, R. 43 E (fractional)
T. 28 S, R. 42 E
T. 28 S, R. 43 E (fractional)
T. 28 S, R. 44 E (fractional)
T. 30 S, Rs. 45 and 46 E (fractional)
T. 31 S, R. 47 E (fractional)
T. 22 S, R. 37 E (fractional)
T. 23 S, Rs. 38 and 39 E (fractional)

Copper River Meridian (Cont'd.)

- T. 24 S, Rs. 38 and 39 E (fractional)
- T. 25 S, Rs. 38 and 39 E (fractional)
- T. 26 S, R. 38 (that portion outside of the Tongass N. F.)
- T. 26 S, Rs. 39 through 41 E
- T. 26 S, R. 42 E (fractional)
- T. 27 S, Rs. 38 through 41 E
- T. 28 S, Rs. 37 and 41 E (fractional)
- T. 29 S, Rs. 42 and 43 E
- T. 29 S, Rs. 38 through 41 E, north of Tongass National Forest
- T. 29 S, Rs. 44 and 45 E (fractional)
- T. 30 S, Rs. 39, 40 and 41 E, north of Tongass National Forest
- T. 30 S, Rs. 42 and 43 E (fractional)
- T. 31 S, Rs. 43 and 44 E
- T. 31 S, R. 42 E, east of Tongass National Forest
- T. 31 S, Rs. 45 and 46 E (fractional)
- T. 32 S, R. 42 E, east of Tongass National Forest
- T. 32 S, Rs. 43 through 46 E
- T. 32 S, R. 47 E (fractional)
- T. 33 S, Rs. 43 through 46 E
- T. 33 S, R. 42 E, east of Tongass National Forest
- T. 33 S, R. 47 E, (fractional)
- T. 34 S, Rs. 44 through 47 E
- T. 35 S, Rs. 45 through 47 E, North of Glacier Bay National Monument

Gates of the Arctic Area

Fairbanks Meridian

- T. 32 N, Rs. 14, 15, 16, 17 W
- T. 31 N, Rs. 14, 15, 16 W
- T. 30 N, Rs. 14, 15, 16 W
- T. 29 N, Rs. 13, 14, 15 W
- T. 28 N, Rs. 14, 15, 16 W
- T. 27 N, Rs. 15, 16 W

Charley River Area

Fairbanks Meridian

- T. 1 N, Rs. 21, 22, 23, 24 E
- T. 2 N, Rs. 21, 22, 23, 24 E

McCarthy Area

Copper River Meridian

- T. 3 S, Rs. 10, 11, 12, 13, 14 and 15 E, (S 1/2)
- T. 4 S, Rs. 11, 12, 13, 14 and 15 E
- T. 5 S, Rs. 11, 12, 13, 14, 15, 16, 17 and 18 E
- T. 6 S, Rs. 11 through 18 E
- T. 7 S, Rs. 14 through 18 E
- T. 8 S, Rs. 16 through 18 E

Excludes any patented lands.

4. DEFICIENCY LAND AND 17(d)(1) LANDS

The following lands will either be withdrawn under Section 11(a)(3) of the Act as deficiency lands for the selection by the Village Corporations or the Regional Corporation for the Cook Inlet Region or for study and classification by the Secretary under Section 17(d)(1) of the Act. The Secretary will determine which lands should be placed in each of the two categories.

Lake Clark Area

Seward Meridian

T. 1 S, Rs. 26, 27, 28, 29 W
T. 3 S, Rs. 20, 21 W (fractional)
T. 3 S, R. 22 W (fractional)
T. 3 S, R. 23 W
T. 3 S, R. 24 W (E 1/2)
T. 4 S, Rs. 22 and 23 W (fractional)
T. 4 S, R. 24 W
T. 5 S, R. 22 W (fractional)
T. 5 S, R. 23 W
T. 5 S, Rs. 24 and 25 W (fractional)
T. 6 S, Rs. 22 through 26 (fractional)
T. 7 S, Rs. 25, 26 W (fractional)
T. 7 S, R. 27 W E 1/2
T. 8 S, R. 26 W (fractional)
T. 8 S, R. 27 W
T. 8 S, R. 28 W E 1/2
T. 9 S, Rs. 27 and 28 W (fractional)
T. 9 S, R. 29 W (fractional) E 1/2
T. 1 N, Rs. 26, 27, 28, 29 W
T. 2 N, Rs. 25, 26, 27, 28 W
T. 3 N, Rs. 28, 29, 30 W
T. 4 N, Rs. 30, 31 W

Illiamna Area

Seward Meridian

T. 12 S, Rs. 31, 32 W
T. 11 S, Rs. 29, 30, 31, 32 W
T. 10 S, Rs. 28 partial, 29, 30 W

5. STATE SELECTIONS AFTER NATIVE CORPORATIONS SELECTIONS

The following list of lands will be made available for State selection after the completion of all selections by the Village Corporations or Regional Corporation for whose benefit the lands are presently withdrawn.

Tyonek Village Deficiency Withdrawal (Cook Inlet Region)

Seward Meridian (Protraction Description)

T. 10 N, R. 16 W (W 1/2)
T. 10 N, Rs. 17 through 20 W
T. 11 N, Rs. 17 through 20 W
T. 12 N, Rs. 16 through 20 W
T. 13 N, Rs. 16 through 20 W
T. 14 N, Rs. 16 through 20 W
T. 15 N, Rs. 15 through 20 W
T. 16 N, Rs. 15 through 20 W
T. 17 N, Rs. 15 through 20 W
T. 18 N, Rs. 15 through 20 W
T. 19 N, Rs. 15 through 18 W
T. 20 N, Rs. 15 through 17 W

Eklutna Village Deficiency Withdrawal (Cook Inlet Region)

Seward Meridian (Protraction Description)

T. 12 N, Rs. 4 and 5 E
T. 13 N, Rs. 4 through 6 E
T. 14 N, Rs. 4 through 7 E
T. 15 N, Rs. 4 through 8 E
T. 16 N, Rs. 4 through 10 E
T. 17 N, Rs. 4 through 10 E
T. 18 N, Rs. 4 through 10 E
T. 19 N, Rs. 6 and 7 E
T. 20 N, R. 3 E
T. 21 N, Rs. 1 through 5 E
T. 22 N, Rs. 1 through 4 E
T. 23 N, R. 1 E
T. 21 N, Rs. 1 and 2 W
T. 22 N, Rs. 1 and 2 W

Copper River Regional Deficiency

Copper River Meridian (Protraction Description)

T. 1 N, Rs. 3 through 11 W
T. 2 N, Rs. 3, 4, 10 and 11 W
T. 1 S, Rs. 3 through 11 W
T. 2 S, Rs. 1 through 11 W
T. 3 S, Rs. 1 through 11 W
T. 4 S, Rs. 1 through 11 W
T. 5 S, Rs. 2 through 11 W
T. 6 S, Rs. 2 through 9 W
T. 7 S, Rs. 2 through 5 W

Seward Meridian (Protraction Description)

Ts. 15 through 22 N., Rs. 11 and 12 E

Chugach Regional Deficiency Withdrawal

Copper River Meridian (Protraction Description)

- T. 7 S, Rs. 6 through 11 W
- T. 8 S, Rs. 4, 8 through 11 W (North of Chugach National Forest)
- T. 9 S, R. 2 W
- T. 10 S, Rs. 2, 3, 4 W
- T. 10 S, R. 5 W (East of Chugach National Forest)
- T. 11 S, Rs. 2 and 3 W
- T. 11 S, Rs. 4 and 5 W (East of Chugach National Forest)
- T. 12 S, R. 1 W
- T. 12 S, Rs. 2, 3 W (East of Chugach National Forest)
- T. 13 S, R. 1 W (East of Chugach National Forest)
- T. 13 S, R. 1 E (East of Chugach National Forest)
- T. 14 S, R. 1 E (East of Chugach National Forest)

Tanana Chiefs Regional Deficiency Withdrawal (Kandik Basin)

Fairbanks Meridian (Protraction Description)

- T. 4 N, Rs. 32 and 33 E
- T. 5 N, Rs. 31 and 32 E
- T. 6 N, Rs. 29 through 32 E
- T. 7 N, Rs. 29 through 32 E
- T. 8 N, Rs. 21 through 32 E
- T. 9 N, Rs. 20 through 32 E
- T. 10 N, Rs. 21 through 32 E
- T. 11 N, Rs. 21 through 32 E
- T. 12 N, Rs. 21 through 32 E
- T. 13 N, Rs. 24 through 32 E
- T. 14 N, Rs. 24 through 32 E
- T. 15 N, Rs. 27 through 32 E
- T. 16 N, Rs. 27 through 32 E
- T. 17 N, Rs. 27 through 31 E
- T. 18 N, Rs. 27 through 31 E
- T. 19 N, Rs. 27 through 31 E
- T. 20 N, Rs. 27 through 31 E
- T. 21 N, Rs. 27 through 31 E
- T. 22 N, Rs. 27 through 31 E
- T. 23 N, Rs. 27 through 31 E
- T. 24 N, Rs. 27 through 31 E
- T. 25 N, Rs. 28, 29, and 30 E
- T. 26 N, Rs. 28, 29, and 30 E
- T. 27 N, Rs. 29 and 30 E
- T. 28 N, Rs. 29 and 30 E

6. SUBMISSION TO PLANNING COMMISSION

The following lands will be jointly submitted immediately to the Planning Commission by the Secretary and the State with a recommendation that the Planning Commission give priority to the establishment of a land use plan for these lands:

Seward Meridian

- T. 27 N, Rs. 12 and 13 W
- T. 28 N, Rs. 12 and 13 W

7. RECOMMENDATIONS TO CONGRESS

The Secretary agrees that any recommendation to Congress concerning the following lands and their inclusion in national parks, forests, wildlife refuges, or wild and scenic rivers systems will include a recommendation that these lands remain open to hunting:

Seward Meridian (Protraction Description)

T. 38 S, R. 51 W (fractional)
T. 39 S, R. 51 W (fractional)
T. 39 S, R. 52 W (fractional)
T. 40 S, R. 52 W (fractional)
T. 40 S, R. 53 W (fractional)
T. 40 S, R. 54 W (fractional)
T. 41 S, R. 51 W (fractional)
T. 41 S, R. 52 W (fractional)
T. 41 S, R. 53 W (fractional)
T. 41 S, R. 54 W (fractional)
T. 41 S, R. 55 W (fractional)
T. 41 S, R. 56 W (fractional)
T. 42 S, R. 54 W (fractional)
T. 42 S, R. 55 W (fractional)
T. 42 S, R. 56 W (fractional)
T. 43 S, R. 54 W (fractional)
T. 43 S, R. 55 W (fractional)
T. 43 S, R. 56 W (fractional)

8. COOPERATIVE AGREEMENT FOR WILDLIFE MANAGEMENT

The State and the Secretary will enter into a cooperative agreement for the management of the wildlife resources in the general areas of the following described lands:

Umat Meridian (Protraction Description)

T. 15 S, R. 36 E
T. 16 S, Rs. 36 and 37 E
T. 17 S, Rs. 35, 36 and 37 E

Fairbanks Meridian (Protraction Description)

T. 37 N, Rs. 17 through 19 E
T. 36 N, Rs. 17 through 30 E
T. 35 N, Rs. 17 through 30 E
T. 34 N, Rs. 17 through 30 E
T. 33 N, Rs. 17 through 30 E

9. WITHDRAWAL OF STATE SELECTIONS

The State will withdraw its selection of the following lands and the Secretary will then include these lands in a withdrawal under Section 11(a)(3) of the Act for deficiency selections by Village Corporations or the Regional Corporation of the Cook

Inlet Region:

Seward Meridian

- T. 8 N, R. 29 W
- T. 9 N, Rs. 28 and 29 W
- T. 10 N, Rs. 28 and 29 W
- T. 11 N, R. 28 W

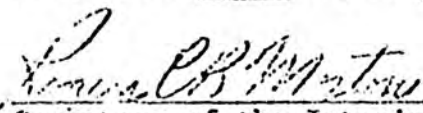
10. LANDS NO LONGER IN CONTROVERSY

The State and the Secretary agree that lands not specifically described herein are no longer in controversy and their selection, withdrawal, or disposition are not relevant to the settlement of any litigation between the State and the Secretary. The State expressly agrees to withdraw all those State selections filed on January 21 and January 24, 1972, which are for lands not described in paragraphs 2, 5, 6, or 8 of this memorandum or which are not in PLO 5186, and the State acknowledges the validity of Public Land Orders 5169 through 5184, 5187, 5188, and 5190 through 5195, as such orders relate to the lands described in paragraphs 3, 4, 5, 7, and 9. The Secretary agrees to proceed immediately with the adjudication of those State selections which will be made pursuant to this agreement.

11. DISMISSAL OF LITIGATION

The State and the Secretary agree to the dismissal with prejudice of the litigation entitled Alaska v. Morton, et al., Civil Action No. A-48-72. The State further agrees not to challenge the validity of Public Land Orders 5150, 5151, 5156, 5169 through 5188, and 5190 through 5195, or to challenge those portions of any public land orders which the Secretary will issue in order to perform all the acts specified in this agreement.

IN WITNESS WHEREOF, the parties have hereto set their hands this 1st day of September, 1972.


Secretary of the Interior of the
United States of America


Governor of the State of Alaska

BIRCH, HORTON, BITTNER & MONROE
733 West Fourth Avenue, Suite 206
Anchorage, Alaska 99501

(907) 279-9403

Attorneys for Applicants
THE STEERING COUNCIL FOR ALASKA LANDS AND
REPRESENTATIVE STEVE COWPER, CHAIRMAN OF THE
STEERING COUNCIL FOR ALASKA LANDS

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

AT ANCHORAGE

STATE OF ALASKA,)	
)	
Plaintiff,)	
)	
vs.	)	A 78-291 Civil
)	
JAMES EARL CARTER, President)	
of the United States, in his	)	MOTION TO INTERVENE
individual capacity;)	
CECIL D. ANDRUS, Secretary	)	AS PLAINTIFFS
of the Interior, in his)	
individual capacity;)	
UNITED STATES DEPARTMENT OF)	
THE INTERIOR,)	
)	
Defendants.)	
)	
)	
)	

The Steering Council for Alaska Lands and Steve Cowper, individually and in his capacity as Chairman of the Steering Council for Alaska Lands, respectfully move this Honorable Court for leave to intervene as plaintiffs in the instant action, in order to assert the claims and seek the relief set forth in the proposed Complaint, a copy of which is attached hereto, on the grounds set forth in the aforesaid Complaint, pursuant to Rule 24 of the Federal Rules of Civil Procedure, 28 U.S.C. The grounds for this motion are the following:

BIRCH, HORTON, BITTNER AND MONROE
ATTORNEYS AT LAW
4400 JENIFER ST., N.W., SUITE 300
WASHINGTON, D.C. 20015
TELEPHONE (202) 244-4250

1. The Steering Council for Alaska Lands, hereinafter referred to as Council, was established by statute duly enacted, effective May 21, 1977, Ch. 47, SLA 1977.

2. The composition of the Council is the following:

Senator Mike Colletta

Senator Joe Orsini ✓

Senator Chancy Croft ✓

Representative Steve Cowper ✓

Representative Alvin Osterback

Representative Joe Hayes

Robert LeResche, Commissioner of the State
Department of Natural Resources

Walter Parker, State Cochairman, Joint Federal-
State Land Use Planning Commission

Carl Jack, representing Alaska Natives

C.C. Hawley of the Alaska Miners Association ✓

David Cline of the Audubon Society.

See ed ✓

3. The statutorily mandated duties of the Council are as follows:

a. Ensure the full recognition of the land selection rights of the State of Alaska;

b. Assure that Alaska natives are provided an economic base in their lands;

c. Ensure that Alaska's needs and future requirements are made known to Congress;

d. Provide a forum for Alaskans to develop recommendations to protect Alaska's present and future needs;

e. Direct research into various matters pertaining to the State's land selection rights including, but not limited to, the use of selected land by the State of Alaska;

f. Make recommendations to the Governor and the Legislative Council for further action to assert the rights of the State to select land;

g. Work with the Alaska Congressional delegation to develop recommendations for appropriate State legislation;

h. Formulate and implement policies on behalf of the State with regard to Sections 17(d)(1) and (2) of the Alaska Native Claims Settlement Act, 43 U.S.C. §1616(d)(1) and (2) (1970), hereinafter referred to as ANSCA.

4. The Council was established by the Legislature of the State of Alaska and commanded to perform these duties under and pursuant to the Legislature's exercise of its powers granted by Articles II and VIII of the Alaska Constitution, and particularly Article VIII, §§ 2, 5 and 6, which confer the following explicit constitutional responsibilities upon the Legislature, apart from and in addition to its general Article II law making authority:

a. The Legislature shall provide for the utilization, development, and conservation of all natural resources, including land, for the maximum benefit of the people of Alaska;

b. The Legislature may provide for facilities, improvements, and services to assure greater utilization, development, reclamation, and settlement of lands; and

c. The Legislature shall provide for the selection of lands granted to the State by the United States, and for the administration of the state public domain.

5. The Council and its Chairman appear here as the legislatively created vehicle for the exercise and implementation of the aforesaid constitutional responsibilities.

6. The Council and its Chairman have interests relating to the matters which are the subject of the instant action. These interests include:

a. The exercise and implementation of the Legislature's constitutionally mandated duties with regard to land and natural resources in Alaska, particularly including the selection of lands granted to the State by the United States, as contained in Article VIII of the Alaska Constitution and as set forth above in paragraph four (4);

b. The protection and preservation of the prerogatives of the Legislature emanating from Article II of the Alaska Constitution;

c. The preservation and protection of the Council's autonomous policy making and implementing function as set forth in the Council's enabling statute and referred to above;

d. The preservation and protection of the Council's statutorily mandated responsibility to assure that Alaska Natives are provided an economic base in their land;

e. The preservation and protection of the Council's statutorily mandated responsibility to gather critical information from and provide it to all persons and elements involved in the matters arising out of Sections 17(d)(1) and (2) of ANCSA, generically known as the (d)(2) land issue;

f. The preservation and protection of the Council's statutorily mandated responsibility to ensure the full recognition of State land selection rights on behalf of the Legislature;

g. The preservation and protection of the Council's statutorily mandated responsibility to make recommendations for action on (d)(2) and State land selection issues on behalf of the Legislature to the Governor, the Legislative Council, and the Alaska congressional delegation;

h. The preservation and protection of its statutorily mandated responsibility to serve as a forum for Alaskans to develop recommendations to protect Alaska's present and future needs;

i. The preservation and protection of the Council's statutorily mandated responsibility as an investigatory arm of the Legislature in the matters of (d)(2) lands and State land selection rights; and

j. The preservation and protection of the Council's constitutionally and statutorily mandated responsibility to function in these areas independently of the Executive Branch of the State Government.

7. The Steering Council and its Chairman are so situated that resolution of this action without their presence

as parties as a practical matter will impair and impede their ability to protect their interests as set forth above for the following reasons, among others:

a. The Complaint seeks final determination of all material and significant issues regarding the actions of the President and the Secretary of the Interior, leaving none, to the knowledge of the Council, for resolution subsequently;

b. A decision in this litigation effectively will be binding in all subsequent litigation, as it will be the initial and seminal decision on the issues raised directly and indirectly in the Complaint;

c. The issues presented involve substantial and complex questions of statutory and constitutional law of first impression which will have obvious direct and manifold indirect consequences for the applicants;

d. The applicants by virtue of the constitutional and statutory provisions set forth above are, and will continue to be, significant, interested, and integral parties in the matters of (d)(2) and other public lands and state selection rights, of which matters this litigation is a critical and sizeable element and upon which it will be of great effect.

3. The applicants, given the particular and unique constitutional and statutory duties, will not be adequately represented by any other party to the litigation, particularly due to the distinct and potentially adverse interests, responsibilities, and authority of the Council on the one hand and the State as represented by the Executive on the other.

9. This motion is timely filed, as the Complaint was filed recently and the litigation is still in the pleading stage.

10. This motion, and the requested intervention by the Council and its Chairman, will not unduly delay the litigation or prejudice the litigation rights of existing parties.

11. This motion, and the requested intervention by the Council and its Chairman, will not unduly and fruitlessly complicate the litigation, as the essential claims underlying the Council's challenge to the action of the Defendants are substantially the same as those of the State and involve common and substantially identical questions of law and fact. Allowance of this application for intervention will avoid otherwise needless duplicate litigation.

12. The applicants for intervention herein request oral argument on this motion.

WHEREFORE, for the foregoing reasons, applicants Council and Cowper respectfully pray that this Honorable Court grant them leave to intervene in the instant lawsuit as of right or, in the alternative, permissively, pursuant to Rule 24 of the Federal Rules of Civil Procedure.

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TELEPHONE (202) 244-4250

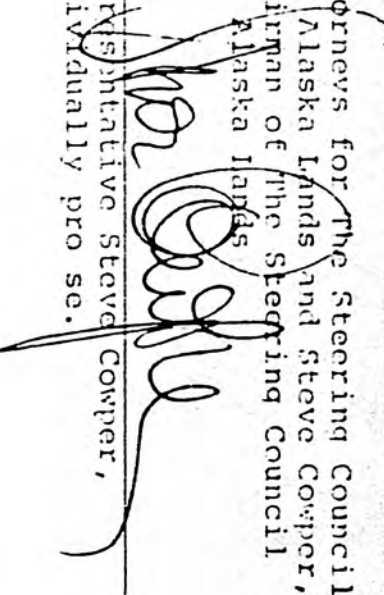
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Respectfully submitted,

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By: Ronald G. Birch

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for Alaska Lands and Steve Cooper,
Chairman of the Steering Council
for Alaska Lands


Representative Steve Cooper,
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Attorneys for Applicants
THE STEERING COUNCIL FOR ALASKA LANDS AND
REPRESENTATIVE STEVE COWPER, CHAIRMAN OF THE
STEERING COUNCIL FOR ALASKA LANDS

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

AT ANCHORAGE

STATE OF ALASKA,)

Plaintiff,)

vs.)

A 78-291 Civil

JAMES EARL CARTER, President)
of the United States, in his)
individual capacity;)

NOTICE OF MOTION

CECIL D. ANDRUS, Secretary)
of the Interior, in his)
individual capacity;)

UNITED STATES DEPARTMENT OF)
THE INTERIOR, *)

Defendants.)

TO: CECIL D. ANDRUS
Secretary of the Interior
United States Department
of Interior
Main Building
18th & C Streets, N.W.
Washington, D.C.

PLEASE TAKE NOTICE that the undersigned will bring a
Motion for Intervention on for hearing in the above entitled
matter before this Court in Room _____, United States
Courthouse, Federal Building, Anchorage, Alaska, on the
_____ day of November, 1978, at _____ m. or as soon

*Pursuant to Rule 25(D)(2) of the Federal Rules of Civil
Procedure, add Cecil D. Andrus, in his official capacity,
(5USC Sections 701-706).

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DATED this 9th day of November, 1978, at Anchorage,

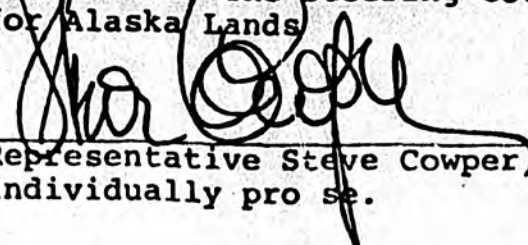
Alaska.

BIRCH, HORTON, BITTNER & MONROE
733 West Fourth Avenue, Suite 206
Anchorage, Alaska 99501

FOR) By 

Ronald G. Birch

Attorneys for The Steering Council
for Alaska Lands and Steve Cowper,
Chairman of The Steering Council
for Alaska Lands


Representative Steve Cowper,
individually pro se.

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Attorneys for Applicants
THE STEERING COUNCIL FOR ALASKA LANDS AND
REPRESENTATIVE STEVE COWPER, CHAIRMAN OF THE
STEERING COUNCIL FOR ALASKA LANDS

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA
AT ANCHORAGE

STATE OF ALASKA,)	
)	
Plaintiff,)	
)	
vs.	)	A 78-291 Civil
)	
JAMES EARL CARTER, President	)	NOTICE OF MOTION
of the United States, in his)	
individual capacity;)	
CECIL D. ANDRUS, Secretary)	
of the Interior, in his)	
individual capacity;)	
UNITED STATES DEPARTMENT OF)	
THE INTERIOR,*)	
)	
Defendants.)	
)	
)	
)	

TO: JAMES EARL CARTER
President of the United States
1600 Pennsylvania Avenue, N.W.
Washington, D.C.

PLEASE TAKE NOTICE that the undersigned will bring a
Motion for Intervention on for hearing in the above entitled
matter before this Court in Room _____, United States
Courthouse, Federal Building, Anchorage, Alaska, on the
_____ day of November, 1978, at _____ m. or as soon


*Pursuant to Rule 25(D)(2) of the Federal Rules of Civil
Procedure, add Cecil D. Andrus, in his official capacity,
(50 USC Sections 701-706).

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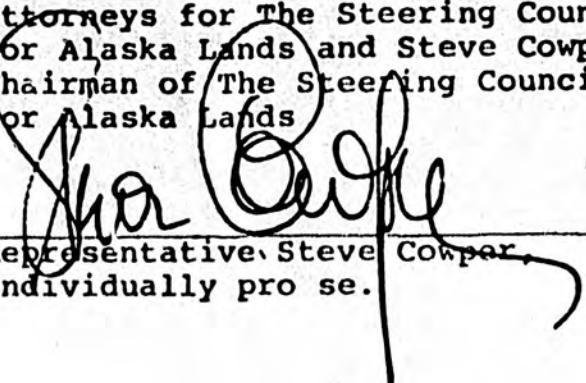
thereafter as counsel can be heard.

DATED this 9th day of November 9, 1978, at Anchorage,
Alaska.

BIRCH, HORTON, BITTNER & MONROE
733 West Fourth Avenue, Suite 206
Anchorage, Alaska 99501

By: 
Ronald G. Birch

Attorneys for The Steering Council
for Alaska Lands and Steve Cowper,
Chairman of The Steering Council
for Alaska Lands

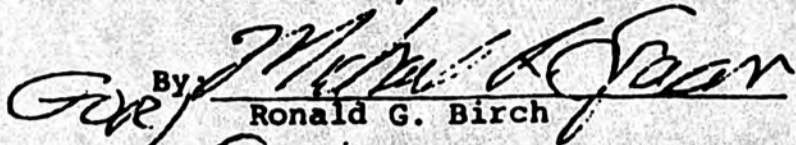

Representative Steve Cowper,
individually pro se.

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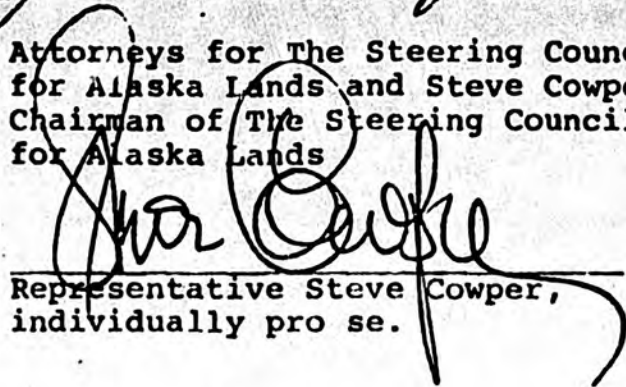
thereafter as counsel can be heard.

DATED this 9th day of November, 1978, at Anchorage,
Alaska.

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733 West Fourth Avenue, Suite 206
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By: 
Ronald G. Birch

Attorneys for The Steering Council
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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)
 individual capacity;)
 CECIL D. ANDRUS, Secretary)
 of the Interior, in his)
 individual capacity;)
 UNITED STATES DEPARTMENT OF)
 THE INTERIOR*,)
)
 Defendants.)

Case No. A 78-291 Civil

AFFIDAVIT OF MAILING

STATE OF ALASKA)
) ss.
 THIRD JUDICIAL DISTRICT)

LESLIE MORRILL, first being duly sworn on her
oath, deposes and says that she is a secretary in the offices of
BIRCH, HORTON, BITTNER & MONROE, 733 West Fourth Avenue, Suite
206, Anchorage, Alaska 99501, and that on the 9th day of
November, 1978, she served a true and correct copy of
the Memorandum of Points and Authorities in Support of Motion to
Intervene as Plaintiffs, Motion to Intervene as Plaintiffs,
Complaint for Declaratory and Injunctive Relief, Notice of

*Pursuant to Rule 25(d)(2) of the Federal Rules of Civil
Procedure, add Cecil D. Andrus, in his official capacity,
(5USC Sections 701-706).

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TELEPHONE (907) 279-9403

Motion to Avrum M. Gross, Attorney General for the State of Alaska, Notice of Motion to James Earl Carter, President of the United States, and Notice of Motion to Cecil D. Andrus, Secretary of the Interior, by depositing the same, with sufficient postage, in the United States mail, addressed to:

AVRUM M. GROSS
Attorney General for the State of Alaska
Attorney for Plaintiff
420 "L" Street, Suite 100
Anchorage, Alaska 99501

James Earl Carter
President of the United States
1600 Pennsylvania Avenue, N.W.
Washington, D.C.

Cecil D. Andrus
Secretary of the Interior
United States Department of the Interior
Main Building
18th & C Streets, N.W.
Washington, D.C.

on behalf of Steering Council for Alaska Lands and Representative Steve Cowper, Plaintiff-Intervenors.

Leslie Morrill
Leslie Morrill

SUBSCRIBED AND SWORN to before me this 9th day of November, 1978.

Michael R. [Signature]
NOTARY PUBLIC IN AND FOR ALASKA
My Commission expires: 2/23/81

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AND REPRESENTATIVE STEVE COWPER,
CHAIRMAN OF THE STEERING COUNCIL FOR
ALASKA LANDS

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA
AT ANCHORAGE

STATE OF ALASKA)	
)	
Plaintiff)	
)	
and)	
)	
STEERING COUNCIL FOR ALASKA)	
LANDS,)	
and)	
REPRESENTATIVE STEVE COWPER)	
)	
Plaintiff Intervenors	)	CASE NO. A78-291 Civil
)	
v.	)	COMPLAINT FOR DECLARATORY
	)	AND INJUNCTIVE RELIEF
)	
JAMES EARL CARTER, President,)	
et al.)	
)	
)	
Defendants)	
)	

I
NATURE OF ACTION

1. This is an action for declaratory and injunctive relief pursuant to 24 United States Code, Section 2201 and 28 United States Code, Section 1331, against the named individual defendants and the agents of the named agency. The amount in controversy exceeds in value the amount of \$10,000.

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II
JURISDICTION

2. This Court has jurisdiction to hear and decide the issues raised in this action by virtue of 28 United States Code, Section 1331. This Court also has jurisdiction to hear and decide the issues raised in this action by virtue of 5 United States Code, Sections 701 through 706.

III
DEFENDANTS

3. Defendant, James Earl Carter, (hereinafter referred to as "the President"), is the President and Chief Executive of the United States of America.

4. 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 is the chief executive officer of the United States Department of the Interior.

5. Defendant, United States Department of the Interior, (hereinafter referred to as "the Department"), are those persons in said Department who act or withhold action at the direction of the Secretary. Designation of said agency as defendant shall include the officers and agents of all component branches, assistant secretariats, bureaus, and services.

IV
INTERVENORS

6. The Legislature of the State of Alaska, in exer-

cise of the authority granted in Article II and Article VIII, Sections 2, 5 and 6, of the Constitution of the State of Alaska, created the Steering Council for Alaska Lands, May 21, 1977, Ch. 47 SLA 1977.

7. Article VIII, Section 2, of the Constitution of the State of Alaska gives the Legislature the specific and plenary authority to

provide for the utilization, development, and conservation of all natural resources belonging to the State, including land and waters, for the maximum benefit of its people.

8. Article VIII, Section 6, of the Constitution of the State of Alaska additionally orders the State Legislature to manage and protect the State's public domain:

Section 6. State Public Domain. Lands and interests therein, including submerged and tidal lands, possessed or acquired by the State and not used or intended exclusively for governmental purposes, constitute the state public domain. The legislature shall provide for the selection of lands granted to the State by the United States and for the administration of the state public domain.

9. The above cited articles of the Alaska Constitution define the full scope of the powers, duties, and obligations granted to and placed upon the Steering Council

for Alaska Lands in its enabling legislation.

10. The enabling legislation provides that the Steering Council shall comprise eleven (11) members, drawn from both the public and private sectors of Alaska citizens. The members are as follows:

- a) Six (6) members of the Alaska Legislature:
 - i) Senator Mike Colletta,
 - ii) Senator Joe Orsini,
 - iii) Senator Chancey Croft,
 - iv) Representative Steve Cowper,
 - v) Representative Alvin Osterback,
 - vi) Representative Joseph Hayes; and

- b) Five (5) members, representing a cross-section of Alaska citizens, appointed by the Governor:
 - i) Walter Parker, State Co-Chairman of the Joint Federal-State Land Use Planning Commission,
 - ii) Robert LeResche, Commissioner of the State Department of Natural Resources,
 - iii) Carl Jack of the Alaska Native Community,
 - iv) Charles C. Hawley of the Alaska Miners' Association,
 - v) David Cline of the Audubon Society.

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11. The enabling legislation directs the Steering Council to carry out the following duties:

- a) Insure the full recognition of the land selection rights of the State of Alaska;
- b) Assure the provision of an economic base for Alaska natives;
- c) Insure that the needs and future requirements of the State are made known to members of Congress;
- d) Provide a forum for Alaskans to develop recommendations to protect Alaska's present and future needs;
- e) Direct research into various matters pertaining to the State's land selection rights, including, but not limited to, the use of lands selected by the State of Alaska;
- f) Make recommendations to the Governor and the Legislative Council for further action with respect to the rights of the State to select public land;
- g) Work with the Alaska congressional delegation to develop recommendations for appropriate State legislation;

- h) Formulate and advocate policies on behalf of the State with regard to Sections 17(d)(1) and (d)(2) of the Alaska Native Claims Settlement Act, 43 U.S.C. §§1616(d)(1) and (d)(2) (1970), hereinafter referred to as ANCSA.

12. Steve Cowper is the elected Chairman of the Steering Council for Alaska Lands and is a resident of and a landowner in Alaska. He frequently hunts and fishes and makes other recreational use of public lands in the State of Alaska, some of which are subject to withdrawal under Sections 17(d)(1) and (2) of ANCSA.

13. The Defendants' actions which constitute the basis of this Complaint and the Complaint filed by the State of Alaska threaten to impair or preclude Mr. Cowper's recreational activities and make it difficult if not impossible as a practical matter to fully assess the impact of the Defendants' proposals on Mr. Cowper's interests asserted herein.

14. In the exercise of both the statutory and constitutional obligations flowing from the State Legislature to the Steering Council for Alaska Lands, the Steering Council has formulated and advocated consensus positions with respect to the disposition and management of public lands subject to the withdrawal authority of Sections 17(d)(1) and (2) of ANCSA.

15. The resolutions and policies adopted by the Steering Council are pursuant to its authority and that of

the Legislature to protect and manage the State public domain, the natural resources belonging to the State, and State selection rights granted to the State in the Statehood Act of 1958, 43 U.S.C. Prec. §1.

16. The resolutions and policy positions taken with respect to the public land issues have from time to time differed from those set by the Office of the Governor of Alaska. Such different, although not necessarily adverse, positions and policies arise because the Steering Council has interests diverse from those of the Governor. The positions of the Steering Council reflect the workings and compromises of a group composed of different, varied, and often conflicting interests.

IV
FIRST CAUSE OF ACTION

17. Intervenors allege and incorporate by reference herein the Statement of Facts and the seven (7) causes of action alleged in Paragraphs seven (7) through fifty-one (51) of the Complaint filed by the State of Alaska in this matter.

V
SECOND CAUSE OF ACTION

18. Intervenors reallege and incorporate by reference each and every legal and factual assertion set forth in Paragraphs seven (7) through twenty-five (25) of the Complaint filed by the State of Alaska in this action and each and every legal and factual assertion set forth in Paragraphs one

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(1) through seventeen (17) of this Complaint.

19. Intervenors further allege on information and belief that the public land in the State of Alaska which has been withdrawn pursuant to the authority granted in Sections 17(d)(1) and (d)(2) of ANCSA is presently managed by the Bureau of Land Management of the Department of Interior.

20. Pursuant to the authority granted in the National Environmental Policy Act of 1969 and Executive Order 11514, the Department of Interior through its individual departments including the Bureau of Land Management has promulgated rules and regulations governing the preparation of environmental impact statements.

21. Rule .52D of Bulletin 1792, "Environmental Statements", prepared by the Bureau of Land Management governs the preparation of environmental impact statements for lands subject to the jurisdiction of the Bureau of Land Management. Rule .52D provides as follows:

D. Time Limit for Draft Environmental Statement Review Comments. A period of no less than 45 days must be established for comment. Upon request in writing to the responsible official (See .04), extension of the time for submitting comments may be granted. Use the date of availability to CEQ, publication in the Federal Register, or distribution to the public, whichever is the latest, to establish the review period. (Note: The minimum review period is 45 days; whenever possible

a longer review period is established.) Despite specific limits of receiving comments, the Bureau will normally address all comments received during the preparation of the PFES.

22. On or about October 26, 1978, the Department of Interior gave notice in the Federal Register, Volume 43, Page 208, that the Secretary would receive public comment until November 20, 1978 with respect to the Secretary's proposals as contained in the "Draft Environmental Supplement" which was made available to the public on or about that date.

23. The above notice gives Intervenors less than twenty-five (25) days in which to analyze and prepare and submit public comment upon the series of proposals made by the Department of Interior. This truncated public comment period with respect to a major Federal action which will affect the human environment of Alaska residents and which involves more than 99.4 million acres of Alaska's public land, some of which might otherwise be available for State selection, is in direct violation of the regulations promulgated by the Bureau of Land Management and approved by the Department of Interior with respect to the preparation of environmental impact statements. Furthermore, the shortened period of public comment violates the principles of the Guidelines of the President's Council on Environmental Quality which also recommends a forty-five (45) day comment period, 40 C.F.R. §§ 1500.7 and 1500.9(f) (1978).

24. The shortened period for public comment will frustrate and materially interfere with Intervenors' efforts to protect their and the State's interests in exercising the State's land selection rights. It further will impede the Intervenors' ability to determine which selections are adversely affected and to determine what action to take to protect those selections.

25. Neither the Steering Council nor Alaska residents individually can adequately analyze, review, and comment on the complex proposals offered by the Department of Interior within the twenty-five (25) days provided. Among other reasons, geographical, climatic, temporal, and population conditions in Alaska make it more difficult, if not impossible as a practical matter, to gather and assess public opinion in such a short time. The twenty-five (25) days offered by the Department of Interior through the Secretary is insufficient.

WHEREFORE, Intervenors hereby respectfully request that this Court grant the following relief:

- a) That this Court find that the requirements for public review, analysis and comment as required by the National Environmental Policy Act and the regulations and policies promulgated thereunder have been, and will continue to be, violated by defendants;
- b) That this Court enter an order enjoining the

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President from finally deciding upon any course of action and from making any promulgations or issuing any order affecting Alaska pursuant to any otherwise lawful authority vested in him by the Antiquities Act, until compliance with the requirements of the National Environmental Policy Act and regulations and policies promulgated thereunder has occurred to the satisfaction of the Court;

- c) That this Court enter an order enjoining the Secretary and the Department, or either of them, from finally deciding upon any course of action, issuing any order, or making any withdrawal of lands affecting Alaska under ANCSA, the Federal Land Policy and Management Act, or the Antiquities Act, or any of them, until compliance with the requirements of the National Environmental Policy Act and regulations and policies promulgated thereunder has occurred to the satisfaction of the Court;
- d) That this Court enter such additional orders as it may deem necessary to afford Intervenors' complete relief from Defendants' actions.

VI
THIRD CAUSE OF ACTION

26. Intervenors reallege and reincorporate herein by reference each and every legal assertion and statement of fact set forth in Paragraphs one (1) through twenty-five (25)

of this Complaint.

27. Intervenors have incurred certain costs and fees in the filing of this action.

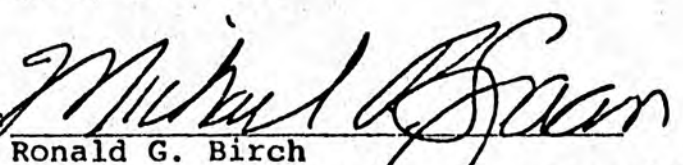
WHEREFORE, Intervenors pray as to their Third Cause of Action that this Court enter an Order awarding them costs and fees against Defendants, and each of them.

DATED this 9th day of November, 1978, at Anchorage, Alaska.

Respectfully submitted,

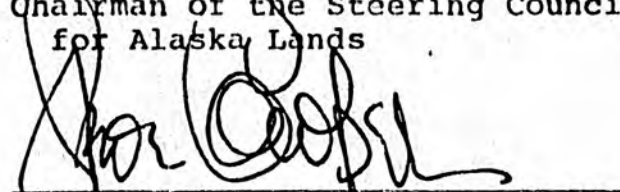
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By


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for

and
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Representative Steve Cowper,
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Attorneys for Applicants
THE STEERING COUNCIL FOR ALASKA LANDS AND
REPRESENTATIVE STEVE COWPER, CHAIRMAN OF THE
STEERING COUNCIL FOR ALASKA LANDS

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

AT ANCHORAGE

STATE OF ALASKA,)	
)	
Plaintiff,)	
)	
vs.	)	A 78-291 Civil
)	
JAMES EARL CARTER, President)	
of the United States, in his	)	MOTION TO INTERVENE
individual capacity;)	
CECIL D. ANDRUS, Secretary	)	AS PLAINTIFFS
of the Interior, in his)	
individual capacity;)	
UNITED STATES DEPARTMENT OF)	
THE INTERIOR, *)	
)	
Defendants.)	
)	
)	

The Steering Council for Alaska Lands and Steve Cowper, individually and in his capacity as Chairman of the Steering Council for Alaska Lands, respectfully move this Honorable Court for leave to intervene as plaintiffs in the instant action, in order to assert the claims and seek the relief set forth in the proposed Complaint, a copy of which is attached hereto, on the grounds set forth in the aforesaid Complaint, pursuant to Rule 24 of the Federal Rules of Civil Procedure, 28 U.S.C. The grounds for this motion are the following:

*Pursuant to Rule 25(d)(2) of the Federal Rules of Civil Procedure, add Cecil D. Andrus, in his official capacity, (5USC Sections 701-706).

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1. The Steering Council for Alaska Lands, hereinafter referred to as Council, was established by statute duly enacted, effective May 21, 1977, Ch. 47, SLA 1977.

2. The composition of the Council is the following:

Senator Mike Colletta

Senator Joe Orsini

Senator Chancy Croft

Representative Steve Cowper

Representative Alvin Osterback

Representative Joe Hayes

Robert LeResche, Commissioner of the State

Department of Natural Resources

Walter Parker, State Cochairman, Joint Federal-

State Land Use Planning Commission

Carl Jack, representing Alaska Natives

C.C. Hawley of the Alaska Miners Association

David Cline of the Audubon Society.

3. The statutorily mandated duties of the Council are as follows:

a. Ensure the full recognition of the land selection rights of the State of Alaska;

b. Assure that Alaska natives are provided an economic base in their lands;

c. Ensure that Alaska's needs and future requirements are made known to Congress;

d. Provide a forum for Alaskans to develop recommendations to protect Alaska's present and future needs;

e. Direct research into various matters pertaining to the State's land selection rights including, but not limited to, the use of selected land by the State of Alaska;

f. Make recommendations to the Governor and the Legislative Council for further action to assert the rights of the State to select land;

g. Work with the Alaska Congressional delegation to develop recommendations for appropriate State legislation;

h. Formulate and implement policies on behalf of the State with regard to Sections 17(d)(1) and (2) of the Alaska Native Claims Settlement Act, 43 U.S.C. §§1616(d)(1) and (2) (1970), hereinafter referred to as ANSCA.

4. The Council was established by the Legislature of the State of Alaska and commanded to perform these duties under and pursuant to the Legislature's exercise of its powers granted by Articles II and VIII of the Alaska Constitution, and particularly Article VIII, §§ 2, 5 and 6, which confer the following explicit constitutional responsibilities upon the Legislature, apart from and in addition to its general Article II law making authority:

a. The Legislature shall provide for the utilization, development, and conservation of all natural resources, including land, for the maximum benefit of the people of Alaska;

b. The Legislature may provide for facilities, improvements, and services to assure greater utilization, development, reclamation, and settlement of lands; and .

c. The Legislature shall provide for the selection of lands granted to the State by the United States, and for the administration of the state public domain.

5. The Council and its Chairman appear here as the legislatively created vehicle for the exercise and implementation of the aforesaid constitutional responsibilities.

6. The Council and its Chairman have interests relating to the matters which are the subject of the instant action. These interests include:

a. The exercise and implementation of the Legislature's constitutionally mandated duties with regard to land and natural resources in Alaska, particularly including the selection of lands granted to the State by the United States, as contained in Article VIII of the Alaska Constitution and as set forth above in paragraph four (4);

b. The protection and preservation of the prerogatives of the Legislature emanating from Article II of the Alaska Constitution;

c. The preservation and protection of the Council's autonomous policy making and implementing function as set forth in the Council's enabling statute and referred to above;

d. The preservation and protection of the Council's statutorily mandated responsibility to assure that Alaska Natives are provided an economic base in their land;

e. The preservation and protection of the Council's statutorily mandated responsibility to gather critical information from and provide it to all persons and elements involved in the matters arising out of Sections 17(d)(1) and (2) of ANCSA, generically known as the (d)(2) land issue;

f. The preservation and protection of the Council's statutorily mandated responsibility to ensure the full recognition of State land selection rights on behalf of the Legislature;

g. The preservation and protection of the Council's statutorily mandated responsibility to make recommendations for action on (d)(2) and State land selection issues on behalf of the Legislature to the Governor, the Legislative Council, and the Alaska congressional delegation;

h. The preservation and protection of its statutorily mandated responsibility to serve as a forum for Alaskans to develop recommendations to protect Alaska's present and future needs;

i. The preservation and protection of the Council's statutorily mandated responsibility as an investigatory arm of the Legislature in the matters of (d)(2) lands and State land selection rights; and

j. The preservation and protection of the Council's constitutionally and statutorily mandated responsibility to function in these areas independently of the Executive Branch of the State Government.

7. The Steering Council and its Chairman are so situated that resolution of this action without their presence

as parties as a practical matter will impair and impede their ability to protect their interests as set forth above for the following reasons, among others:

a. The Complaint seeks final determination of all material and significant issues regarding the actions of the President and the Secretary of the Interior, leaving none, to the knowledge of the Council, for resolution subsequently;

b. A decision in this litigation effectively will be binding in all subsequent litigation, as it will be the initial and seminal decision on the issues raised directly and indirectly in the Complaint;

c. The issues presented involve substantial and complex questions of statutory and constitutional law of first impression which will have obvious direct and manifold indirect consequences for the applicants;

d. The applicants by virtue of the constitutional and statutory provisions set forth above are, and will continue to be, significant, interested, and integral parties in the matters of (d) (2) and other public lands and state selection rights, of which matters this litigation is a critical and sizeable element and upon which it will be of great effect.

8. The applicants, given the particular and unique constitutional and statutory duties, will not be adequately represented by any other party to the litigation, particularly due to the distinct and potentially adverse interests, responsibilities, and authority of the Council on the one hand and the State as represented by the Executive on the other.

9. This motion is timely filed, as the Complaint was filed recently and the litigation is still in the pleading stage.

10. This motion, and the requested intervention by the Council and its Chairman, will not unduly delay the litigation or prejudice the litigation rights of existing parties.

11. This motion, and the requested intervention by the Council and its Chairman, will not unduly and fruitlessly complicate the litigation, as the essential claims underlying the Council's challenge to the action of the Defendants are substantially the same as those of the State and involve common and substantially identical questions of law and fact. Allowance of this application for intervention will avoid otherwise needless duplicate litigation.

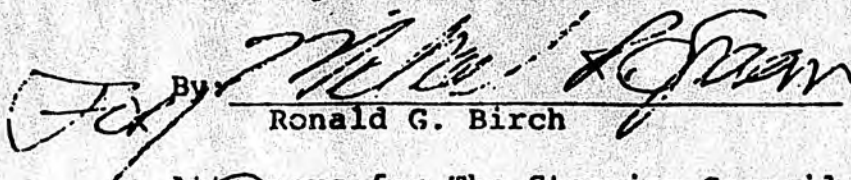
12. The applicants for intervention herein request oral argument on this motion.

WHEREFORE, for the foregoing reasons, applicants Council and Cowper respectfully pray that this Honorable Court grant them leave to intervene in the instant lawsuit as of right or, in the alternative, permissively, pursuant to Rule 24 of the Federal Rules of Civil Procedure.

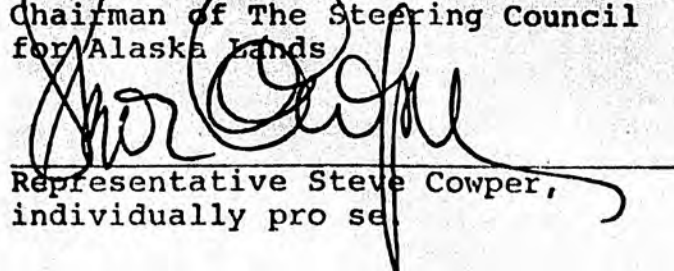
DATED this 9th day of November, 1978, at Anchorage, Alaska.

Respectfully submitted,

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By 
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Representative Steve Cowper,
individually pro se

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Plaintiff,)	
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JAMES EARL CARTER, President)	
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CECIL D. ANDRUS, Secretary)	MOTION TO INTERVENE
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UNITED STATES DEPARTMENT OF)	
THE INTERIOR, *)	
)	
Defendants.)	
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)	
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By this motion, The Steering Council for Alaska Lands, hereinafter referred to as Council,¹ and Representative Steve Cowper, individually and as Chairman of the Council, respectfully request allowance to intervene as party plaintiffs as of right under F.R. Civ. P. Rule 24(a), 28 U.S.C., or, in the alternative, to intervene permissively under F.R. Civ. P. Rule 24(b), 28 U.S.C.

1. All references to the Council should be read, where appropriate, to include its Chairman.

*Pursuant to Rule 25(D)(2) of the Federal Rules of Civil Procedure, add Cecil D. Andrus, in his official capacity, (5USC Sections 701-706).

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Rule 24(a) directs intervention of a person as of right upon the sufficient showing of two requisites:

1. The applicant claims an interest relating to the matters which are the subject of the action; and

2. The applicant is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest,

unless the applicant's interest is adequately represented by existing parties. Under the rule as now constituted, it is the applicant's burden to make a sufficient showing on the two requisites. It generally is held that, at most, the applicant need raise only the possibility of inadequacy of representation, as the rule now places the burden of persuasion upon the party opposing intervention to establish the adequacy of its, or other, representation. See generally United States v. Reserve Mining Co., 56 F.R.D. 408, 412-15 (D. Minn. 1972).

I. The Council Has the Express and Implied Constitutional and Statutory Responsibility To Protect the State Public Domain.

The Council was established by the Legislature of the State of Alaska, pursuant to statute duly enacted, Ch. 47, SLA 1977, for the general purpose of establishing and implementing policy on behalf of its parent the Legislature and the State with regard to the commingled matters of the grants to and selections by the State of Alaska of lands pursuant to

Public Law 85-508, the Alaska Statehood Act, and the reservation and classification of federal lands in Alaska pursuant to Sections 17(d)(1) and (2) of the Alaska Native Claims Settlement Act, 43 U.S.C. §§1616(d)(1) and (2) (1970), hereinafter referred to as ANCSA. Specifically, the literal duties of the Council as set forth in its enabling statute are as follows:

Sec. 3. DUTIES. (a) The steering council shall develop a unified lobbying and informational effort to insure that the land selection rights of the State of Alaska are fully recognized, that Alaska Natives are provided an economic base in their land, and that Alaska's needs and future requirements are made known to Congress.

(b) The steering council is to provide a forum for Alaskans to develop recommendations to protect Alaska's present and future needs.

(c) The steering council shall review the status of state land selection rights by directing research into the following areas:

(1) the Alaska Statehood Act and relevant judicial decisions;

(2) Bureau of Land Management processing of state land selections;

(3) legal status of land "tentatively approved" for state selection and the effects of the failure of the federal government to act in a timely manner on these selections;

(4) any other factors limiting satisfaction of the state's full land entitlement as intended by the Alaska Statehood Act;

(5) the effect of various proposals under the consideration of the United States Congress pursuant to section 17(d)(2) of the Alaska Native Claims Settlement Act on the state land selection process and on the use of selected land by the State of Alaska.

(d) The steering council may, based upon the results of its review under (c) of this section,

(1) make recommendations to the governor and the Legislative Council for further action, including but not limited to legal action, to assert the rights of the state to select land as provided in the Alaska Statehood Act;

(2) work with the Alaska congressional delegation to develop recommendations to the governor and the Legislative Council for appropriate state legislation relating to congressional decisions under section 17(d)(2) of the Alaska Native Claims Settlement Act.

The authority pursuant to which the Legislature established the Council is found in two distinct constitutional grants. Article II of the Alaska Constitution confers upon the Legislature plenary legislative power, with all implicit and incidental authority traditionally accorded legislatures under the theory of separation of powers and the guaranty of a republican form of government.

More importantly for purposes of this motion, however, Article VIII of the Alaska Constitution, particularly Sections 2, 5, and 6, invests the Legislature with the autonomous, self-executing, exhaustive authority over natural resources, in this case particularly lands and state selections under ANCSA and the Statehood Act, in addition to and apart from the Article II powers. Article VIII reads, in pertinent part, as follows:

Section 2. General Authority. The legislature shall provide for the utilization, development, and conservation of all natural resources belonging to the State, including land ... for the maximum benefit of its people.

Section 5. Facilities and Improvements. The legislature may provide for facilities, improvements, and services to assure greater utilization, development, reclamation, and settlement of lands

Section 6. State Public Domain. ... The legislature shall provide for the selection of lands granted to the State by the United States, and for the administration of the state public domain.

Thus the clear constitutional authority, all inclusive and comprehensive on its face, to oversee and protect the land in Alaska is reposed categorically in the Legislature. The means available to the Legislature for the execution of this authority are, again on the face of this provision, limitless, except of course for those constitutional restraints imposed generally.

The Legislature has chosen the constitutionally permissible means of effecting its Article VIII powers via creation of the Council.² That Article VIII is the fount of the Council's

2. So long as the means chosen by the Legislature is within the broad constitutional limitations, the Legislature is free to devise methods of performing its functions; and so long as the means chosen by the Council does not transgress constitutional and statutory constraints, it too, as a creation of the Legislature and as a creature of statute, is permitted to fashion its own mode of effectuating its authority. See *DeArmond v. Alaska State Development Corp.*, 376 P. 2d 717, 724-25 (Alaska 1962); *In re Permian Basin Area Rate Cases*, 390 U.S. 747, 767 (1968). That being the case, the act of the Legislature creating the Council and the performance of the Council, including its presence here, are allowable, absent "compelling evidence of legislative intent to the contrary." *In re Permian Basin Area Rate Cases*, 390 U.S. at 780.

Furthermore, in any consideration of this matter, this Court is not limited to the mere words of the statute or what is declared expressly therein; that which is "incidentally necessary to full exposition of legislative intent should be upheld as germane to the law", as every grant of power carries with it the use of the "necessary and lawful means of its effective execution." *Morrow v. Clayton*, 326 F.2d 36, 44 (10th Cir. 1963). See also, e.g., *Stahlman v. FCC*, 75 U.S. App. D.C. 176, 126 F. 2d 124 (1942).

substantive authority becomes unmistakable upon a look at the Council's enabling act. That act, in its exposition of the Council's duties, refers numerously to the State's land selection rights, the use of selected lands and (d) (2) lands. See, e.g., Ch. 47, SLA 1977, §§3(a), (c) (1), (c) (3), (c) (5), (d) (1), and (d) (2).

Moreover, from the functions delegated to and imposed upon the Council, it is clear that its purposes are not merely to assist the Legislature in the law making process empowered by Article II. Rather, its duties extend into areas, among others, of lobbying, research, litigation, and advising the Governor. See, e.g., id. §§3(a), (c), (d) (1), and (d) (2). As a practical matter, the Council's duties extend, and have extended, beyond the literal litany of its enabling statute. In order to function as mandated, the Council necessarily must decide and implement policy, as to all germane issues which arise, with regard to substance, strategy, and procedure, which policy decisions it makes solely and finally. Thus its role in the matters of (d) (2) lands and state selections has been pervasive and comprehensive and of its nature must be such, given the multitude of persons, forums, and issues involved.

- A. The Interests Deriving from the Council's Constitutional and Statutory Responsibility to Protect the State Public Domain Support Intervention as of Right.

The interests of the Council in this litigation, in the exercise of its statutorily imposed responsibilities, are manifold and will be discussed in detail below; but it

should be noted at the outset that the land (with the attendant legal questions) directly at issue in this litigation is precisely the same land categorically referred to in the constitutional grant of authority to the Legislature in Article VIII and in the successive statutory grant of authority to the Council in Ch. 47, SLA 1977. Clearly and unassailably, the property and the actions by the federal government, as set forth in the Complaint, are the very ones in which the Legislature and the Council have a direct and vital interest. This confluence of concerns, clear on its face, should be sufficient of itself to mandate intervention as a right. See Atlantis Development Corp. v. United States, 379 F. 2d 818, 819 (5th Cir. 1967).

The Council submits, however, that even were the poignancy of its interests in this litigation not so readily apparent, its particular interests emanating from its constitutional and statutory mandates support its plea for intervention as of right. The Legislature, as stated above, is distinctly, mandatorily, and solely charged, apart from and in addition to its general legislative authority, with a particular constitutional responsibility, without limitation as to means, to provide for the utilization, development, and conservation of all of the State's land and to provide for the selection of lands granted to the State under the Statehood Act. This responsibility, and the interests which it creates, are constitutionally the Legislature's. It has, in the exercise of this authority, created the Council as the

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functional vehicle for the effectuation of its constitutional powers.³ As such, the Council has an interest "in the maintenance of its statutory authority and the performance of its public duties", as more explicitly set forth in the motion, in this area. SEC v. United States Realty & Improvement Co., 310 U.S. 434, 460 (1940). See United States v. American Telephone and Telegraph Co., 79 U.S. App. D.C. 198, 205, 551 F. 2d 384, 391 (1976); Hines v. D'Artois, 531 F. 2d 726, 738 (5th Cir. 1976); Nuesse v. Camp, 128 U.S. App. D.C. 172, 178, 385 F. 2d 694, 700 (1967).

The Council respectfully submits that the individual interests delineated in paragraph six of its Motion to Intervene, individually and collectively, compel the allowance of its intervention of right to protect and preserve its constitutional and statutory responsibilities.⁴

3. The Council is, in effect, a designee of the Legislature for the exercise of policy making and implementation in the (d)(2) lands areas. See United States v. American Telephone and Telegraph Co., 79 U.S. App. D.C. 198, 205, 551 F. 2d 384, 391 (1976).

4. As reported in the October 25, 1978 Anchorage Daily News, the land which is the subject of the Secretary of Interior's "environmental supplement" comprises 18 million acres selected by the Native pursuant to ANCSA and nearly four million acres selected by the State pursuant to the Alaska Statehood Act. Moreover, the subject land encompasses approximately 25 percent of the total significant mineral resource land in Alaska and 5 percent of the significant agricultural areas. Also, as reported, over half of the State's approximately 60,000 bush residents directly or indirectly derive a portion of their food from within the subject land. Thus the area of responsibility of the Council and its concerns expressed in this application for intervention are active, real, direct, and imminent.

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B. The Council is So Situated That Any Resolution of This Matter Will Impair and Impede its Ability To Protect Its Constitutional and Statutory Interests.

It is imperative to the fulfillment of the Council's duties, particularly as it is the means chosen by the Legislature for the exercise of the Legislature's Article VIII authority, that the intervention sought be allowed. That is, the Council is so situated that resolution of this action without its presence as a full party will impair and impede, as a practical matter, its ability to protect its interest.⁵

5. It is of no account for purposes of considering this request for intervention that the Council is a public body and this suit already is brought in the name of a public body. First and foremost, as stated initially above, the broad and primary interest is in the land and impending actions over which this suit was filed. The heart of the litigation and the heart of the interests of the Council, identical in substantial part for sure, raise and effect various aspects and segments of the public interest. Where intervention is to maximize the protection of this public interest, and particularly where the applicant for intervention has discernible individual concerns, intervention as a right should be granted. See *Cascade Natural Gas Corp. v. El Paso Natural Gas Co.*, 386 U.S. 129, 135-36 (1967); *Textile Workers Union v. The Allendale Co.*, 96 U.S. App. D.C. 401, 404, 226 F. 2d 765, 768 (1955), cert. denied, 351 U.S. 909 (1956). This is particularly so where the expressed concerns impact policies, actions, and authority of multiple bodies. See *Nuesse v. Camp*, supra, 128 U.S. App. D.C. at 178, 385 F. 2d at 700.

Article VIII of the Alaska Constitution grants the Legislature the unfettered authority as set forth above. Within the limits of this constitutional expression, the means chosen and the ends sought are solely within the discretion of the Legislature. On the face of it, no one other than the Legislature itself, or its duly authorized designee, can define, defend, or effect those interests without encroaching upon, or indeed transgressing, the constitutional grant of authority. /

Practically speaking, it is clear on the face of the lawsuit that the Council's interests will be severely affected by this litigation. The Complaint seeks resolution of all issues regarding Federal-State relations in the area of State selections and (d) (2) lands. To the knowledge of the Council, no significant or material matters would be left for subsequent determination de novo after the conclusion of this lawsuit.

Additionally, as a practical matter, any decision in this litigation will be binding on any subsequent litigation as it will be the initial and seminal decision in complex and hitherto unexplored areas of constitutional law, statutory interpretation, Federal-State relationships, and public land law. Thus, this suit is, at this point, the critical forum for the exposition and protection of the interests at stake. Its importance cannot be underestimated, and the "intellectually straight forward, realistic view" of this necessitates applicants presence. Atlantis Development Corp. v. United States, supra, 379 F. 2d at 829.

Moreover, the Council is best prepared to represent its interests. By virtue of its statutory duties, it has been intensively involved in the matter of (d)(2) lands and State selection rights since its inception. It has, in the course of prodigious work in this area, accumulated information and insight of unique kind and dimension. Because of this, it probably more than any other possible party adverse to the defendants is in a position to assist in, if not provide for, the fullest exploration of the facts and issues set forth in and underlying the Complaint. In this sense, not only is it singularly able to express and protect its interest, it is uniquely prepared to assist the Court and the other parties on the matters at issue. At the very least, its informational function is an invaluable one and its inclusion as a full party plaintiff in this lawsuit well might be the wisest and fairest way to proceed. See, e.g., United States v. Reserve Mining Co., supra, 56 F.R.D. at 415-16; Bass v. Richardson, 338 F. Supp. 478, 492 (S.D.N.Y. 1971).

C. The Separate and Unique Interests of the Council in This Litigation Raise the Possibility of Inadequate Representation if the Council is Not a Party.

The issue of the absence of adequate representation of the Council's interests without its presence is one inextricably intertwined with the discernment of its interests vis-a-vis those of the other parties and the explication of the possible effects, absent its presence, upon its interests. However, there is one difference. The Council need only make a bare

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showing of the possibility of the inadequacy of the representation for it to meet its burden on this point. Thereafter, the burden of persuasion on the issue of the adequacy of the existing parties to represent the interests of the applicant shifts to those opposing the application. The Council need not show positively that the representation of its interests by the State will be inadequate; it is enough for intervention as of right if it shows that representation by existing parties might be inadequate. See, e.g., United States v. Reserve Mining Co., supra, 56 F.R.D. at 414. So long as the effect on the asserted interests, be that effect direct or indirect, might be diverse as between the existing parties or, even though similar, of a different nature, the measure of inadequate representation has been met. Id. at 415. See also Nuesse v. Camp, supra, 128 U.S. App. at 181-82, 385 F. 2d at 703-04. Cf. Cascade National Gas Corp. v. El Paso Natural Gas Co., supra, 386 U.S. at 135.

The Council's interests for purposes of intervention can be different from without being adverse to those of the existing parties, Nuesse v. Camp, supra, 128 U.S. App. D.C. at 181, 385 F. 2d at 703. The Council's and the Legislature's constitutional and statutory status places them in a position, that of protecting their constitutional and legislative prerogatives, which cannot be adequately advanced or defended by a branch of the State government with a dissimilar mandate and responsibility. Further, given the Executive's discretion and authority, the Council especially cannot be guaranteed adequate protection for its interests given the myriad possible forms and degrees of relief which might emerge from

this lawsuit. Any resolution which infringes, yet alone preempts or forecloses, a full exercise by the Legislature and the Council of their constitutional and statutory responsibilities, if representation of the Council's interests were left to the Executive, would be an unnecessary and possibly improper limitation upon that constitutional and statutory authority and also might be an impermissible infringement by the Executive upon the constitutional division of responsibility between the Executive and the Legislature.

In short, given the interest of the Council, its ancestral autonomous constitutional footing, and the insight and information it uniquely has accumulated in its intense involvement in the (d) (2) issue to date pursuant to its statutory authorization, it goes almost without saying that no one but it can represent its unique cause adequately.⁶

6. It appears that the defendants would have ground to support this intervention request. The contest, if any, over the interests, situation, and representation of the Council is a matter of State constitutional law and State separation of powers. The defendants, under Article IV, §4 of the United States Constitution, are obligated to guarantee Alaska a republican form of government in the presence of a tendency to consolidate governmental functions in a single branch. Should the present plaintiff object to the application for intervention, and thereby seek to arrogate to itself some of the Legislature's constitutional authority, it might be the defendants' Article IV obligation to come to the aid of this application. See generally The Federalist No. 43 (J. Madison); Minor v. Happersett, 21 Wall. 162, 175, 22 L.Ed. 627, 631 (1875).

II. Intervention Will Not Unduly Delay or Complicate This Lawsuit and Will Avoid Multiple Litigation.

Finally, it should be noted that the entrance of the Council as a party plaintiff at this point, given the timeliness of its application and the similarity of its claims to those in existence, will not be burdensome, will obviate multiple litigation, and for the reasons set forth above most likely will be fruitful and beneficial to the consideration of the issues at hand.

III. Conclusion.

Thus, for the foregoing reasons, the applicants respectfully request that they be granted intervention as of right pursuant to F.R. Civ. P. Rule 24(a).

For the reasons set forth above, and because of the clear commonality and similarity of the issues raised and questions presented in applicants' Complaint to those in the State's Complaint, the applicants respectfully request that, in the alternative, should this Court not grant them intervention as of right, they be permitted to intervene as full parties as a matter of the Court's discretion pursuant to F.R. Civ. P. Rule 24(b).

DATED this 9th day of November, 1978, at Anchorage,
Alaska.

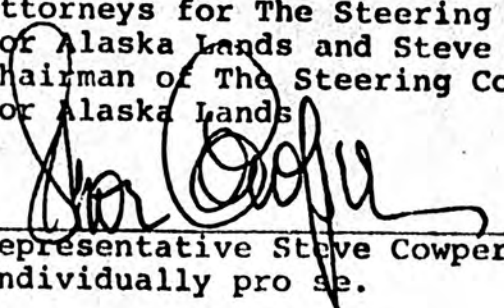
Respectfully submitted,

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