

ALASKA LEGISLATURE COMMITTEE FILES 1981-1982 8672  
1926 SRES SB 796 1926

February 26, 1982

*Letter of  
Consensus*

*3/2/82  
12:10pm*

The Honorable Jay S. Hammond  
Governor, State of Alaska  
Pouch A  
Juneau, AK 99811

Dear Governor Hammond:

This is to advise you that after prolonged study and debate, the undersigned parties have reached a consensus regarding a legislative solution to resource conflicts on State land in the Haines area. This preferred solution involves passage of companion legislation, Senate Bill 796 and House Bill 881, namely, "An Act providing for the management of State owned land in the Haines area, establishing the Alaska Chilkat Bald Eagle Preserve and the Haines State Forest Resource Management Area."

Earlier this month, at our request, Senator Ray and Representative Duncan introduced draft bills in both the House and Senate to serve as legislative vehicles. We recommend that the consensus legislation we have agreed to be introduced as "sponsor substitutes" for the introduced legislative vehicles in the very near future.

Since the consensus agreement involves very careful wording of the legislation to achieve a delicately structured compromise, we also strongly urge that the legislation, a copy of which is enclosed, be passed by the Legislature without amendment. Should the bill be amended by the Legislature so as to change its nature, all parties to this agreement reserve the right to pursue alternative courses of action, including but not limited to, opposing passage of the amended legislation. Should passage of unacceptable amended legislation occur, despite our best efforts, then we would request exercise of your veto authority.

All parties to this consensus agree that the reinventory of timber resources in the area is important for the purposes of scientific forest management and expect that a reinventory be made a high priority for funding by your administration. We respectfully request that you direct Commissioner of Natural Resources John Katz to make adequate funding of a current "operational level inventory" in the

February 26, 1982

Haines State Forest Resource Management Area his highest priority in terms of timber inventories and reinventories on state land.

We would also like to request your continued support for the currently uncompleted interdisciplinary resource studies under the purview of the Haines-Klukwan Cooperative Resource Advisory Committee. These cooperative study efforts should provide information useful in developing comprehensive management plans for the proposed Bald Eagle Preserve and State Forest Resource Management Area.

On passage of the proposed consensus legislation by the State Legislature, the National Audubon Society agrees to request that you remove the "moratorium" on development you established in your letter to Senator Gary Hart of Colorado dated July 21, 1980. The Society also agrees to request that Senator Hart and other concerned U. S. Senators and Congressmen support the proposed legislation and your lifting of the moratorium.

In closing, we would like to thank you and your administration, particularly the Department of Natural Resources, for the strong support provided in helping to achieve this unprecedented legislative compromise involving land and resource conflicts in the Haines area. We are convinced that this "Alaskan solution" has the potential for adequately protecting local, state, national and international resource values and other interests in the Chilkat and Chilkoot valleys and could well serve as a model for resolving similar conflicts elsewhere in the State. Furthermore, successful implementation of this legislation once passed should demonstrate to all Alaskans and to the Nation as a whole that protection and management of resource values and other interests can in fact be successfully accomplished.

Your consideration of this request is greatly appreciated.

Sincerely yours,

*R. E. Henderson*  
Mayor of Haines Borough

*Jon D. Halliwell*  
Mayor of City of Haines

February 26, 1982

*John J. Schnabel, President*  
Schnabel Lumber Company

*William C. Duncker*  
President, Lynn Canal  
Conservation Council Inc

*David R. Clive*  
Regional Vice President,  
National Audubon Society

*Jim Steuts*  
Executive Director,  
Southeast Alaska  
Conservation Council

*Robert A. Ladd Jr.*  
for Regional Director, U. S. Fish  
& Wildlife Service

Alaska Miners Association  
Haines Branch

*Marshall Palmer*

SWS/ke

cc: Hon. Bill Ray  
Hon. Betty Fahrenkamp  
Hon. Jim Dunca.  
Hon. Mike Miller  
Hon. Eric Sutcliffe  
Hon. Ken Fanning

# STATE OF ALASKA

## DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

JAY S. HAMMOND, GOVERNOR

POUCH M  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-2400

February 24, 1982

Mr. Joe Wilson  
P. O. Box 1534  
Juneau, AK 99801

Dear Joe,

At the recent Board of Forestry meeting in Juneau, I briefly discussed with the Board my suggestions for a State Forest system. In the aftermath of that meeting, it has come to my attention that a certain degree of misunderstanding may have been engendered by my remarks about boundary delineation of proposed State Forests.

While I stated that boundaries should be drawn primarily to encompass forest lands, I did not mean that every non-forested area should be excised from the forest. I simply meant that large areas which possess important non-forest resource values and are in themselves distinct management units should not be included in the forest.

Recent boundary discussions on the proposed Haines State Forest will illustrate this concept. There are 84,000 acres of commercial forest lands near Haines out of approximately 300,000 total acres. The forest is located between the braided Chilkat River on steep alpine country with important fish and wildlife resources. The state and the community residents of Haines have proposed that 55,000 acres of the riverine system be managed separately to protect its high value fisheries and associated wildlife, and the remainder of State land be designated as a State forest. The alpine areas would be very difficult to manage as a separate unit, and, therefore, should not be excluded from the forest management area. Interspersed among the commercial forest stands are small recreation areas and community watersheds which are also included.

Mr. Joe Wilson

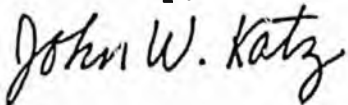
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February 24, 1982

As we look toward establishment of a State forest system, similar situations will arise in the Susitna and Tanana basins. A hard look at the values of non-forested areas and the missions of other Department of Natural Resources land management divisions must be taken before reaching boundary decisions. In so doing, I hope - and attempted to say at the Board's recent meeting - that we will look at land management and resource considerations, not at the number of acres involved: i.e., the old "d(2) numbers game".

I hope that this communication clarifies any misunderstandings that my earlier comments may have generated.

Sincerely,



John W. Katz  
Commissioner

cc: Ted Smith  
Jack Sedwick  
Chip Dennerlein  
Reed Stoops  
Nick Carney  
Senator Bettye Fahrenkamp

P.S. If appropriate, I would appreciate you sending this letter to the other members of the Board.

SSSB 796

LEGISLATION SUMMARY

SSSB 796: "An Act providing for the management of state-owned land in the Haines area, establishing the Alaska Chilkat Bald Eagle Preserve and the Haines State Forest Resource Management Area"

Sec. 1: The purpose is to establish the Alaska Chilkat Bald Eagle Preserve. The primary purpose is to protect and perpetuate the Chilkat bald eagles and their habitat, and to protect the salmon spawning and rearing areas of the Chilkat and Chilkoot River systems; other purposes are to provide for research, study and enjoyment of the wildlife and other consistent public uses. The Preserve is dedicated as a special purpose site.

State-owned land and water lying in the Preserve, as described on a map on file with the Commissioner of Natural Resources, is designated as the Alaska Chilkat Bald Eagle Preserve--subject to valid existing rights--and assigned to the Department of Natural Resources for control, development and maintenance.

Private land, Haines Borough selections, and existing transportation and utility corridors lying within the Preserve are excluded from the Preserve. The state may not acquire them by eminent domain.

Approved and pending Native allotment applications shall be excluded from the Preserve, and approved allotments shall be treated as private land.

The Department of Natural Resources shall consult with the Department of Fish and Game, the U. S. Fish and Wildlife Service, and the Local Advisory Council prior to adopting regulations for the Preserve. The Department of Fish and Game shall consult with the Department of Natural Resources and the Advisory Council in proposing fish and game regulations for the Preserve to the Boards of Fisheries or Game, and cooperate with the U. S. Fish and Wildlife Service in administering the Bald Eagle Protection Act of 1940, and any other appropriate laws and treaties.

Sec. 1: Directs the Department of Natural Resources to manage (cont.) the Preserve for perpetual sustained populations of eagle, salmon and other wildlife and to insure water quality in accordance with existing law.

The Preserve is closed to mineral entry and location, commercial timber harvest, and the conveyance of fee simple title in a state disposal or a municipal selection.

Guarantees traditional uses of the Preserve consistent with protection of the bald eagle population, including hunting, trapping, fishing, berry picking, other subsistence and recreational uses, motor vehicle operation, and personal firewood harvest. Traditional uses shall be permitted subject to regulation. The director of the Division of Parks, after consultation with the Advisory Council, and public hearings, may find that the level or means of traditional use is inconsistent with the primary purposes of this Act, and restrict a traditional use.

Valid existing claims or occupancies surrounded by the Preserve, and valid occupancies or state or federally owned land not part of the Preserve reasonably requiring access across the Preserve, shall be granted access by the director of the Division of Parks, subject to regulation and stipulations by the director, in consultation with the Advisory Council. The director shall give favorable consideration to applications for utility rights-of-way compatible with the Preserve.

The director and the Advisory Council, in consultation with the U. S. Fish and Wildlife Service and the Department of Fish and Game, shall: use information from the Haines-Klukwan Cooperative resources studies and other sources for the development of the Preserve management plan and in managing the Preserve; implement the plan within two years of the effective date; investigate the need for additional research. Requires that studies done for the single purpose of adding to or deleting from the Preserve must be reviewed by the Advisory Council on 90 days prior notice. Authorizes the director to authorize emergency studies by certifying the emergency to the Advisory Council.

Establishes the Alaska Chilkat Bald Eagle Preserve Local Advisory Council, with 11 members to be appointed by the Governor. Members are entitled to per diem and travel expenses. The Council shall be composed of: (1) a Haines Borough resident conservation organization representative; (2) a Haines Borough resident commercial or industrial representative, nominated by the Borough Mayor; (3) the City of Haines Mayor; (4) Haines Borough Mayor; (5) a Klukwan, Inc. nominee; (6) the Chilkat Indian Village IRA Council President; (7) an Upper Lynn

Sec. 1: Canal Local Fish and Game Advisory Board nominee;  
(cont.) (8) a Department of Fish and Game representative;  
(9) a U. S. Fish and Wildlife Service representative;  
(10) a Department of Natural Resources, Division of  
Forestry representative; (11) a Department of Natural  
Resources, Division of Parks representative.

Members hold two-year terms.

Directs the Advisory Council to assist the Department of  
Natural Resources in developing and monitoring the Preserve  
management plan.

The establishment of the Preserve does not effect any  
substantive or procedural requirements under existing  
law applicable to the management or use of adjacent lands.  
The directors of the Divisions of Parks and Forestry are  
encourage to consult in preparing the management plan  
so as to promote coordinated administration of both the  
Preserve and the Haines Forest Resource Management Area

It is the intent of the Legislature to protect the purposes  
of the Preserve. Establishment of the Preserve represents  
a proper balance between reservation of state-owned land  
and water for the purposes of the Preserve and other lands  
for multiple use; the Legislature believes that no future  
legislation changing the boundaries of the Preserve is  
necessary.

Repeals the Chilkat River Fish and Game Critical Habitat  
Area.

Sec. 2: Amends existing law regarding public resources to  
establish the Haines State Forest Resource Management  
Area, comprised of designated state-owned land and  
water, for the primary purposes of the use, perpetuation,  
conservation, and production of the land and water,  
including the multiple-use of resources and the continuation  
of other beneficial uses.

Directs the Department of Natural Resources to manage  
the area.

The Area consists of the state-owned land and water above  
the mean high tide line and within the boundaries described  
on a map on file with the Commissioner of Natural Resources,  
subject to existing valid rights.

Existing private land, transportation corridors and borough  
selection are excluded from the Area. The state may not  
acquire private land within the Area by eminent domain.

Sec. 2: Approved and pending Native allotment applications within (cont.) the Area are unaffected; approved allotments shall be considered private land.

The Division of Forestry shall consult with the Division of Parks, the Department of Fish and Game, and the Eagle Preserve Advisory Council to promote coordinated management of the Preserve and the Area.

As far as practical, studies performed by the Department shall be for the benefit of the management of both the Preserve and the Area.

The establishment of the Area does not effect on existing resource use permits or contracts in the Area.

Land in the area shall be managed for multiple use and sustained yield and pursuant to applicable existing law and a management plan prepared by the Department of Natural Resources. The plan shall be implemented within two years of the effective date, and may not be adopted or revised without review by the Board of Forestry and public hearings in the Haines Borough, and should be based on current operational level inventory, which should be updated as information becomes available.

Directs the Department of Natural Resources to periodically review the Area management plan. The plan shall be based on the Haines-Skagway Area Land Use Plan. Prior to approval of the plan, management of the Area shall be under the Haines-Skagway Area Land Use Plan.

Requires that a copy of a management plan and any revisions, prepared by the Department of Natural Resources and reviewed by the Board of Forestry and adopted by the Department after public hearings shall be provided to the Legislature within 30 days of its adoption or revision or within the first 10 days of the subsequent legislative session.

Directs the Department of Fish and Game to manage the fish and game resources for the Area, consistent with the purposes of the Area.

Directs the Department of Natural Resources to manage highway access and roadside structures in the Area. Requires the Department of Transportation and Public Facilities to maintain existing public roads in the Area.

Closes state land and water within the Area to conveyance of fee title under state disposals and municipal selections.

Sec. 2: Directs the Department of Natural Resources and the  
(cont.) Department of Fish and Game to consult with each other  
and hold public hearings prior to adopting regulations  
for public use, or management of fish and wildlife, in  
the Area.

Authorizes the Department of Natural Resources to enter  
into cooperative management agreements with persons having  
title or a valid entry on lands within or adjacent to  
the Area.

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PRIME SPONSOR: Ray

CO-SPONSOR(S): None



# THE CITY OF HAINES, ALASKA

P.O. BOX 576  
HAINES, ALASKA 99827  
(907) 766-2231

In Reply  
Refer To: January 28, 1982

Senator Bettye Fahrenkamp, Chairman  
Senate Committee on Resources  
Alaska State Legislature  
Pouch V  
Juneau, Alaska 99811

Dear Senator Fahrenkamp,

The enclosed letter dated January 26, 1982 from Reed Stoops of Department of Natural Resources addressed to residents of Haines and Klukwan represents a summary of critical points surrounding the creation of a bill that would place the 53,000 acre Chilkat Valley Bald Eagle Moratorium Area under a permanent designation and management plan.

Although residents of Haines and Klukwan are reserving judgment until draft legislation can be examined, it has generally been agreed that creation of such a "Chilkat Bald Eagle Preserve" in conjunction with the establishment of a State Forest Resource Management Area under SB 582 could have benefits for both development and conservation interests.

Conceptual support for SB 582 has come from various interests within our community although some boundary changes would be required and some departmental relationships clarified.

When and if draft legislation for the management of the moratorium area is examined by Haines and Klukwan and reasonable community consensus is reached regarding its disposition, I feel it would be appropriate to discuss further with members of the committee how SB 582 and the creation of the Haines-Skagway Forest Area could assist in the long term growth and development of our communities.

I will keep you informed of our progress.

Sincerely,

*PAUL WELLMAN*

Paul Wellman  
CITY OF HAINES

PW/ew  
Enclosure

# STATE OF ALASKA

## DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

JAY S. HAMMOND, GOVERNOR

POUCH M  
JUNEAU, ALASKA 99811  
PHONE:

January 26, 1982

Dear Resident of Haines and Klukwan:

The Haines Klukwan Cooperative Resource Study Advisory Committee held public meetings in both Haines and Klukwan on January 23rd to discuss the desirability of supporting the creation of a State Forest in the Chilkat Valley as proposed under Senate Bill 582 and, at the same time, developing legislation for a specially designated area to protect the Chilkat bald eagles and their essential habitats.

The reasons for initiating legislation at this time are:

1. The desire to achieve a reasonable long-term solution to potential land use conflicts which could not be resolved by the Haines-Skagway Land Use Plan and which resulted in the Governor's commitment to Congress in July 1980 to place a moratorium on major development activities in the proposed eagle area. Certainty will bring social and economic benefits to the communities of Haines and Klukwan, since the various interests concerned with the use of the area will know what to expect and can plan their activities accordingly.
2. The need to adopt a position on Senate Bill 582, a bill establishing State Forests, as it affects areas covered by the Haines-Skagway Land Use Plan.
3. The support for adopting a position on legislation provided by the substantive findings of three years of intensified eagle research, two years of fisheries research and preliminary conclusions of other resource studies conducted to date.
4. The unique opportunity for the local communities and State of Alaska to derive social and economic benefits through participation in the National Bald Eagle Bicentennial.
5. The opportunity to contribute to the State's effort to project to the rest of the nation and live by its reputation of responsible management of its resources by using this legislation as an example of cooperative resolution of a conflict involving local, state and national issues.

Residents of Haines  
and Klukwan  
Page Two  
January 27, 1982

The Advisory Committee traveled to Klukwan on the morning of January 23 to explain the situation and hear what the people of Klukwan had to say about the need for legislation on a State forest and a bald eagle area and the specifics of what that legislation should contain. Generally, the people at the meeting felt they had not had enough past participation in the Haines-Klukwan Resource Studies, in spite of local representation on the Advisory Committee, to be able to quickly assimilate all the information being presented and quickly respond to the question on the need for legislation. Concern was expressed that expanding the area to protect the eagles could infringe on private property and other native claims. There was no expressed support for legislation and, in fact, the preliminary sentiment was against legislation, although people felt they could not make a final decision until they saw the specifics of a bill and understood how it would affect them. There was repeated mention of a 2.6 million acre claim filed by the village on all federal land between William Henry Bay and the Canadian Border. People did not want to compromise this claim or "trespass suit" by supporting legislation and thereby giving credence to the State's claim to the ownership of some of the land in question. There was also concern about the potential effect of legislation on Native Allotments.

In the afternoon the Advisory Committee traveled to the City of Haines for a public meeting on the same subject. Initial comments from the public focused on the concern that because the cooperative resource studies are not finished, legislation at this time is premature. Better information may be available after one additional year of study. Concern was also expressed about possible provisions which might be contained in legislation that could be adverse to local interests.

After lengthy debate, the community residents of Haines asked the Study Committee to work with them to develop legislative proposals so they would not have to speculate about provisions which may or may not be desirable. This was accomplished at a session held on the evening of January 23rd in the city council chambers. The proposals outlined in this letter were tentatively agreed to constitute a reasonable legislative proposal to create both a State Forest and a Bald Eagle Preserve. These proposals will be formally drafted by an attorney from the Legislative Affairs Agency and returned to the people of Haines and Klukwan for their review. If the legislation then receives strong local support, it will be submitted to the Legislature by local initiative with the support of the Advisory Committee. If it does not receive strong local support the Committee and local governments do not intend to pursue it further at this time.

### General Purpose

1. To protect and perpetuate the Chilkat Bald Eagles and their essential habitats.
2. To provide opportunities for continued research, study and enjoyment of the eagles.
3. To provide for traditional uses consistent with the purposes for which the area is established.

### General Provisions

The area designated will include all state owned lands and exclude private lands or interests in lands (including Native Allotments). No valid third party rights in the area will be diminished. No power of eminent domain will be granted to allow condemnation of private property.

### Traditional Uses

Uses which have in the past been compatible with the purpose for which the area is being created, will continue to be allowed. These include but are not limited to hunting, fishing, trapping, subsistence, general recreation, recreational prospecting and gold panning, motorized and non-motorized access, personal use wood, berry picking and grazing.

### Level of Development

Development will be allowed that is not incompatible with the primary purpose of the area as determined by the Director of the Division of Parks in consultation with a local advisory committee created in this proposal.

### Access

Access to private land that is adequate, reasonable, and feasible for economic and other purposes is guaranteed. Access that is adequate, reasonable, and feasible for economic and other purposes will be guaranteed across the area for commercial and non-commercial uses.

Access routes within the area will be granted after consideration of the purposes for which the area was established and which will minimize to the maximum extent practical, adverse environmental impact.

### Management Responsibility

Residents of Haines  
and Klukwan  
Page Four  
January 26, 1982

The area will be managed by the Division of Parks. The Department of Fish and Game's authority to manage fish and game will not be diminished.

#### Advisory Council

An advisory council will be established to assist the Division of Parks in developing a management plan for the area. The Advisory Committee will also monitor the implementation of the plan. The Council will consist of the following members to be appointed by the Governor:

1. The Mayor of the Haines Borough
2. The Mayor of the City of Haines
3. A resident of the Chilkat Valley representing conservation organizations
4. A resident of the Chilkat Valley representing industry or commerce
5. Two residents of the Village of Klukwan
6. The Department of Natural Resources
7. The Department of Fish and Game
8. United States Fish and wildlife Service

#### Relationship to Proposed State Forest

Boundaries of the State forest would be complimentary to the boundaries of this preserve and include remaining lands encompassed by the Haines-Skagway Land Use Plan excepting lands in the Skagway area, and lands identified in the Plan for future disposal. The Haines-Skagway Land Use Plan would serve as the area land use plan for the State Forest.

The Haines Borough municipal entitlement will not be altered or diminished. The Department will be directed to acquire University Lands within the preserve and State forest by exchange.

#### Boundaries

The boundaries are those described in a map dated \_\_\_\_\_. The area will approximate the existing moratorium area with deletions to include State and private lands on the east side of the highway except that between Mile 18 and Mile 23 State land on both sides of the Haines Highway will be included. More precise boundaries will be described to

include<sup>no</sup> more commercial timber than is necessary to protect water quality in important spawning and rearing areas. These will be worked out by the Department of Natural Resources, Fish and Game, National Audubon Society and the local timber industry. The area will encompass approximately 50,000 to 53,000 acres. The overlap with lands with commercial forest potential are estimated to be less than 6,000 acres with more precise accounting dependent on final boundary resolution during the week of January 25.

#### Designation

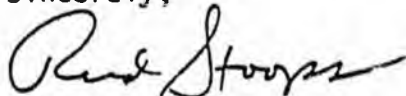
The area will be called the "Alaska Bald Eagle Preserve." It would be the first "preserve" established under State statutes. The designation was selected in part to connote association with a National Preserve which allows sport hunting.

#### Relationship to Resource Studies

It is intended that the existing Haines-Klukwan Cooperative Resource Advisory Committee will remain in effect until current studies are completed. Continuation of these studies are highly desirable to ensure effective management of the proposed State Forest and Bald Eagle Preserve. The existing moratorium would be terminated by executive action as the preserve would obviate its need.

A draft bill and map will be sent to the Advisory Committee members in Haines and Klukwan as soon as possible for distribution to interested local residents. Upon review, the Committee should notify the Resource Advisory Committee of their conclusions. Depending on those conclusions, we will cooperatively decide on further actions.

Sincerely,



Reed R. Stoops  
Director

cc: Haines-Klukwan Cooperative  
Resource Advisory Committee  
John W. Katz  
Theodore G. Smith  
J. W. "Jack" Sedwick  
Chip Dennerlein



STATE OF ALASKA

OFFICE OF THE GOVERNOR  
WASHINGTON, D.C.

July 21, 1980.

The Honorable Gary Hart  
United States Senate  
254 Russell Senate Office Bldg.  
Washington, D.C. 20510

Dear Senator Hart:

At your invitation and that of three other Senators, representatives of my administration have recently met with members of the principal organizations and public agencies which have expressed concern for the future welfare of the Chilkat eagle population. In these meetings, we presented an overview of past State actions which have been taken to protect the eagles and their habitat, and outlined commitments we intend to make in this regard.

In 1972, the Alaska State Legislature established a "Critical Habitat Area" of 4,800 acres to preserve part of the lands used by the eagles in their winter congregation. In addition, the State classified protective riparian corridors for both fish and wildlife values, and designated certain lands for further study to determine their importance to both eagles and fisheries.

Last year, in keeping with recommendations of the Haines/Skagway Land Use Plan, the State cooperated with the communities of Haines and Klukwan, and the National Audubon Society in their initiation of studies of the Chilkat bald eagles. Based on first year recommendations of these studies, I am making \$250,000 in legislative appropriations available for a strengthening cooperative bald eagle study. It is important to me that all parties cooperate in accomplishing one comprehensive eagle study rather than duplicating efforts through two or more such studies.

In addition to helping assure adequate support for the study of eagle ecology, some of these monies will also be committed to comprehensive investigations of related resource values, with special emphasis on hydrology, fisheries, soils, and vegetation. It will be particularly important in these study efforts

The Honorable Gary Hart  
July 21, 1980 - Page Two

to identify projected money and manpower needs, and management policies and objectives, to assist the State in providing effective protection to the Chilkat bald eagles under what I recommend should be a cooperative management regime.

An advisory committee involving representatives of the local communities of Haines and Klukwan, the National Audubon Society, and appropriate State and Federal resource agencies will be established by the Commissioner of the Alaska Department of Natural Resources. I will rely on this group to offer direction on how State funds can best be spent to obtain information vital to enlightened management and protection of bald eagles, and the habitat that sustains them.

In keeping with my concern for impacts of these studies on the local communities and on possible management options for the eagles, I am also urging that some of these monies be made available for study of the social, economic and cultural concerns of the city of Haines and the village of Klukwan. The role of the advisory committee will be especially important in this regard, and the State will be looking to that group on how to best acquire and use this essential information.

At present, there are no plans for development in areas currently thought to be of greatest importance to the eagles. To alleviate concerns about the future possibility of such actions prior to completion of the studies, I am declaring a moratorium on all major development activities within the essential bald eagle habitats as described on the attached map dated May, 1980. This is to include any planning for road and bridge construction. Customary and traditional uses important to the welfare of local residents, and which in past years have not adversely impacted the eagles, will continue to be permitted in these areas. Such uses will include, but are not necessarily limited to, hunting, fishing, trapping, subsistence, prospecting, general recreation and both motorized and non-motorized access.

I want to emphasize that the State of Alaska fully recognizes the great State, national and international values of the annual gathering of bald eagles along the Chilkat River. We are committed to cooperating with all interested parties in seeking sound scientific information necessary to effectively conserve the birds, and to place their essential habitats under permanent protection.

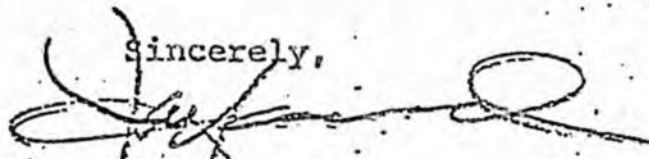
It is my understanding that the moratorium and study outlined above have been discussed with, and are satisfactory to, representatives of Haines and the Alaska Coalition. The study which

The Honorable Gary Hart  
July 21, 1980 - Page Three

I have alluded to will be carried out cooperatively with these groups, which will be represented on a policy advisory committee.

If you have any questions or comments regarding the arrangements which I have just described, please let me know.

Sincerely,

A handwritten signature in dark ink, appearing to read "Jay S. Hammond", written over the word "Sincerely,".

Jay S. Hammond  
Governor

cc: The Honorable Ted Stevens  
The Honorable Mike Gravel  
The Honorable John H. Chafee  
The Honorable Jennings Randolph  
The Honorable John C. Culver  
The Honorable Frank Church

# Eagle preserve hailed at hearing

By KIRK McALLISTER  
Empire Staff Reporter

Legislation establishing a state preserve for bald eagles of the Chilkat Valley near Haines was hailed as an historic consensus agreement between diverse groups in a Senate Resources Committee teleconference Wednesday.

The bill is the result of three years of study and debate over preservation of the eagle habitat and represents a compromise between fishing and conservation groups and timber and mining interests in the Haines area.

The legislation creates the Alaska Chilkat Bald Eagle Preserve to protect the eagles' habitat and the salmon spawning and rearing areas of the Chilkat and Chilkoot River systems within the

Continued on Page 2



Bald eagle: Breakthrough in Haines.

Photo by Mark Kelley

## Eagles...

Continued from Page 1

preserve.

It would also establish a state forest resource management area that would be open to multiple uses, such as logging and mining. The preserve would be administered as part of the state park system.

Traditional uses, including subsistence uses, are protected in the bill, as are access for private landowners and mineral lease holders.

A local advisory council was created to insure local influence in the development of management plans and regulations.

Each fall and winter over 3,500 eagles gather along the Chilkat River to feed on spawning salmon. It is the largest known concentration of bald eagles in North America.

A major breakthrough was achieved February 28 when principal parties to the debate signed a consensus letter to Gov. Jay Hammond and the Legislature supporting passage of the bill, which was introduced by Sen. Bill Ray, D-Juneau.

The Senate Resources Committee heard testimony from a

variety of groups supporting the legislation, including the Department of Natural Resources, the mayor of the HAINES Borough, the National Audubon Society, the Southeast Alaska Conservation Council, the mayor of the City of Haines, Schnabel Lumber Co., the U.S. Fish and Wildlife Service, Lynn Canal Conservation Inc., the Resource Development Council and the Haines branch of the Alaska Miners Association.

Dave Cline, of the Alaska Audubon Society, testified that the legislation represented a "model solution" that could provide an example for resolving conflicting resource use issues in the state "through compromise and consensus, rather than polarization and litigation."

Jim Stratton, executive director of the Southeast Alaska Conservation Council said: "This is the first time SEACC and John Schnabel have been on the same side of things, so I'd like to see the bill pass."

The bill received the unanimous support of all interested parties except one — the native village of Klukwan.

"The Natives of the Chilkat Valley are concerned over the loss of their lands and aboriginal claims for the past 100 years," said Joe Hotch, vice president of the Chilkat Indian Village, in testimony to the committee.

PLEASE NOTE: THE FOLLOWING PAGES WERE TREATED  
AS A UNIT IN THE ORIGINAL DOCUMENT



# Alaska State Legislature

## SENATE Resources Committee

Official Business

BETTYE FAHRENKAMP, Chairman  
VIC FISCHER, Vice-Chairman  
BRAD BRADLEY  
DICK ELIASON  
DON GILMAN  
BOB MULCAHY  
ARLISS STURGULEWSKI

POUCH V  
STATE CAPITOL  
JUNEAU, ALASKA 99811  
(907) 465-3834  
(907) 465-3835

TO: Senate Resources Committee

FROM: Senate Resources Committee Staff

RE: SSSB 796  
Providing for the management of state owned land  
in the Haines area, establishing the Alaska  
Chilkat Bald Eagle Preserve and the Haines State  
Forest Resource Management Area.

DATE: April 13, 1982

-----

Please find attached further background information,  
just received today, outlining points raised during  
the recent Committee hearing on SSSB 796.

This bill is scheduled for hearing Wednesday,  
April 14, 1982 at 1:30 p.m. in the Beltz Room.

SB796

received  
4/13/82

INDEX

1. Letter from City of Haines and Haines Borough to Klukwan I.R.A. Chilkat Indian Village Council
  - A. Reservation Status Report
  - B. Haines Borough Attorney Letter on Native Trespass Claims
  - B. Case File Report on Trespass Suit
  - B. Case File Report on Trespass Suit Appeal
  - C. Letter from State of Alaska Department of Natural Resources - Subject - Native Allotments
  - D. Klukwan I.R.A. Chilkat Indian Village Council Petition



## THE CITY OF HAINES, ALASKA

P.O. BOX 576  
HAINES, ALASKA 99827  
(907) 766-2231

In Reply  
Refer To:

April 7, 1982

Klukwan IRA Chilkat Indian Village  
Council  
Klukwan, Alaska

Dear Sirs:

In reference to your past objections to Senate Bill 796 sponser substitite as verbally expressed, and as expressed in your petition dated 3/8/82, we would like to take this opportunity to address the issues raised by your communications.

Jimmy Stevens requested that the proposed Eagle Preserve have legally defined boundaries, and also that the acreage of the proposed Eagle Preserve be known.

The Department of Natural Resources, State of Alaska, has completed the legal description of the proposed Eagle Preserve, and has determined that there are 47,432 acres of land in the proposed preserve including private land.

It was verbally expressed that there was concern over a past 12,800 acre reservation consideration that occured in 1946.

Please review the attached document "A", which we believe will establish that the proposed reservation is not a current issue.

In response to your petition dated 3/8//82, we would like to sure you that we are fully aware that the Klukwan IRA Chilkat Indian Village council is a different entity than Klukwan Inc. We acknowledge this important difference, and we are aware that Klikwan Inc. does not speak for Klukwan nor represent Klukwan politically.

In response to the 2.6 acre trespass suit as identified in your 3/8/82 petition, our research on this issue establishes the fact that the suit was settled in Arco v. United States, and that the suit has no legal future.

Please review document attachment "B" which addresses this issue.

In response to the Native allotment issue, we appreciate and share your concern on an issue that is of such importance to native culture and their traditional use of the land.

We have recently attended a meeting between various groups of

April 7, 1982

people concerned and involved with the native allotment issue. These groups include the following agencies and organizations.

1. Department of Natural Resources, State of Alaska
2. B.I.A., Federal Government
3. Tlingit Haida Central Council
4. Alaska Legal Services, Anchorage, Lawyer for allotment holders
5. Haines Borough
6. City of Haines
7. Allotment applicants


The Haines Borough and City of Haines gave at this meeting, and will continue to give, political support to the allotment position.

A very favorable agreement for the allotment applicants was worked out at this meeting with the State of Alaska, Department of Natural Resources.

Please review a copy of a letter received from the D.N.R. stating their position on the Chilkat, Chilkoot Native allotment, attached as document "C" to this letter.

We would like to take this opportunity to invite the Klukwan I.R.A. Chilkat Indian Village council to a meeting with representatives of the Haines Borough and City of Haines at a time and place convenient to you for the purpose of continued discussion on Senate Bill 796.

We are hopeful that by working together we can resolve any remaining problems with Senate Bill 796.



Jon D. Halliwill  
Mayor  
City of Haines

Sincerely yours,



Merrill Palmer  
Borough Consultant

xc: Bill Ray  
Jim Duncan  
Mike Miller  
Bettye Fahrenhamp  
City of Haines  
Klukwan Inc.

## PROPOSED NATIVE RESERVATION FOR THE INHABITANTS OF KLUKWAN

## Statement of Facts

Section 2 of the act of May 1, 1936 (49 Stat. 1250, 48 U. S. C. sec. 358a), extending the Indian Reorganization Act to Alaska provides:

"SEC. 2. That the Secretary of the Interior is hereby authorized to designate as an Indian reservation any area of land which has been reserved for the use and occupancy of Indians or Eskimos by section 8 of the Act of May 17, 1884 (23 Stat. 26), or by section 14 or section 15 of the Act of March 3, 1891 (26 Stat. 1101), or which has been heretofore reserved under any executive order and placed under the jurisdiction of the Department of the Interior or any bureau thereof, together with additional public lands adjacent thereto, within the Territory of Alaska, or any other public lands which are actually occupied by Indians or Eskimos within said Territory: Provided, That the designation by the Secretary of the Interior of any such area of land as a reservation shall be effective only upon its approval by the vote, by secret ballot, of a majority of the Indian or Eskimo residents thereof who vote at a special election duly called by the Secretary of the Interior upon thirty days' notice: Provided however, That in each instance the total vote cast shall not be less than 30 per centum of those entitled to vote: Provided further, That nothing herein contained shall affect any valid existing claim, location, or entry under the laws of the United States, whether for homestead, mineral, right-of-way, or other purpose whatsoever, or shall affect the rights of any such owner, claimant, locator, or entryman to the full use and enjoyment of the land so occupied."

In November 1943, Assistant Director of Lands T. W. Whitt submitted to the Office of Indian Affairs a proposal for a reservation for the Indians of Klukwan, comprising approximately 12,800 acres, in the vicinity of Salmon River and Chilkat Lake, running along the

northern shore of the lake at its head and then to the Chilkat River. This proposal was supported by a petition signed by 42 natives.

No action was taken by the Department during the war, but the activity in connection with the Haines cut-off to the Alaska Highway, running very near the native community and the likelihood of an influx of white persons to the area and the development of tourist facilities prompted consideration of the proposed reserve in the spring of 1946. On August 22, 1946, Public Land Order No. 324 was published in the Federal Register (11 F. R. 9142), withdrawing public lands for classification and proposed designation as a native reservation for inhabitants of Klukwan. The lands were described as follows:

"The tract of land at Klukwan, near the mouth of the Chilkat River, near latitude  $59^{\circ}30'$ , longitude  $136^{\circ}$ , that was reserved and set apart for educational purposes by Executive Order of May 4, 1907, containing approximately 0.16 of an acre;

"The lands on the left bank of Chilkat River included in Sec. 32, S $\frac{1}{2}$  Sec. 33, SW $\frac{1}{4}$  Sec. 34, T. 28 S., R. 56 E.; NW $\frac{1}{4}$  Sec. 5, NE $\frac{1}{4}$  Sec. 6, T. 29 S., R. 57 E., Copper River Base and Meridian, that were reserved for the use of the natives of Alaska residing then or thereafter at the Village of Klukwan by Executive Order No. 1764, of April 21, 1913, as modified by Executive Order No. 3673, of May 15, 1922, containing approximately 800 acres;

"The N $\frac{1}{2}$  Sec. 33, T. 28 S., R. 56 E., Copper River Base and Meridian, that was reserved for school, health, and other purposes by Secretarial Order of April 27, 1943, issued pursuant to authority contained in the Act of May 31, 1938 (52 Stat. 593), containing 320 acres; and,

"The area described as: Beginning at a point on the divide between the stream flowing into Chilkat Lake and the stream flowing into the Taklin River, approximate latitude  $135^{\circ}46'30''$  W., approximately longitude  $59^{\circ}17'06''$  N. This point is approximately  $1\frac{3}{4}$  miles south from the

right bank of the Chilkat River as shown on sheet No. 9 International Boundary between United States and Canada, 1923 Edition. Thence following down right bank of stream to Chilkat Lake; thence along easterly shore of Chilkat Lake and stream to the Salmon River; thence along right bank of Salmon River to the Chilkat River; thence south-easterly along right bank of said river to a point due north of the place of beginning; thence south approximately 1 3/4 miles to initial point, containing approximately 12,800 acres."

Notice of public hearings to determine whether Public Land Order No. 324 should be rescinded, modified or let stand, and whether the lands described therein should be designated as a reservation appeared in the Federal Register for August 22, 1946 (11 F. R. 9144), setting the hearings for September 16-21 in Juneau and Fairbanks. The notice was subsequently amended (11 F. R. 10398) to provide for hearings at Fairbanks on October 10 and at Klukwan on October 15. The Chief of the Alaska Branch of the Division of Territories, Joseph Flakne, was designated hearing officer, and I was to act as his alternate. Mr. Flakne was unable to leave Washington at the time set for the hearings; I therefore presided.

Hearings were held at Klukwan on October 15. The General Superintendent of the Alaska Native Service, the Counsel at Large for the Department and a representative of the canned salmon industry were present. Twenty-three natives appeared and gave testimony; about 40 of the 100-odd inhabitants attended the hearings. The record, unfortunately, does not appear in verbatim form. The stenographer was inexperienced and unable to transcribe accurately the exchanges of questions and answers. Some of the witnesses' remarks appear in

the transcript as uninterrupted statements, whereas in fact they were made in response to questions asked by Messrs. Folta, Foster and me.

#### Findings of Fact

1. The area proposed to be designated as a reservation comprises approximately 14,000 acres of land.
2. There was considerable conflict of testimony as to whether the boundaries of the reservation as proposed had been discussed with the natives (R. 6, 10, 24, 26, 28).
3. The boundaries were apparently determined by a teacher of the Alaska Native Service and by a representative of the Indian Office, in 1943 (R. 13-15, 26).
4. According to testimony and to a statement submitted by the teacher involved, the proposal for a reservation was presented as a temporary arrangement with the thought that additional areas could and would be added later (R. 13), or that it would be an extension of the present Klukwan reserve (R. 15 and letter of Mrs. Powell, formerly Perkins, to Mr. Foster, October 26, 1946).
5. Although a representative of the Alaska Salmon Industry, Inc. was present at the hearings, neither he nor any other white person interposed any objection to the withdrawal as proposed.
6. Nine persons thought the area set out in the Land Order was too small for a satisfactory reservation (R. 6, 10, 13, 16, 18, 19, 21, 23, 24).

7. All of the natives were confused as to the legal characteristics of a reservation (R. 5, 6, 25), and had previously understood that they would acquire fee simple title to the lands (R. 13, 25). The term "reservation" apparently carries connotations of bureaucratic control, in the minds of most witnesses, which do not attach to the term "reserve", which is the term commonly applied to the area in which these natives now live. Thus none of the witnesses who objected to "reservations" as an infringement on Indian rights had any objection to offer to the existing Klukwan Reserve.

8. In the course of the hearing the natives were advised by the Superintendent of the Alaska Native Service that a reservation would be "government property" (R. 25) and that any "payments for land" (presumably on leases or timber contracts) would "go to the Juneau office" (R. 6). On the basis of these and similar statements (R. 4, 5, 27), the leading spokesman of the Klukwan community announced that he and the entire community would refuse any reservation and insist, instead, upon recognition of their Indian title (R. 27). Although the record does not show this clearly, because of defective reporting, this position was confirmed by all witnesses, and those witnesses who had signed the 1943 reservation petition repudiated their petition on these grounds (R. 13, 25).

9. Since the hearing, I have been advised by the Indian Office and the Solicitor's Office that the above statements of Superintendent Foster are in conflict with Indian Office policy and with governing

law. The Indian Office policy, I am advised, is to encourage local organized Indian groups to handle their own rentals and income, and any use of agency facilities for banking is purely optional with the natives themselves. If they prefer to deposit income in a local bank, as at Metlakatla, they are free to do so. The law, I am advised, is that Indian title to reservation land is a complete fee simple title in equity and, in the words of the Supreme Court, "For all practical purposes they owned the land." (U. S. v. Shoshone Tribe, 304 U. S. 111, 116). Statutory restrictions on the alienation of Indian lands apply not only to reservation lands but equally to non-reservation lands. (U. S. v. Candelaria, 271 U. S. 432) The Indian Office advises me that it is taking steps to correct the misunderstanding that was made evident at this hearing in the testimony of Superintendent Foster. Nevertheless, it is a fact that the natives would not themselves as a group or individually, be able to convey legal title to the land, and it was their ability to sell their lands freely, if they wished, in which they were interested (R. 25-28).

10. Not a single witness was in favor of the reservation as proposed.

11. However, despite the fact that they were dismayed to hear that a reservation would not give them fee simple title, there was considerable sentiment in favor of some action by the Federal Government which would effectively protect the kind of life they had led from time immemorial (R. 3, 7, 9, 11, 17, 18, 20, 24).

12. The native economy is based on fishing, berry-picking and hunting and trapping (R. 3, 6, 17, 25).

13. Fishing is done chiefly in Chilkat Lake, which supplies trout, sockeyes, ooligans and other fish (R. 9, Ex. B, C, E, F), which are dried and smoked (Ex. C, F, R. 20).

14. Berries, salmon berries, cranberries, blueberries, soapberries, and elderberries, are found "up on the mountains" (R. 5, 9, Ex. D, J) and around Chilkat Lake (Ex. C). The berries are dried, made into cakes, preserved in oil or made into a kind of jam and some of these products are sold commercially (Ex. D).

15. Most of the hunting and trapping, of marten, fox bear, goats, lynx, mink and porcupine, is done in the watershed area of Chilkoot and Chilkat, bounded on the north by the Canadian border (R. 3, 11, 16, 18, 20, 22, 23, 24), by a point between Klukwan and Haines (Berner's Bay) to the south (R. 16, 18, 20, 23, 24) and the mountain ranges to the east and west (R. 7, 9, 16, 18, 24, 29). (See also R. 6, Ex. B, C, D.)

16. Within this area, there is steady encroachment by white homesteaders (R. 17, 18, 24, 29) who are cutting down timber on lands regarded by the natives as a source of winter fuel (R. 3, 18), are interfering with native hunting (R. 3, 7, 17), and trapping activities (R. 3, 7, 12).

17. With all the encroachments and interferences, it is becoming increasingly harder for natives to make a living (R. 7, 11, 12, 17, 18, 19, 21, 23, 24), and the native justifiably fear that there will be an increasing number of homesteaders (R. 7, 18, 19, 21, 24).

18. The reservation as proposed is of no economic benefit to the natives (R. 14, 15, 16, 20, 24).

19. It contains little timber (R. 18), is very gravelly (R. 15) and has little fish (R. 12) or game (R. 12). One witness stated "You can't even kill rabbits in that area" (R. 24).

#### Analysis

The intention in setting up the proposed reservation was to give the natives of Klukwan some economic security and to protect them against infringement of their ancient trapping, hunting and fishing rights. Since a substantial percentage of the Klukwan natives had actually petitioned the Department for the reservation, it was thought, at the start of the hearings, that the bulk of the testimony would merely go to support the earlier petition.

However, it became apparent immediately that even the signers of the petition had been confused in their concept of a reservation. The testimony was overwhelming that the natives had ranged over an area extending to the Canadian border, between the mountain ranges lying to the east and west of the village, and south to Berner's Bay. They had earned their livelihood and based their economy in this area since time immemorial, and they understood that the setting up of a reservation would confirm title to lands they had always used. Some of them repudiated their petition when they heard that they would not be acquiring title to even the area proposed to be designated as a reservation and others disavowed their request when they finally realized how small the area proposed to be designated was in comparison to the area they are accustomed to draw upon.

Not only is the area small, but it is of no use to the natives. It is not the source of their game, their fish, their timber or their berries. To confine them in the exclusive use of the area proposed is to give them nothing of value. The interference they have experienced from white homesteaders, and which they anticipate will increase, has come not in the area described in Public Land Order No. 324, but in the valuable timber land, the berry patches, the lakes and rivers where fish abound.

It is already more difficult for the natives to gather subsistence supplies, and unless encroachment is promptly and effectively prevented in the area where it is a danger to the native economy, the standard of living will fall below subsistence level. In theory, of course, the natives will not be restricted to the area set aside as a reservation, but as a practical matter, if they have no authority to control fishing, trapping and hunting by whites in the larger area, and if the Department does nothing to limit use of this larger area by outsiders, they will be slowly driven back to the small area within which they are supreme, and the record shows conclusively that they cannot confine their activities to that area and at the same time maintain their present living standard.

The record clearly demonstrates that the 700 square miles of the watershed of Chilkat and Chilkoot, up to the Canadian border and down to a point between Klukwan and Haines, was used by natives of Klukwan from time immemorial and is needed to keep the community life at its present level. Since it is not economically feasible to withdraw from

the public domain so substantial an area in southeastern Alaska, and since the natives themselves are more interested in establishing their possessory rights than in having a reservation of whatever size set up, I make the following recommendations for action by the Department, looking to protection of the ancient hunting, trapping, fishing and berrying grounds of the natives of Klukwan:

#### Recommendations

1. I recommend that the land described in Public Land Order No. 324 be not designated as a reservation.
2. I recommend that the Department arrange, in accordance with the procedure prescribed by the Acting Secretary on June 10, 1946 (11 F. R. 6911), for hearings to determine the extent of possessory claims of the natives of Klukwan in the area they claim as their own.
3. I recommend that, upon the determination of the extent of such rights, arrangements be made to give the people of Klukwan the choice of retaining the lands as to which their title has been confirmed, or selling portions thereof, the proceeds of such sale to be set aside for the establishment of native community projects, such as canneries, freezing plants, etc. Opportunity may thus be afforded for the establishment of private enterprise and for expansion of native industries, and the natives will receive a quid pro quo for lands from which they are presently being driven with no economic return. It is probable

that additional legislative authority, similar to the Bartlett bill, H. R. 5731 of the 79th Congress, would be necessary effectively to carry out this program, to the extent that it may be put into effect.

(Sgd) IRWIN W. SILVERMAN

Irwin W. Silverman,  
Presiding Officer.

Approved: December 9, 1946.

(Sgd) J. A. Krug,

Secretary of the Interior.

(Public Land Order 324)

Alaska

RESERVE AND PUBLIC LANDS FOR CLASSIFIC TION AND PROPOSED DESIGNATION AS  
NATIVE RESERVATIONS FOR INHABITANTS OF VILLAGES OF BARROW AND KLUKAN,  
AND VICINITY

By virtue of the authority vested in the President, and pursuant to Executive Order No. 9337 of April 24, 1943, it is ordered as follows:

Subject to valid existing rights and to existing withdrawals, the following described public lands in Alaska are hereby temporarily withdrawn from settlement, location, sale, or entry and reserved for the purpose of classification and proposed designation under section 2 of the act of May 1, 1936, 49 Stat. 1250 (U.S.C., Title 48, sec. 352a), as a native reservation for the use and occupancy of the native inhabitants of the native village of Barrow and vicinity, Alaska:

Beginning at a point on the Arctic Ocean 30 miles southwest of Point Barrow, air line, approximate latitude  $71^{\circ}05'27''$  N., approximate longitude  $157^{\circ}10'$  W., running thence in a southeasterly direction to McLavish Point; thence following along the coast of Dease Inlet, Elson Lagoon, and the Arctic Ocean, including Point Barrow, to the place of beginning, and including the waters adjacent to the above-described area extending 3,000 feet from the shore at mean low tide, all as shown on the Reconnaissance Map of Northwestern Alaska, 1930, prepared by the United States Geological Survey in cooperation with the Bureau of Engineering, Department of the Navy, containing approximately 750 square miles of land and approximately 50 square miles of water.

Subject to valid existing rights and to existing withdrawals, the following described public lands in Alaska are hereby temporarily withdrawn from settlement, location, sale, or entry and reserved for the purpose of classification and proposed designation under section 2 of the act of May 1, 1936, 49 Stat. 1250 (U.S.C., Title 48, sec. 352a), as a native reservation for the use and occupancy of the native inhabitants of the native village of Klukwan, and vicinity, Alaska:

The tract of land at Klukwan, near the mouth of the Chilkat River, near latitude  $59^{\circ}30'$ , longitude  $136^{\circ}$ , that was reserved and set apart for educational purposes by Executive Order of May 4, 1907, containing approximately 0.16 of an acre;

The lands on the left bank of Chilkat River included in Sec. 22, SW 1/4 Sec. 33, SW 1/4 Sec. 34, T. 28 S., R. 56 E., NW 1/4 Sec. 5, NE 1/4 Sec. 6, T. 29 S., R. 57 E., Copper River Base and Meridian, that were reserved for the use of the natives of Alaska residing then or thereafter at the Village of Klunakna by Executive Order No. 1764, of April 21, 1913, as modified by Executive Order No. 3613, of May 15, 1922, containing approximately 800 acres;

The NW 1/4 Sec. 33, T. 28 S., R. 56 E., Copper River Base and Meridian, that was reserved for school, health, and other purposes by Secretarial Order of April 27, 1943, issued pursuant to authority contained in the Act of May 31, 1936 (52 Stat. 593), containing 320 acres; and,

The area described as: Beginning at a point on the divide between the stream flowing into Chilkat Lake and the stream flowing into the Takhin River, approximate latitude  $135^{\circ}46'30''$  W., approximate longitude  $59^{\circ}17'06''$  N. This point is approximately  $1\frac{3}{4}$  miles south from the right bank of the Chilkat River as shown on sheet No. 9, International Boundary between United States and Canada, 1923 Edition. Thence following down right bank of stream to Chilkat Lake; thence along easterly shore of Chilkat Lake and stream to the Salmon River; thence along right bank of Salmon River to the Chilkat River; thence southeasterly along right bank of said river to a point due north of the place of beginning; thence south approximately  $1\frac{3}{4}$  miles to initial point, containing approximately 12,800 acres.

AUGUST 14, 1946.

OSCAR L. CHAFFAN  
Acting Secretary of the Interior.

(F. R. Doc. 46-14620; Filed, Aug. 21, 1946;  
9:43 a. m.)

B

THOMAS P. BLANTON  
ATTORNEY AT LAW  
P.O. BOX 616  
HAINES, ALASKA 99827  
(907) 766-2344

April 7, 1982

The Honorable R.E. Henderson  
Mayor  
Haines Borough  
P.O. Box H  
Haines, Alaska 99827

Re: Trespass Claims by Alaska Natives

Dear Mayor Henderson:

In an effort to determine what actually happened to the 2.6 million acre trespass claim of the Klukwan IRA Chilkat Indian Village, I contacted the Solicitors Office of the United States Department of Interior in Anchorage, and spoke with Field Solicitor, Bruce Landon.

I was advised that the Federal District Court Case of United States of America (and Inupiat Community of the Arctic Slope) v. Atlantic Richfield Company et al decided the trespass claims for all the companion cases, and as a result of that case, all other cases were dismissed by the Courts.

U.S. v. Atlantic Richfield Company 435 Fed. Supp. 1009 (1977) was tried in the United States District Court for the District of Alaska before Federal Judge James M. Fitzgerald. The decision in that case held that the Alaska Native Claims Settlement Act, pursuant to which natives were granted in exchange \$962,500,000 and 40 million acres of land in fee simple, extinguished not only the Aboriginal titles of all Alaska natives, but also every claim "based on" Aboriginal title in the sense that the past or present existence of Aboriginal title is an element of the claim, and the Act would be given retrospective construction so that entities under Federal authorization and conditional state leases were not pre-Act trespasses as claimed.

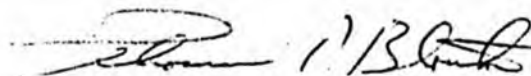
This decision, in favor of Atlantic Richfield and the other named defendants, was appealed to the United States Circuit Court of Appeals for the Ninth Circuit. The decision of that appeal is found in 612 Fed. Supp. 1132 (1980). The United States Circuit Court of Appeals, for the Ninth Circuit, affirmed the lower Court's decision. The appellants, the United States of America, on behalf of the Inupiat Community of the Arctic Slope, further appealed the case to the United States Supreme Court and that Court declined to hear the matter.

Trespass Claims by Alaska Natives  
April 7, 1982  
Page Two

This line of cases, forever settled the trespass claims based on Aboriginal title, of all Alaska native groups.

A copy of the United States District Court Decision and the United States Circuit Court of Appeals for the Ninth Circuit Decision accompany this letter.

Very truly yours,

  
Thomas P. Blanton

B

UNITED STATES v. ATLANTIC RICHFIELD CO.

1009

CIVIL ACTION NO. 75-215 (1977)

cause there is little likelihood that the persons who are enjoined by this Order will suffer monetary damage during the life of the Order and because Mr. Levstik has not indicated to the Court that a bond is needed. See, Fed.R.Civ.P. 65(c).

IT IS FURTHER ORDERED that this Temporary Restraining Order shall expire on the tenth day after the date it is filed, unless extended pursuant to Fed.R.Civ.P. 65(b).

A subsequent order of this Court will shortly be forthcoming setting a hearing date for Dr. Crews' Motion for a Preliminary Injunction.

IT IS FURTHER ORDERED that Dr. Crews' Motion, filed November 18, 1976, to make Timothy E. Levstik ("State Court Receiver") a new party defendant in this case is granted.

IT IS SO ORDERED.

trespass to land claimed on the basis of aboriginal title. The District Court, Fitzgerald, J., held that: (1) Settlement Act extinguished aboriginal title to lands tentatively approved to the State or conveyed pursuant to federal law as of date of the tentative approval or conveyance, rather than merely from effective date of the Settlement Act; (2) Act extinguished all remaining aboriginal title and native claims as of its effective date, (3) Act goes beyond extinguishment of claims for compensation of taking of Indian land and extinguishes all native claims based on alleged aboriginal occupancy, including claims against private parties for past trespasses and (4) trespass claims based on unrecognized aboriginal title are not a protected property interest and, hence, extinguishment of native trespass claims against third parties presented no Fifth Amendment problem.

Motion granted

1. Public Lands ≈3

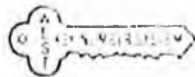
Aboriginal title, as opposed to Indian title recognized by treaty or reservation, is legally extinguishable when the United States makes an otherwise lawful conveyance of land pursuant to federal statute. Alaska Native Claims Settlement Act, § 2 et seq., 43 U.S.C.A. § 1601 et seq.; Alaska Statehood Act, § 1 et seq., 48 U.S.C.A. preceding section 21.

2. Public Lands ≈3

Congressionally authorized conveyance of lands from the public domain demonstrates the requisite intent to extinguish the Indian right of exclusive use and occupancy to those lands; hence, when Secretary of the Interior issued a patent to a homesteader in Alaska, aboriginal title of the native inhabitants was extinguished with respect to the patented land. Act May 14, 1898, 30 Stat. 409, Alaska Native Claims Settlement Act, § 2 et seq., 43 U.S.C.A. § 1601 et seq.

3. Public Lands ≈3

Conveyance of land in derogation of a congressional directive to respect and protect native occupancy would be void and



UNITED STATES of America, Plaintiff,  
Inupiat Community of the Arctic Slope,  
Plaintiff-Intervenor,

v.

ATLANTIC RICHFIELD COMPANY  
et al., Defendants.

No. A 75-215 Civil.

United States District Court,  
D. Alaska

June 3, 1977.

The United States, in its own behalf and on behalf of Eskimos inhabiting Arctic Slope of Alaska, sued the State of Alaska and 140 corporations and private parties for trespass to native land prior to passage of Alaska Native Claims Settlement Act. Defendants moved to dismiss all claims of

legally ineffective to extinguish aboriginal title. Alaska Native Claims Settlement Act, § 2 et seq., 43 U.S.C.A. § 1601 et seq.

#### 4. United States ⇌ 105

Intent of Congress in enacting Alaska Native Claims Settlement Act was to settle claims of Alaska natives and compensate them without deciding difficult question of existence and extent of aboriginal title to Alaska lands; hence, since Treaty of Cession and Congressional legislation, including Statehood Act, preceding the Settlement Act incidentally affected but did not purport to resolve issues relating to native land claims, it was appropriate to look directly to Settlement Act to discern congressional intent with respect to settlement and extinguishment of claims based on aboriginal title. Alaska Native Claims Settlement Act, § 2 et seq., 43 U.S.C.A. § 1601 et seq.; Alaska Statehood Act, § 1 et seq., 48 U.S.C.A. preceding section 21; Treaty of Cession, 15 Stat. 539.

#### 5. States ⇌ 8

Purpose of Alaska Statehood Act was to insure that the new state would be economically viable. Alaska Statehood Act, § 1 et seq., 48 U.S.C.A. preceding section 21.

#### 6. Public Lands ⇌ 3

Provision of Alaska Native Claims Settlement Act that prior conveyances of public land pursuant to federal law as well as tentative approvals pursuant to Statehood Act are to be regarded as an extinguishment of any aboriginal title thereto retroactively extinguished aboriginal title as of date of prior conveyances or tentative approval of state land selections under Statehood Act and did not merely validate prior federal conveyances and tentative land selection approvals as of effective date of Settlement Act; also, Act extinguished all remaining aboriginal title and native claims as of its effective date. Alaska Native Claims Settlement Act, §§ 2 et seq., 4(a), (b), 43 U.S.C.A. §§ 1601 et seq., 1602(a), (b); Alaska Statehood Act, § 1 et seq., 48 U.S.C.A. preceding section 21.

#### 7. United States ⇌ 105

Purpose of provision of Alaska Native Claims Settlement Act that all conveyances pursuant to the Act are subject to valid existing rights and that patents issued under the Act are subject to preexisting rights, such as leases issued under Statehood Act, was to protect rights and expectations of persons who previously received an interest in the land pursuant to federal law; to hold such prior lessees, permittees or grantees liable for trespass for entries made prior to effective date of Settlement Act would contravene the express legislative purpose fully protecting rights of those who entered the North Slope in reliance on federal authorization. Alaska Native Claims Settlement Act, §§ 4(a), 14(g), 43 U.S.C.A. §§ 1603(a), 1613(g); Alaska Statehood Act, § 6(g), 48 U.S.C.A. preceding section 21.

#### 8. United States ⇌ 105

In enacting Alaska Native Claims Settlement Act, Congress viewed previous federal conveyances of lands claimed by Alaska natives as past takings of aboriginal title and intended, by the Settlement Act, to compensate the natives for such past appropriations as well as for extinguishment of any remaining aboriginal land rights. Alaska Native Claims Settlement Act, § 4, 43 U.S.C.A. § 1603.

#### 9. United States ⇌ 105

Alaska Native Claims Settlement Act eliminated any basis for native claims relating to pre-Settlement Act entries on land tentatively approved to the state under the Statehood Act or previously conveyed to private parties; hence, Settlement Act required dismissal of claims for entries under state leases pursuant to the Statehood Act or entries pursuant to valid federal leases or conveyances. Alaska Native Claims Settlement Act, § 4(a), (c), 43 U.S.C.A. § 1603(a), (c); Alaska Statehood Act, § 6(g), 48 U.S.C.A. preceding section 21.

#### 10. Indians ⇌ 19

Provision of Alaska Native Claims Settlement Act extinguishing claims against the United States for the loss of aboriginal title and rights thereto, by persons

claims of injury or loss of personal property not dependent on a showing of aboriginal title or trespass claims asserted by individual natives or a group of natives having fee title or a leasehold interest in land, since a claim of trespass to such land can be proven without a showing of aboriginal use or occupancy. Alaska Native Claims Settlement Act, § 4(a, c), 43 U.S.C.A. § 1603(a, c).

#### 11. Public Lands ≈3

Provision of Alaska Native Claims Settlement Act extinguishing all claims against the United States, the state and all other persons that are based on claims of aboriginal rights embraces claims beyond claims for appropriation of Indian land, which claims are ascertainable only against the United States. Alaska Native Claims Settlement Act, § 4(c), 43 U.S.C.A. § 1603(c).

#### 12. Public Lands ≈3

Purpose of provision of Alaska Native Claims Settlement Act extinguishing all claims based on claims of aboriginal title was to avoid costly litigation and to end divisiveness between native and nonnatives in Alaska. Alaska Native Claims Settlement Act, § 4(c), 43 U.S.C.A. § 1603(c).

#### 13. Indians ≈19

Provision of Alaska Native Claims Settlement Act extinguishing all claims against the Government and others that are based on claims of aboriginal title extinguishes trespass claims based on aboriginal title and is not limited to claims for compensation for taking of Indian land; hence, provision extinguished native claims against State of Alaska and private parties for trespass on aboriginal title lands prior to passage of Settlement Act, specifically, alleged trespass as to lands tentatively approved to the state pursuant to Statehood Act or conveyed pursuant to federal law and, encompassed bases of North Slope oil lands which the state had tentatively selected under the Statehood Act. Alaska Native Claims Settlement Act, § 4(a, c), 43 U.S.C.A. § 1603(a, c), Alaska Statehood Act, § 6, 48 U.S.C.A. preceding section 21.

#### 14. Indians ≈19

Purpose of provision of Alaska Native Claims Settlement Act extinguishing all claims based on claims of aboriginal right, title, etc., was to eliminate indirect challenges to title, such as those asserted by way of a trespass action. Alaska Native Claims Settlement Act, § 4(c), 43 U.S.C.A. § 1603(c).

#### 15. Public Lands ≈3

Alaska Native Claims Settlement Act is to be broadly construed to effectuate a comprehensive settlement of all native claims based on aboriginal use and occupancy of land in Alaska and to bar any litigation based on such claims. Alaska Native Claims Settlement Act, § 4(a), 43 U.S.C.A. § 1603(a).

#### 16. Constitutional Law ≈277(1)

##### Public Lands ≈3

Trespass claims based on unrecognized aboriginal title are not a protected "property interest" within meaning of the Fifth Amendment; hence, provision of Alaska Native Claims Settlement Act extinguishing native claims based on alleged aboriginal occupancy, including claims against private parties for pre-Settlement Act trespasses, does no violence to the Fifth Amendment. Alaska Native Claims Settlement Act, § 4(c), 43 U.S.C.A. § 1603(c); U.S.C.A. Const. Amend. 5.

See publication Words and Phrases for other judicial constructions and definitions.

#### 17. Constitutional Law ≈277(1)

##### Indians ≈10

Indian occupancy of land without government recognition of ownership is not a constitutionally protected interest and, hence, may be terminated by Congress at will without compensation; since such use and occupancy is not constitutionally protected, trespass or other claims of interference with the underlying interest likewise fall outside the scope of Fifth Amendment protection. U.S.C.A. Const. Amend. 5.

#### 18. Constitutional Law ≈277(1)

##### Indians ≈10

Congress has plenary power over aboriginal use and occupancy and claims de-

rived therefrom and may extinguish such occupancy rights and derivative claims in any manner it chooses; hence, Fifth Amendment was not violated by retroactively extinguishing aboriginal title and trespass claims for pre-1971 entries on Alaska's North Slope. Alaska Native Claims Settlement Act, § 4(a, c), 43 U.S.C.A. § 1603(a, c); U.S.C.A.Const. Amend. 5.

#### 19. Public Lands ⇌ 3

It is essential that Congress be able to extinguish aboriginal title and all claims based on such title unimpeded by constitutional restrictions so that Indian land claims and disputes generated thereby may be conclusively and finally settled. Alaska Native Claims Settlement Act, § 4(a, c), 43 U.S.C.A. § 1603(a, c); U.S.C.A.Const. Amend. 5.

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Avrum M. Gross, Atty. Gen., Anchorage, Alaska, for State of Alaska.

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Atkinson, Conway, Young, Bell & Gagnon, Anchorage, Alaska, for defendants ATCO Housing, dba ATCO Structures, National Mechanical Contractors, Polar Oil Field Services.

Birch, Jermain, Horton & Bittner, Anchorage, Alaska, for defendant Hewitt Lounsbury & Assoc.

William V. Boggess, Fairbanks, Alaska, for defendants James A. Dalton & Assoc. and Stutzmann Eng. Assoc.

Burr, Pease & Kurtz, J. W. Sedwick, Anchorage, Alaska, for defendants Green Const. Co., Union Oil Co. of California, Alaska Geophysical, Inc. and Digicon Alaska, Inc.

Charles E. Cole, Fairbanks, Alaska, for defendants Burgess Const. Co. and Spruce Equipment Co.

Richmond & Willoughby, Anchorage, Alaska, for defendants Alaska Barge & Trans., Inc., Battelle Pacific Northwest Laboratories, General Const. Co., Goodyear Tire & Rubber Co., Pac. Inland Navigation Co., Universal Services, Inc. and Alaska General Const.

Paul F. Robison, Robison, McCaskey, Reynolds & Frankel Anchorage, Alaska, for defendant Pipeline Technologists, Inc.

Charles E. Tulin, Anchorage, Alaska, for defendants S & G Const., Inc. and Winship Air Service.

Hugh G. Wade, Anchorage, Alaska, for defendants Rivers C & M Co.

H. Bixler Whiting, Whiting & Blanton, Fairbanks, Alaska, for defendants J & J Equipment, Inc. of Alaska.

Klimit E. Giddens, in pro. per. and for defendants Borst & Giddens Oil Well dba Logging Serv., Inc.

Hagens, Smith & Brown, Anchorage, Alaska, for defendants Geophysical Service, Inc., Reading & Bates Offshore Drilling Co., Reading & Bates Oil and Gas Co. and United Geophysical Corp.

Hoge, Lekish, Cardwell, Marquez & Lawrence, Anchorage, Alaska, for defendants Sea Automotive, Inc.

Holland & Thornton, Anchorage, Alaska, for defendants Colorado Oil & Gas Corp., Era Helicopters, Inc., Forest Oil Corp., Hunt Oil Co., Marathon Oil Co., Merrie, Inc., Mobil Oil Corp., Parker Drilling Co., Phillips Petroleum Corp., Placid Oil Co., Mo-

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bile Pipeline Co., Socony Mobil Oil Co. and Amerasia Hess Corp.

Ely, Guess & Rudd, Anchorage, Alaska for defendants Alyeska Pipeline Serv. Co., BP Oil Corp., by Sohio Petroleum Co., Successor Evergreen Helicopters of Alaska, Inc., Kaiser Steel Corp., Michael Baker, Jr., Inc., Newmont Oil Co., Prudhoe Bay Communications, by Sohio Trans. Co., formerly Prudhoe Bay Comm., Shell Oil Co., Sohio Petroleum Co., ARCO Pipeline Co., BP Alaska Exploration, BP Alaska, Inc., Kip Pipelines, Inc. and Woodward-Lundgren Assoc.

Barry Donnellan, Anchorage, Alaska, for defendants Ramstad Const. Co.

M. P. Evans, George A. Dickson, Anchorage, Alaska for defendants S. S. Mullens, Inc., dba S. S. Mullen Const.

Faulkner, Banfield, Doogan & Holmes, Juneau, Alaska, for defendants Atlantic Refining Co., Atlantic Richfield Co., Richfield Oil Corp. and Sinclair Oil Corp.

James E. Fisher, Kenai, Alaska, for defendants Better Concrete Products Corp.

Gallagher, Crauston & Snow, Anchorage, Alaska, for defendants Sourdough Freight Lines, Inc.

Stephen S. Hart, Graham & James, Anchorage, Alaska, for defendants Nabors Alaska Drilling.

Cole, Hartig, Rhodes & Norman, Anchorage, Alaska, R. T. Robberson, Houston, Tex., for defendants Alaska Geophysical, Inc., Core Laboratories, Inc., Digicon Alaska, Inc., Dresser Industries, Inc., Lindsay & Associates, Lorac Service Corp., Madrel, dba Ray Geophysical, Occidental Petroleum, Western Geophysical Co. of America, Continental Laboratories and The Superior Oil Co.

Ralph G. Crews, Anchorage, Alaska, for defendants Gulf Oil Corp., Pan American Petroleum and Texaco, Inc.

Delaney, Wiles, Moore, Hayes & Reitman, Anchorage, Alaska, for defendants Alaska Airlines, Boatel Alaska, Inc., Eastman Oil Well Survey, Rowan Drilling Co., dba Row-

an Drilling U.S., Standard Oil Co. of Cal., Whipstock Alaska, Globe Universal Sciences, Hamilton Brothers Oil and Frontier Rock & Sand, Inc.

Robert L. Hartig, Anchorage, Alaska, Michael R. Waller, Karen A. Berndt, Houston, Tex., for defendants Digicon Alaska, Inc. and Alaskan Geophysical, Inc.

Karl S. Johnstone, Anchorage, Alaska, for defendants C. R. Lewis, Inc.

Denis R. Lazarus, Anchorage, Alaska, for defendants Olympic, Inc.

McCarrey & McCarrey, Anchorage, Alaska, for defendants Wien Air Alaska.

Philip D. Maloney, Anchorage, Alaska, for defendants Cities Service Oil Corp., Conoco, Inc., Sperry-Sun Well Surveying Co. and Sun Oil Co.

Nosek, Bradbury & Wolf, Anchorage, Alaska, for defendants Arctic Marine Freighters, Eye Construction, Inc., Mukluk Freight Lines, Inc., Oilfield Service, Inc. and Puget Sound Tug & Barge Co.

Thomas P. Owens, Jr., Owens, Riordan & Turner, Anchorage, Alaska, for defendants Atwood Enterprises, Inc. and Brinkerhoff Drilling Co.

Rice, Hoppner & Hedland, Fairbanks, Alaska, for defendants Earthmovers of Fairbanks, Inc.

Croh, Beakert & Walter, Anchorage, Alaska, for defendants Locher Construction Co., dba Locher Co., Inc. and Western Offshore Drilling & Exploration Co.

## OPINION

FITZGERALD, District Judge.

The United States, acting in its own behalf and on behalf of Eskimos inhabiting the Arctic Slope of Alaska, sues the State of Alaska and one hundred forty corporations and private parties for trespass to Native land prior to the passage of the Alaska Native Claims Settlement Act.<sup>1</sup> The intervenor, Inupiat Community of the Arctic Slope, a recognized Eskimo tribal

1. 43 U.S.C. § 1601 et seq. Hereinafter referred to as the Settlement Act.

entity, makes similar but somewhat more extensive claims.<sup>2</sup>

The underlying theory of both the complaint and the complaint in intervention is that until the 1971 Settlement Act the Eskimos of the Arctic Slope had a right of exclusive possession to the Arctic Slope of Alaska based on use and occupancy of that region from time immemorial, or as it is sometimes termed, "aboriginal title."

The case is here on defendants' joint motion to dismiss all claims of trespass to land claimed on the basis of aboriginal title.<sup>3</sup> The case raises important questions of law arising under the Settlement Act and federal common law regarding Indian rights. In order to fully develop the issues presented, it is necessary to review the background of the Settlement Act.

Jurisdiction over the claims of the United States is conferred by 28 U.S.C. § 1345. Jurisdiction over the claims of intervenor is based on 28 U.S.C. §§ 1331, 1362.

## I. HISTORY OF ALASKA NATIVE LAND CLAIMS

The claims of the Native people to the land and resources of Alaska had been a source of potential conflict and uncertainty for over a century before Congress finally

2. More specifically, the United States claims damages for entries to land aboriginally used and occupied by the Arctic Slope Natives where: (1) the entry was unauthorized; (2) the entry and trespass were under color of the Statehood Act of 1868, 72 Stat. 339, but in violation of explicit terms contained therein, which affirmatively protected Native rights; or (3) the entry was made under federal authorization but the entry interfered with substantial and notorious Native use resulting in destruction of Native possessions, such as homes, hunting or trapping grounds, and other physical structures. Damages to the Eskimos are alleged to include the disturbance of game animals, the extraction of oil and gas, the obtaining of geophysical information of great value, and the construction of roads, buildings, airfields and other structures.

Intervenor claims damages for all entries on the North Slope prior to December 18, 1971; the value of any geologic and geophysical information obtained as a result of oil exploration on Arctic Slope land; the royalty value of grav-

undertook to settle the aboriginal claims in the late 1960's.

The Treaty of Cession<sup>4</sup> by which the United States purchased Alaska from Russia in 1867 did not address the property rights of the Native inhabitants. It provided that the Natives would be subject to such laws as the United States might adopt with respect to aboriginal tribes.

The first statute to mention the land rights of Alaska Natives was the Organic Act of 1884<sup>5</sup> which provided for a civil government and extended the mining laws of the United States to Alaska. Section 8 of the Organic Act provided:

... that the Indians or other persons in said district shall not be disturbed in the possession of any lands actually in their use or occupation or now claimed by them but the terms under which such persons may acquire title to such lands is reserved for future legislation by Congress . . . .

Congress proceeded to open Alaska to settlement and development by extending the general land laws to Alaska. The Act of March 3, 1891 authorized the establishment of townsites and conveyances of town lots to individual occupants.<sup>6</sup> In 1898 Congress extended the homestead laws to Alaska<sup>7</sup> and in 1900 the mining laws of the United States to Alaska in the second Or-

der or other mineral resources obtained as a result of trespass on the Arctic Slope; damages for destruction of wildlife; damages for theft or disturbance of chattels; and damages for injury to real property and structures.

3. All claims which may lie for injury to personal property or real property individually owned, as opposed to property claimed by right of aboriginal use and occupancy, are excepted from the motion to dismiss. Such claims, however, are not adequately stated by the complaints filed in this case.

4. Treaty of March 30, 1867, 15 Stat. 539.

5. Act of May 17, 1884, Ch. 53, 23 Stat. 24.

6. Act of March 3, 1891, Ch. 551, 26 Stat. 1055, 43 U.S.C. § 732.

7. Act of May 14, 1898, Ch. 259, 30 Stat. 409, 43 U.S.C. § 270.

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ganic Act.<sup>8</sup> In 1914 Congress enacted the Alaska Coal Lands Act, directing the President to reserve potential coal-bearing lands and issue leases for those lands.<sup>9</sup> The Mineral Leasing Act enacted in 1920<sup>10</sup> authorized the Secretary of the Interior to lease lands owned by the United States which contain deposits of coal, oil and other minerals. Some of these enactments contained provisions exempting or protecting from disposition lands actually occupied by Natives. The second Organic Act, for example, provided that Natives "shall not be disturbed in the possession of any lands now actually in their use and occupancy."<sup>11</sup> However, other statutes, such as the Mineral Leasing Act, did not contain any provisions respecting Native occupancy.

Under these laws, appropriate administrative officials authorized entries on, and disposition of, Alaska lands without regard to aboriginal title claims of Natives.

In the Alaska Native Allotment Act,<sup>11</sup> Congress for the first time provided a means by which individual Alaska Natives could obtain legal title to land they occupied. The Act provided for the allotment of homesteads of up to 160 acres of non-mineral land. However, only 80 allotments, most of which were in southeastern Alaska, were issued under the Act during the first 54 years after its passage. Knowledge of the provisions of the Allotment Act and the means to apply for lands under its provisions were not available to most Alaska Natives.<sup>12</sup>

Under a 1926 Act, Congress extended the provisions of the townsite laws to Alaska Natives, providing for the patenting of lots within Native townsites to the occupants. Native townsite residents received a restricted deed, inalienable except by permission of the townsite trustee.<sup>13</sup>

Significantly, in Alaska, unlike the Lower 48, there were never treaties between the United States and Alaska Native groups designating lands which Natives were entitled to occupy or defining their rights to the taking of fish and game. Congress created only one reservation in Alaska, an 86,000 acre reservation in southeastern Alaska for the Metlakatla Indians.<sup>14</sup> Between 1914 and 1917 the President made various Executive Order withdrawals of Alaskan land for the benefit of Native groups.<sup>15</sup> In 1936 the Secretary of the Interior was authorized to designate reservations in Alaska upon vote of the adult Native residents within the proposed reservation.<sup>16</sup> Only six such reservations were created, none of which were on the North Slope. Alaskans, both Native and non-Native, opposed creation of reservations on the grounds that reservations were socially divisive and tended to perpetuate a wardship rather than equality for the Natives. Four villages voted down proposed reservations and one was declared invalid by the Territorial Court. *United States v. Libby, McNeill & Libby*, 107 F.Supp. 697, 14 Alaska 37 (1952).<sup>17</sup>

8. Act of June 6, 1906, Ch. 786, 34 Stat. 321, as amended, 30 U.S.C. § 49(a).

9. Act of Oct. 20, 1914, Ch. 330, 38 Stat. 741.

10. Act of Feb. 25, 1920, Ch. 85, 41 Stat. 437, as amended, 30 U.S.C. § 181 et seq.

11. Act of May 17, 1906, Ch. 2469, 34 Stat. 197.

12. Senate Report No. 92-405, 92nd Congress, 1st Session at 91 (1971).

13. Act of Mar. 25, 1926, Ch. 379, 44 Stat. 629, 43 U.S.C. § 731.

14. Act of March 3, 1891, Ch. 561, § 15, 26 Stat. 1101, 25 U.S.C. § 495.

15. E.g., Ft. Yukon, Executive Order No. 1896 (Feb. 24, 1914); Klukwan, Executive Order No.

2227 (Aug. 2, 1915); Chilkat, Executive Order No. 2228 (Aug. 2, 1915); Yendistucky, Executive Order No. 2388 (May 25, 1915); Norton Bay, Executive Order No. 2508 (Jan. 3, 1917); Akiak, Executive Order No. 2757 (Nov. 22, 1917); Mountain Village, Executive Order No. 2757 (Nov. 22, 1917); Tatitlek, Executive Order No. 2757 (Nov. 22, 1917).

16. Act of May 1, 1936, Ch. 254, § 2, 49 Stat. 1250, 25 U.S.C. § 496.

17. Federal Field Committee for Development Planning in Alaska, *Alaska Natives and the Land*, Chap. V. See also, E. Gruening, *The State of Alaska*, Ch. 25, pp. 365-381 for an account of the opposition of Alaskans to the Department of Interior's plan to create Indian reservations throughout Alaska.

In 1935 Congress enacted a jurisdictional statute which allowed the Tlingit and Haida Indians of southeastern Alaska to bring suit in the Court of Claims for compensation for land and tribal property rights expropriated by the United States and for the failure by the United States to protect those property rights from usurpation by non-Natives.<sup>18</sup> However, it took over 35 years for the Tlingits and Haidas to receive compensation.

In 1959 the Court of Claims held that the Tlingits and Haidas had established title to six areas.<sup>19</sup> Judgment for \$7,546,053.80 was entered in 1968. Money was not appropriated to pay the judgment until 1970.

Nevertheless, the Tlingit and Haida Indians fared better than the Tee-Hit-Tons, who failed to get any compensation whatsoever when they went to court without the aid of a jurisdictional statute. The Supreme Court held that unrecognized aboriginal title was not a property interest protected by the Fifth Amendment from government taking without compensation. *Tee-Hit-Ton Indians v. United States*, 348 U.S. 272, 75 S.Ct. 313, 99 L.Ed. 314 (1955).

When the *Tee-Hit-Ton* decision was handed down, Congress was deliberating the question of statehood for Alaska. However, statehood was not approved until 1958 when Congress enacted the Alaska Statehood Act.<sup>20</sup>

The confrontation of Native and non-Native over ownership and use of the land accelerated after statehood. Section 6 of the Statehood Act authorized the State to select 102,500,000 acres from public lands that were "vacant, unappropriated, and unreserved at the time of their selection."<sup>21</sup> The intent of Congress was, of course, to provide the new state with a solid economic foundation.<sup>22</sup> State land selections required the approval of the Secretary of the Interior who was the official with authority to patent selected lands to the State.<sup>23</sup> Section 6(g) authorized the State to execute conditional leases and make conditional sales of selected lands following tentative approval but prior to issuance of the final patent.<sup>24</sup>

The Statehood Act further provided that the State of Alaska would receive 90% of the revenues derived by the United States from coal and mineral leases of the lands retained by the United States in Alaska.<sup>25</sup>

Significantly, the Statehood Act also contained a provision protecting Native rights. Section 4 of the Act provided that the State disclaimed any right or title to "any lands or other property (including fishing rights), the right or title to which may be held by any Indians, Eskimos, or Aleuts . . . or is held by the United States in trust for said Natives . . ." <sup>26</sup>

18. Act of June 13, 1935, Ch. 275 § 2, 49 Stat. 388.

19. *Tlingit and Haida Indians of Alaska v. United States*, 177 F.Supp. 452, 147 Cl.Cl. 315 (1959).

20. Act of July 7, 1958, Pub.L. No. 85-508, 72 Stat. 339, as amended, 73 Stat. 141 (hereinafter Statehood Act). 48 U.S.C. prec. 21 note.

21. Sections 6(a) and 6(b) of the Statehood Act, 72 Stat. 339, 340.

22. See, U.S. Code Congressional and Administrative News, 85th Cong., 2d Sess. (1958) Legislative History, p. 2933.

23. Sections 6(a) and 6(g), 72 Stat. 339, 340-341.

24. 72 Stat. 339, 342.

25. 72 Stat. 339, Section 25.

26. It is important to read the full text of Section 4 of the Statehood Act to understand how Section 4, when read in conjunction with the grant to the State in Section 6, is subject to differing interpretations by the parties herein. Section 4, as amended in 1959, 73 Stat. 141, provides:

As a compact with the United States said State and its people do agree and declare that they forever disclaim all right and title to any lands or other property not granted or confirmed to the State or its political subdivisions by or under the authority of this Act, the right or title to which is held by the United States or is subject to disposition by the United States, and to any lands or other property (including fishing rights), the right or title to which may be held by any Indians, Eskimos, or Aleuts (hereinafter called natives) or is held by the United States in trust for said natives; that if such lands or other property (including fishing rights), the right

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In the 1960's the State proceeded to select land as provided in Section 6 of the Statehood Act.

In 1964 and 1965 the State selected, and the Secretary of the Interior tentatively approved, approximately 1,650,000 acres of land on the Arctic Slope, a region in which the existence of large oil deposits was suspected.<sup>27</sup> Reports of oil deposits in Prudhoe Bay, one of the selected areas, were confirmed in 1968. In 1969 the State conducted sales of oil and gas leases for tentatively approved Arctic Slope lands. The lease sale was vigorously protested by Alaska Natives. Nevertheless, oil companies, including a number of the defendants in this lawsuit, paid over 900 million dollars to acquire oil and gas leases.

Meanwhile, the Secretary of the Interior, in a series of public land orders issued between 1958 and 1965, had authorized locations and entries under the mining laws and leases pursuant to the Mineral Leasing Act on various areas of the Arctic Slope. Pursuant to these land orders and federal leases, numerous private parties including many of the present defendants partici-

of title to which may be held by said natives or is held by the United States in trust for said natives, shall be and remain under the absolute jurisdiction and control of the United States until disposed of under its authority except to such extent as the Congress has prescribed or may hereafter prescribe, and except when held by individual natives in fee without restrictions on alienation. *Provided*, That nothing contained in this Act shall recognize, deny, enlarge, impair, or otherwise affect any claim against the United States, and any such claim shall be governed by the laws of the United States applicable thereto, and nothing in this Act is intended or shall be construed as a finding, interpretation, or construction by the Congress that any law applicable thereto authorizes, establishes, recognizes, or confirms the validity or invalidity of any such claim, and the determination of the applicability or effect of any law to any such claim shall be unaffected by anything in this Act.

*And provided further*, That no taxes shall be imposed by said State upon any lands or other property now owned or hereafter acquired by the United States or which, as heretofore set forth, may belong to said natives, except to such extent as the Congress has prescribed or may hereafter pre-

parted in oil and gas explorations on the Slope.

Certain initial State land selections were protested by the Bureau of Land Management on behalf of Native villages. As State selections continued, Alaska Natives began organizing themselves into groups and associations and the number of Native protests and land claims mounted steadily. The Alaska Federation of Natives was organized in 1966, and regional Native associations were organized throughout Alaska. By April, 1968, forty claims covering 256,000,000 acres, approximately 80% of the State, had been filed.<sup>28</sup> The North Slope Native Association had filed a claim to virtually the entire North Slope.<sup>29</sup> In short, most of the State land area, and virtually all of the commercially valuable land, were subject to Native protests.

Partly in response to the mounting protests, the Secretary of the Interior instituted a land freeze policy whereby federal patenting and approval of State selections and other applications for public lands were suspended pending a legislative settlement of the controversy.<sup>30</sup>

scribe, and except when held by individual natives in fee without restrictions on alienation.

27. Federal Field Committee, *Alaska Natives and the Land*, 456-7 (1968). During the 90th Congress the Senate Committee on Interior and Insular Affairs commissioned the Federal Field Committee for Development Planning in Alaska to prepare a report concerning the Native land claims. The report *Alaska Natives and the Land* is an important document in the legislative history of the Settlement Act. Senate Report No. 92-405, 92d Cong., 1st Sess. (1971), 74.

28. *Alaska Natives and the Land*, 442.

29. *Id.* at 456.

30. The land freeze was made official in Public Land Order No. 4582, issued January 12, 1969, which reads as follows:

Subject to valid existing rights, and subject to the conditions hereinafter set forth, all public lands in Alaska which are unreserved or which would otherwise become unreserved prior to the expiration of this order, are hereby withdrawn from all forms of appropriation and disposition under the public



lowed to pursue pending allotment applications.<sup>41</sup>

Any summary of the background to the Settlement Act and the instant lawsuit would not be complete without mention of *Edwardsen v. Morton*, 373 F.Supp. 1359 (D.D.C.1973). That case was filed October, 1971, in the United States District Court for the District of Columbia while Congress was in the final stages of consideration of the terms of the Settlement Act. The plaintiffs included Charles Edwardsen, Jr., Executive Director of the Arctic Slope Native Association, the Inupiat Community of the Arctic Slope and several Native villages and individual Eskimos of the Arctic Slope. The named defendants were the Secretary of the Interior and subordinate officials. The complaint alleged that the federal officers had unlawfully transferred and permitted trespass to Arctic Slope lands claimed and occupied by Inupiat Eskimos under aboriginal title. Plaintiffs alleged that all State land selections on the North Slope and tentative approvals thereof were illegal and sought declaratory and injunctive relief to this effect. Plaintiffs also sought an order requiring the Secretary to account to the plaintiffs for all monies received by the State of Alaska, including the \$912 million received by the State in the September, 1969, Prudhoe Bay oil and gas lease sale, and other third persons as a result of the tentative approvals. The complaint was later amended to state a claim for a money judgment against the Secretary.

After passage of the Settlement Act, the defendants in *Edwardsen* moved for summary judgment on the grounds that the Settlement Act barred all of plaintiffs' claims. The district court granted summary judgment for the federal defendants on the claims to the tentatively approved State lands, holding that the Settlement Act validated all prior tentatively approved State

selections. However, the district court denied summary judgment as to the accounting and damage claims, holding that the Settlement Act did not extinguish tort claims that accrued prior to enactment of the Settlement Act.

No appeal was taken from the decision of the district court in *Edwardsen*. Instead, the federal defendants entered into a stipulation with the plaintiffs which required federal officers to conduct an investigation of plaintiffs' trespass claims and thereafter to recommend that the Attorney General institute damage actions on the Natives' behalf.

This lawsuit followed.

## II. PRELIMINARY ISSUES

The main argument in support of the motion to dismiss is that the Settlement Act conclusively extinguished, and therefore bars, all claims based on aboriginal use or occupancy, including claims of past trespass to lands claimed by aboriginal title.

However, defendants also raise several preliminary issues by arguing that the aboriginal title claimed by the Arctic North Slope Eskimos was extinguished even prior to passage of the Settlement Act by operation of various federal statutes concerning disposition and use of federal land in Alaska, including the Alaska Statehood Act.

First, defendants argue that the Treaty of Cession extinguished the aboriginal title of all Native peoples in Alaska.<sup>42</sup>

Second, defendants contend that between cession and statehood the federal government exercised "complete dominion" over Alaska lands in a manner adverse to the existence of a Native right of exclusive possession and thereby extinguished all aboriginal title.<sup>43</sup>

Third, relying on the Supreme Court in *Organized Village of Kake v. Egan*, 369

41. 43 U.S.C. § 1613(b)(5), § 1617(a).

42. In *Miller v. United States*, 159 F.2d 997, 41 Alaska 285 (9th Cir. 1947), a condemnation action brought by the United States to obtain unencumbered fee title to tidelands in Juneau for the purpose of building a wharf, the Ninth Circuit held that no communal claim of aboriginal title survived the Treaty of Cession. How-

ever, this holding was impliedly overruled by the Supreme Court in *Tee-Hit-Ton Indians v. United States*, 348 U.S. 272, 75 S.Ct. 313, 99 L.Ed. 314 (1955).

43. In *United States v. Santa Fe Pac. R.R.*, 314 U.S. 339, 62 S.Ct. 245, 86 L.Ed. 260 (1941), the Supreme Court stated that the right of the United States to extinguish aboriginal title may

U.S. 60, 82 S.Ct. 562, 7 L.Ed.2d 573 (1962),<sup>44</sup> defendants argue the Statehood Act authorized the State to select and obtain clear title to lands claimed under aboriginal title, thereby extinguishing inconsistent aboriginal title to the selected lands, but preserved the Natives' right to seek compensation from the federal government for the lands granted to the State. Plaintiff and intervenor, on the other hand, contend that the intent of Congress in the Statehood Act was to preserve the status quo of Native occupancy, not to extinguish the right of aboriginal occupancy; hence State selection was limited to lands not occupied or claimed by Natives. Plaintiff and intervenor concede that under this interpretation of the Statehood Act, the State would likely end up with substantially less than the allotted

103 million acres in view of the fact that Alaska Natives claimed aboriginal title by virtue of use and occupancy to almost all of the land in Alaska.

[1-3] These contentions raise difficult issues. To determine whether, and to what extent, aboriginal title to the Arctic Slope may have been legally extinguished prior to passage of the Settlement Act would require close examination of almost every federal statute and federal government action relating to use of Arctic Slope lands between 1867 and 1971 in order to discern if there was some clear manifestation of Congressional intent to extinguish aboriginal title. *Unit. States v. Gemmill*, 535 F.2d 1145 (9th Cir. 1976).<sup>45</sup>

[4] The Settlement Act, however, makes such an undertaking unnecessary. The in-

terests with respect to Native land, not its governmental and political interests. 369 U.S. at 68-69, 82 S.Ct. at 562.

be exercised "by treaty, by the sword, by purchase, by the exercise of complete dominion adverse to the right of occupancy, or otherwise . . ." 314 U.S. at 347, 62 S.Ct. at 252. The Ninth Circuit recently applied the "complete dominion" theory in *United States v. Gemmill*, 535 F.2d 1145 (9th Cir. 1976). In *Gemmill*, the court reviewed a "century-long course of conduct" to conclude that a tribe's aboriginal title had been extinguished *de jure* even though any one of the specific federal actions, "examined in isolation, may not provide an unequivocal answer to the question of extinguishment." 535 F.2d at 1149.

44. In the *Kate* opinion Justice Frankfurter, relying on the early legislative history of the Section 6 disclaimer provision of the Alaska Statehood Act, stated:

It was understood that the disclaimer provision left the State free to choose Indian "property" if it desired, but that such a taking would leave unimpaired the Indians' right to sue the United States for any compensation that might later be established to be due. 369 U.S. at 61-66, 82 S.Ct. at 566.

However, *Kate* is not controlling authority for the instant case because it did not resolve the issue of whether the State could select Native lands. Instead, the issue before the Court was whether the restrictions of federal title and the paramount claim by the United States over the continent claimed by the State in Section 4 of the Statehood Act barred the State from applying its own state law to convey title to Indian lands. The Court held the State could convey its public lands over to the Indians, but that the restriction of title to the federal government did not bar the State from conveying

interests with respect to Native land, not its governmental and political interests. 369 U.S. at 68-69, 82 S.Ct. at 562.

45. In *Gemmill*, the Ninth Circuit held that extinguishment of aboriginal title occurs when the United States acts in a manner which manifests an intention to extinguish, regardless of the means or propriety of the action. "The relevant question is whether the governmental action was intended to be a revocation of Indian occupancy rights." *Gemmill*, supra, 535 F.2d at 1148.

Contrary to intervenor's contentions, aboriginal title, as opposed to Indian title recognized by treaty or reservation, is legally extinguishable when the United States makes an otherwise lawful conveyance of land pursuant to federal statute. Congressionally authorized conveyance of lands from the public domain demonstrates the requisite intent to extinguish the Indian right of use and occupancy to those lands. That, as the United States acknowledged, when the Secretary of the Interior issued a patent to a homesteader in Alaska, aboriginal title was extinguished with respect to the patented land. However, since the United States retained title to almost all of the Arctic Slope during the period in question, extinguishment of aboriginal title by conveyance is not at issue here. Whether homestead approval at State level, or any other legally extinguished aboriginal title pursuant to a later, difficult question, the Statehood Act can be read to preserve Native occupancy rights. Congress could not have intended a Congressional action to extinguish aboriginal title to the Arctic Slope.

intent of Congress in the Settlement Act was to settle the claims of Alaska Natives and to compensate them without deciding the difficult and disputed question of the existence and extent of aboriginal title to Alaska lands. The Act's Declaration of Settlement reads: "All aboriginal titles, if any . . . are hereby extinguished." (emphasis added)<sup>46</sup> Congress was aware that claims or aboriginal title raised difficult questions of law and fact. The difficulty was in large part due to the long delay before Congress directly confronted settlement claims based on aboriginal title. The Settlement Act was the first and only legislative action in which Congress considered and undertook to resolve the claims of Alaska Natives. The Treaty of Cession and Congressional legislation, including the Statehood Act, which preceded the Settlement Act, incidentally affected issues relating to Native land claims but did not purport to resolve them. It is appropriate then to look directly to the Settlement Act, rather than to previous legislation, to discern Congressional intent with respect to settlement and extinguishment of claims based on aboriginal title.

[5] The legislative history of the Statehood Act fails to clarify Congressional intent with respect to Native use and occupancy.<sup>47</sup> In fact, there is very little reference to Native land claims in the legislative history on the Statehood Act. This is so

because Congress was principally concerned with achieving statehood for Alaska, not with settlement of Native land claims. Given the difficulty of winning Congressional approval for Alaska statehood,<sup>48</sup> Congress undertook to bypass, rather than to resolve the complex and difficult questions arising out of Native claims.<sup>49</sup>

Nevertheless, the Statehood Act is important insofar as it is a significant part of the background of the Settlement Act and contributes to an understanding of legislative intent in the Settlement Act. As noted, the conflicting claims by the State of Alaska and by Alaska Natives to lands selected by the State pursuant to the Statehood Act and the land freeze imposed by the Secretary of the Interior precipitated demands on Congress to enact legislation bringing about settlement of Native land claims.<sup>50</sup> As will be discussed in the following section, Congress specifically addressed and resolved the problem of the conflicting State and Native claims to tentatively approved lands in subsection 4(a) of the Settlement Act.

To summarize, I decline to decide whether aboriginal title to the Arctic North Slope was extinguished in whole or in part by the Treaty of Cession, or by the exercise of complete dominion over Alaska lands between cession and statehood, or by operation of the Statehood Act. The decision in this case rests on the Settlement Act since

46. 43 U.S.C. § 1603.

47. Defendants' interpretation of what Congress intended in the Statehood Act is more persuasive since that construction gives effect to an important purpose of the Statehood Act to insure that the new state would be economically viable. The construction urged by plaintiff and intervenor would defeat that purpose since the State would be virtually without land or resources for its support. However, given the patent ambiguity in the terms of the Statehood Act itself and the absence of clarifying legislative history, I decline to rule that the Statehood Act required dismissal of the claims against the State and its leaseholders.

48. See E. Gruening, *The State of Alaska*, *supra*, Chap. 28 for a detailed account of the political obstacles in the path of Alaska statehood

49. Senate Report 92-405 expresses a similar conclusion in explaining the background of the Alaska Native land claims. The Report concludes that Section 4 of the Statehood Act was intended to maintain the "status quo with respect to Native use, occupancy, and title to lands in Alaska until Congress could act upon these questions." The Report further states that Congress "has reserved to itself the full power to define, confirm, deny, or extinguish Native title, and with minor exceptions, Congress has so far declined to do so." S.Rep. No. 92-405 at 75-76, 92nd Cong., 1st Sess. (1971).

50. See Senate Report 92-405, 92nd Congress, 1st Session, 94-95, (1971), for the Senate Committee's account of the conflict between the State and Alaska Natives and between the State and the United States which necessitated the Settlement Act.

that legislation was specifically directed to final resolution and settlement of Native land claims. Nor is it necessary to look to other statutes to discern Congressional intent to extinguish Native land claims since I conclude, for reasons to follow, that Section 4 of the Settlement Act unequivocally extinguished claims based on aboriginal title which are asserted in this lawsuit. Accordingly, for the purposes of the motion to dismiss, it is assumed without so deciding, that aboriginal title to the Arctic Slope was not legally extinguished prior to the Settlement Act.

III. CONGRESSIONAL INTENT IN SECTION 4 OF THE SETTLEMENT ACT

The pivot of this case is Section 4 of the Alaska Native Claims Settlement Act, the extinguishment provision. Section 4 of the Act, 43 U.S.C. § 1603, provides:

(a) All prior conveyance of public land and water areas in Alaska, or any interest therein, pursuant to Federal law, and all tentative approvals pursuant to section 6(g) of the Alaska Statehood Act, shall be regarded as an extinguishment of the aboriginal title thereto, if any.

(b) All aboriginal titles, if any, and claims of aboriginal title in Alaska based on use and occupancy, including submerged land underneath all water areas, both inland and offshore, and including any aboriginal hunting or fishing rights that may exist, are hereby extinguished.

(c) All claims against the United States, the State, and all other persons that are based on claims of aboriginal right, title, use, or occupancy of land or water areas in Alaska, or that are based on any statute or treaty of the United States relating to Native use and occupancy, or that are based on the laws of any other nation, including any such claims that are pending before any Federal or state court or the Indian Claims Commission, are hereby extinguished.

Nothing in this section shall be construed to affect the validity of any conveyance or approval of State land selections made under the Statehood Act, but to dispel any doubt that aboriginal title to such lands was extinguished at the time of tentative approval or conveyance.

by extinguishing, as of December 18, 1971, any and all aboriginal title in Alaska. After that date, no Native group had aboriginal title or could claim aboriginal title to any land in Alaska.

[6] Contentions as to interpretation and construction of subsection 4(a), however, differ sharply. According to plaintiffs and intervenors, 4(a) validated as of December 18, 1971, prior federal conveyances and tentative approvals of State land selections which were void when actually made. According to this interpretation, the State leases previously issued to various oil companies were not valid and all activities on lands covered by such leases were trespasses until the effective date of the Settlement Act.

Defendants, by contrast, contend that 4(a) validates the prior federal conveyances, including tentative approvals of State land selections, and operated to extinguish aboriginal title as of the date of the prior conveyance.

On examination of the language of the statute, the circumstances surrounding the enactment, and the pertinent legislative history, I conclude that the unmistakable intent of subsection 4(a) is not only to validate prior conveyances of public land in Alaska, including tentative approvals of State land selections under the Statehood Act, but to dispel any doubt that aboriginal title to such lands was extinguished at the time of tentative approval or conveyance.

The language of 4(a) tends to refute the contention that the provision was intended merely to recognize existing titles and leases as of the date of the Settlement Act without retroactively extinguishing aboriginal title. Instead of merely stating that prior conveyances are hereby validated, 4(a) specifically provides:

(a) all prior conveyances of public land and all tentative approvals shall be regarded as an extinguishment of the aboriginal title thereto, if any. (emphasis added)

The choice of the words "regarded as" and "extinguishment" clearly indicates that

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S. 35 printed in Sen. Report No. 92-405, 92nd Congress, 1st Session at p. 2.<sup>51</sup>

Although this language was deleted from the Declaration of Policy when the House-Senate Conference Committee adopted the form of the House Bill in lieu of the Senate version, the change in wording does not indicate that Congress changed its belief that past conveyances effected a taking of aboriginal title.

[8] Thus, the legislative history shows that Congress viewed previous federal conveyances of lands claimed by Alaska Natives as past takings of aboriginal title and that the Settlement Act was intended to compensate the Natives for these past appropriations as well as for the extinguishment of any remaining aboriginal land rights. The legislative history squarely contradicts the construction of Section 4 urged by the United States and the Inupiat Community.

Moreover, the circumstances surrounding the enactment of the Settlement Act support the conclusion that Congress intended to make the extinguishment of aboriginal title relate back to the date of tentative approval of State land selections. Native claims pending at the time the Settlement Act was passed challenged not only the State's title to the tentatively approved lands (and, therefore, questioned the validity of the oil leases executed by the State) but also raised a question as to the State's right to the more than \$900 million which the State had received from the September, 1969, oil lease sale. The legislative record shows that Congress was well aware of the controversy:

51. Virtually identical provisions were contained in S. 1830 and its counterpart H.R. 10193, bills considered in 1969-70 by the 91st Congress. S. 1830 was passed by the Senate but the House failed to take action on it so S. 1830 was reintroduced in the 92nd Congress as S. 35.

The early bills introduced in 1967-68 in the 90th Congress authorized Alaska Natives to bring suit in the court of claims for compensation for lands taken. For example, the original proposal of the Alaska Federation of Natives to the 90th Congress, S. 2020, provided jurisdiction in the court of claims to award compensation at fair market value at the time of taking for all aboriginal title lands which had been

The fact that unresolved Native claims have been made to most of the lands of Alaska has halted both federal mineral leasing and the transfer of lands selected by the State under the Statehood Act. Some contend that the Native land claims may also cast a cloud over the State's title to mineral revenues it has already received. . . . S.Rep. 92-405 at 73.

Congress addressed the problem in subsection 4(a). By providing that tentative approvals of State land selections extinguished any aboriginal title thereto, Congress affirmed the Secretary's authority to tentatively approve the State land selections pursuant to the Statehood Act and resolved all questions as to the validity of the State's right to the oil lease proceeds. Intervenor's interpretation of 4(a) as merely validating the State's title as of December 21, 1971, leaves unresolved the State's right to revenues received before December 21, 1971.

It is incomprehensible that Congress would fail to resolve in this legislation a question as important as the State's right to the more than \$900 million in revenues derived from the 1969 sale of oil leases on State selected land in Prudhoe Bay.

Moreover, it is inconsistent with the fact that the Settlement Act requires the State to contribute a portion of its oil and mineral revenues to the Settlement fund. Under Section 9 of the Settlement Act, the Natives have the right to receive \$500 million in revenues to be derived from mineral leases on public lands in Alaska, including lands tentatively approved to the State or selected by the State.<sup>52</sup> Thus, Congress has

appropriated and to grant the Natives title to all aboriginal lands to which title had not previously been conveyed to third parties by the United States. No action was taken by either the House or the Senate Interior Committees and the bills were not reintroduced in the 91st Congress. See S.Rep.No.91-925, p. 91-94, for a detailed summary of the bills considered by the 90th Congress.

52. Section 9 of the Settlement Act, 43 U.S.C. § 1608, provides in pertinent part:

Revenues Shalag

(a) The proceeds of this section shall apply to the payment of the \$500,000,000 to dispo-

Handwritten note: "Alaska Superior Court" written vertically on the left margin.

already determined that the State must pay a certain amount of its mineral revenues towards settlement of Native claims. The effect of the claims asserted against the State in this lawsuit would be to require the State to pay not only its designated share of the settlement but additionally to account for all benefits received from tentatively selected Arctic Slope land prior to the Settlement Act.

[9] In short, the circumstances surrounding enactment of the Settlement Act and the legislative history confirm that 4(a) means exactly what it says—prior conveyances of land from the federal domain and tentative approvals of State land selections extinguished any aboriginal title to the selected or transferred lands. Subsection 4(a) thereby eliminates any basis for Native claims relating to pre-Settlement Act entries on land tentatively approved to the State or previously conveyed to private parties.

Subsection 4(a) so construed requires dismissal of claims for entries under State leases pursuant to subsection 6(g) of the Statehood Act or entries pursuant to valid

federal leases or conveyances. The majority of the claims are in this category. However, plaintiffs additionally assert damage claims for unauthorized entries on the North Slope. These remaining claims draw subsection 4(e) of the Settlement Act into contention.

Subsection 4(e) extinguishes:

All claims against the United States, the State, and all other persons that are based on claims of aboriginal right, title, use, or occupancy of land or water areas in Alaska, . . .

Plaintiff and intervenor contend that the phrase "claims based on claims of aboriginal right . . ." means claims for compensation for taking Indian land, not trespass claims. It is argued that Congress did not intend to extinguish the trespass claims asserted in this lawsuit.

[10] The language of subsection 4(e) is clear and unequivocal. It explicitly extinguishes *all* claims that are based on claims of aboriginal occupancy. Claims of post-trespass to lands claimed by reason of aboriginal title require as an essential element

and tentatively approved, shall reserve for the benefit of the Natives, and for payment into the Alaska Native Fund, (1) a royalty of 2 per centum upon the gross value (as such gross value is determined for royalty purposes under any disposition by the State) of the minerals thereafter produced or removed from such lands, and (2) 2 per centum of all revenues thereafter derived from the State from rentals and bonuses from the disposition of such minerals.

(b) With respect to conditional leases and sales of minerals heretofore or hereafter made pursuant to section 6(g) of the Alaska Statehood Act, and with respect to mineral leases of the United States that are or may be subsumed by the State under section 6(h) of the Alaska Statehood Act, until such time as the provisions of subsection (c) become operative the State shall pay into the Alaska Native Fund from the royalties, rentals, and bonuses hereafter received by the State (1) a royalty of 2 per centum upon the gross value (as such gross value is determined for royalty purposes under such leases or sales) of such minerals produced or removed from such lands, and (2) 2 per centum of all rentals and bonuses under such leases or sales, excluding bonuses received by the State at the September 1963 sale of minerals from tentatively approved lands and excluding rentals received pursuant to such sale before the date of enactment of this Act. Such payment shall be made within sixty days from the date the revenues are received by the State.

(c) Each patent heretofore issued to the State under the Alaska Statehood Act, including a patent of lands heretofore selected

(d) All bonuses, rentals, and royalties received by the United States after the date of enactment of this Act for the disposition by it of such minerals in public lands in Alaska shall be distributed as provided in the Alaska Statehood Act, except that prior to calculating the shares of the State and the United States as set forth in such Act, (1) a royalty of 2 per centum upon the gross value of such minerals produced (as such gross value is determined for royalty purposes under the sale or lease), and (2) 2 per centum of all rentals and bonuses shall be deducted and paid into the Alaska Native Fund. The respective shares of the State and the United States shall be calculated on the remaining balance.

and tentatively approved, shall reserve for the benefit of the Natives, and for payment into the Alaska Native Fund, (1) a royalty of 2 per centum upon the gross value (as such gross value is determined for royalty purposes under any disposition by the State) of the minerals thereafter produced or removed from such lands, and (2) 2 per centum of all revenues thereafter derived from the State from rentals and bonuses from the disposition of such minerals.

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which intervenor relies shows that WOGA was concerned with precluding Native claims arising from past activities of the oil companies on the North Slope. Thus, intervenor's interpretation of subsection 4(c) finds no support in this part of the legislative history.

[13] Finally, in attempting to avoid the terms expressed in subsection 4(c), plaintiff and intervenor rely heavily on a comment in the 1971 Senate Report explaining the scope of the extinguishment provision. The pertinent part of Senate Report No. 92-405 states:

Subsection 4(a) declares that the provisions of this Act constitute a full and final extinguishment of any and all claims based upon aboriginal right, title, use or occupancy of land in Alaska. The language specifically includes submerged lands and any aboriginal hunting and fishing rights. The extinguishment is final and effective not only for claims against the United States but also for any claims against the State of Alaska and all other persons. Remaining in effect and unextinguished by this Act are all claims which are based upon grounds other than the loss of original Indian title land. Included in such unextinguished claims are suits for an accounting for funds belonging to Natives or Native groups in the custody of the United States, for tort or breach of contract, and for violations of the fair and honorable dealings clause of the Indian Claims Commission Act. Specifically included, and dismissed and extinguished under the terms of this Act, are all claims pending before the Indian Claims Commission and any court, Federal or State, which are based upon a claim of aboriginal right, title, use or occupancy. *Id.* at 110.

Plaintiff's reliance on this somewhat ambiguous passage in the 1971 Senate Report is

ment extends to the United States and all other persons, which will include the State of Alaska, mineral lessees of the United States, and anyone else to whom the United States has granted any interest in lands claimed by

misplaced. The legislative history of the extinguishment provision of the Settlement Act clearly demonstrates that Congress intended to extinguish trespass claims based on aboriginal title.

First, reference to the 1971 Senate Committee hearings where former Justice Goldberg, attorney for the APN, discussed with Senators Stevens and Metcalf the meaning and scope of the extinguishment clause in S. 1830 clearly show that the Senate Committee intended to distinguish between claims based on past Native use and occupancy of land on the one hand, and claims having nothing to do with aboriginal use and occupancy of land on the other hand. The former, including claims of traditional fishing rights, were extinguished. The latter, including, for instance, a claim that the United States breached the Fair and Honorable Dealings clause by bombarding a Native village or a personal injury claim by a Native working for the federal government, were not extinguished.<sup>55</sup>

Second, the language in the 1971 Senate Report on which intervenor relies is actually descriptive of language which appeared in the 1970 Senate Bill but was deleted from the 1971 bill as reported by the Senate Committee. The extinguishment provision of S. 1830 as passed by the Senate in 1970 read as follows:

The provisions of this Act shall constitute a full and final settlement and extinguishment of any and all claims against the United States, the State and all other persons which are based upon aboriginal right, title, use, or occupancy of land in Alaska (including submerged land underneath all water areas, both inland and offshore, and including any aboriginal hunting or fishing rights that may exist) by any Native, Native Village, or Native group or claims arising under the Act of May 17, 1884 (23 Stat. 321), or any other statute or treaty of the United States

the Natives. There will then be no possibility of future dispute.

55. Hearings on S. 1830 before the Senate Commission on Interior and Insular Affairs, 91st Cong., 1st Session (1969), 295-301.



tive difference between the final House and Senate extinguishment provisions.

The 1971 House Report states that Section 4 of the House Bill, which is virtually identical to Section 4 of the Settlement Act, "extinguishes all aboriginal titles in Alaska, and all claims based thereon."<sup>61</sup> The House Report further offers the following specific explanation of the extinguishment provision:

The section extinguishing aboriginal titles and claims based on aboriginal title is intended to be applied broadly, and to bar any further litigation based on such claims of title. The land and money grants contained in the bill are intended to be the total compensation for such extinguishment.<sup>62</sup>

Similarly, the joint House-Senate Conference report set forth the following explanation of the extinguishment provisions of the Settlement Act:

It is the clear and direct intent of the conference committee to extinguish all aboriginal claims and all aboriginal land titles, if any, of the Native people of Alaska and the language of settlement is to be broadly construed to eliminate such claims and titles as any basis for any form of direct or indirect challenge to land in Alaska. (emphasis original).<sup>63</sup>

[14] The trespass claims asserted in this lawsuit are an indirect challenge to land ownership in Alaska. It was the express intention of the Conference Committee to eliminate such indirect challenges to title.

[15] Thus, Congress has expressly directed that the language of the Settlement Act be broadly construed to effectuate a comprehensive settlement of all Native claims based on aboriginal use and occupancy of land in Alaska and to bar any litigation based on such claims.

61. House Report No. 92-523 at 8, 1971 U.S. Code Congressional and Administrative News at p. 2196.

62. *Id.* at p. 2196.

63. Conference Report No. 92-746, 40, Vol. 2, 1971 U.S. Code Congressional and Administrative News at p. 2196-2253.

Broadly construing the clear language of subsection 4(c) of the Settlement Act leaves no doubt that Congress intended to extinguish and did extinguish Native claims against the State of Alaska and private parties for trespass on aboriginal title lands prior to passage of the Settlement Act.

To summarize, I hold that subsection 4(a) extinguishes aboriginal title to lands tentatively approved to the State or conveyed pursuant to federal law as of the date of the tentative approval or conveyance.

Subsection 4(b) extinguishes all remaining aboriginal title and Native claims to land as of December 18, 1971.

Subsection 4(c) goes beyond extinguishment of claims for compensation for the taking of Indian land and extinguishes all Native claims based on alleged aboriginal occupancy, including claims against private parties for past trespasses.

#### IV. THE SETTLEMENT ACT'S EXTINGUISHMENT OF TRESPASS CLAIMS IS CONSTITUTIONAL.

[16] Intervenor contends that claims of trespass to aboriginal possession are protected property interests within the meaning of the Fifth Amendment.<sup>64</sup> It is argued that Congress lacks power to cut off the rights of the Natives to seek judicial relief for third party interference with their possessory rights. Indeed, the *Edwardsen* court's concern that Congress might lack power to extinguish accrued trespass claims led that court to construe the Settlement Act as not affecting accrued trespass claims.<sup>65</sup>

My examination of relevant authorities leads me to conclude that trespass claims based on unrecognized aboriginal title are not protected property interests and, there-

64. The United States does not suggest that Congress had no power to extinguish accrued trespass claims but contends that Congress did not intend to do so in the Settlement Act.

65. *Edwardsen v. Merton*, supra, 369 F. Supp. at 1379.



that precise issue. But, Congress has expressly extinguished any aboriginal possessory rights which the Alaska Natives may have had and all claims based on such possession, including damage claims for past interference with aboriginal use and occupancy. The question is whether Congress has the power to validate prior entries as it did in subsection 4(a) or to extinguish all aboriginal claims challenging such entries as it did in subsection 4(c) of the Settlement Act.

[18] Intervenor in effect challenges the powers of Congress to retroactively extinguish aboriginal title and claims for pre-1971 entries on the North Slope. This challenge must fail. *Tea-Hit-Ton* and *Sente Fe* establish that Congress has plenary power over aboriginal use and occupancy and claims derived therefrom and may extinguish such occupancy rights and derivative claims in any manner it chooses.<sup>67</sup>

[19] Indeed, it is essential that Congress be able to extinguish aboriginal title and all claims based on aboriginal title unimpeded by constitutional restrictions so that Indian land claims and the disputes generated by such claims may be conclusively and finally settled.

To hold, as intervener urges, that Congress lacked the power to extinguish claims against the United States, the State and third parties for trespass to aboriginal lands in Alaska, would mean that Congress is powerless to effect a final and comprehensive solution to the Native land claims problem in Alaska. It would mean the Settlement Act is illusory. The fact that Alaskan Natives petitioned Congress for a just and final settlement of their claims contradicts the claim now made that Congress was in fact limited in its authority to effect a final settlement.

On the authorities discussed, I conclude that Congress does have the power to effect

in the reservation but were dismissed as to lands outside the reservation.

67. Courts have affirmed the power of Congress to validate prior entries on aboriginal land and thereby retroactively extinguish aboriginal title

a comprehensive and final settlement of the Native land claims issue by extinguishing all claims relating to aboriginal use and occupancy of land, including claims for past trespasses to Native occupied land. Section 4 of the Settlement Act in its entirety is constitutional.

V. CONCLUSION

The Settlement Act settled and extinguished all claims based on aboriginal title, use, and occupancy. Congress meant to settle such disputes, was empowered by the Constitution to settle them, and did settle them.

Accordingly, defendants' motion to dismiss all claims for tortious interference with Natives use and occupancy of lands in Alaska is granted.



In the Matter of JACK LOPEZ WHOLESALE SHIRT LAUNDRY, Debtor.

UNITED STATES of America

v.

ROYAL GLOBE INDEMNITY COMPANY.

Civ. A. No. 76-934.

United States District Court,  
E. D. Pennsylvania.

June 14, 1977.

United States brought action against surety for receiver who operated debtor's business pursuant to a Chapter XI arrangement

and claims arising from those entries. *United States v. Northern Paiute Nation*, 459 F.2d 954, 203 Ct.Cl. 405 (1973); *Shoshone Tribe of Indians v. United States*, 299 U.S. 476, 57 S.Ct. 243, 51 L.Ed. 300 (1937).

ers as an alternative basis of recovery. *F. W. Woolworth Co. v. Contemporary Arts, Inc.*, *supra* (gross profits under \$900); *Key West Hand Print Fabrics, Inc. v. Servin, Inc.*, 269 F.Supp. 605, 615 (S.D.Fla.1966) (infringer made no profit), *aff'd*, 381 F.2d 735 (5th Cir. 1967). The courts there had every reason to award higher compensation for the plaintiffs' substantial but unprovable damage than what the defendants had realized from their infringing activity. We are not faced with a similar situation in this case. The gross profits figure here can hardly be described as *de minimis*. We think the amount sufficient "to discourage wrongful conduct" without necessitating resort to in lieu damages to effectuate that purpose of copyright policy. *Woolworth*, 344 U.S. at 233, 73 S.Ct. 222.<sup>25</sup> We find no abuse of discretion and consequently affirm the damage award.

IV. ATTORNEYS' FEES

[9, 10] The copyright statute authorizes the district court in the exercise of its discretion to award reasonable attorneys' fees to the prevailing party. 17 U.S.C. § 116. This court could reverse an order allowing such fees only for abuse of discretion. See *Monogram Models, Inc. v. Industro Motive Corp.*, 492 F.2d 1281, 1288 (6th Cir.), cert. denied, 438 U.S. 813, 95 S.Ct. 76, 42 L.Ed.2d 71 (1974). While the \$10,000 awarded plaintiffs in fees might be considered generous when compared with the amount recovered in damages, the fees do not appear unreasonable considering the amount of work necessitated and performed and the skill employed. See also *Key West Hand Print Fabrics*, 269 F.Supp. at 615-16. There was no abuse here.

However, we deny plaintiffs' application for allowance of additional attorneys' fees on appeal. We assume counsel was familiar with the law, having made similar arguments in district court on all the issues raised on appeal. See *Monogram Models*, 492 F.2d at 1288. The appeal was not frivolous.

Plaintiffs did not prevail on their cross appeal. Equity considerations lead us to permit the parties to pay their own attorneys' fees in this court. The plaintiffs are entitled to costs.

Affirmed.



UNITED STATES of America, Plaintiff,  
and

Inupiat Community of the Arctic Slope,  
Plaintiff-Intervenor-Appellant,

v.

ATLANTIC RICHFIELD COMPANY et  
al., Defendants-Appellees.

United States of America,  
Plaintiff-Appellant,

and

INUPIAT COMMUNITY OF THE  
ARCTIC SLOPE, Plaintiff-  
Intervenor,

v.

ATLANTIC RICHFIELD COMPANY et  
al., Defendants-Appellees.

Nos. 77-2224, 77-3972.

United States Court of Appeals,  
Ninth Circuit.

Jan. 4, 1980.

Rehearing Denied Feb. 22, 1980.

The United States, in its own behalf and on behalf of 23 Alutians inhabiting Arctic Slope of Alaska, a state of Alaska and 130 corporations and private parties for trespass to native land prior to passage of Alaska Native Claims Settlement Act. Defendants moved to dismiss all claims of

25. The award of \$100,000 in attorneys' fees was affirmed by the Ninth Circuit on appeal. *Key West Hand Print Fabrics, Inc. v. Servin, Inc.*, 492 F.2d 735 (5th Cir. 1967).

trespass to land claimed on basis of aboriginal title. The United States District Court for the District of Alaska, James M. Fitzgibbon, J., 435 F.Supp. 1069, granted motion, and appeal was taken. The Court of Appeals, CHOY, Circuit Judge, held that the Alaska Native Claims Settlement Act, pursuant to which natives were granted in exchange \$962,500,000 and 40 million acres of land in fee simple, extinguished not only the aboriginal titles of all Alaska natives, but also every claim "based on" aboriginal title in the sense that the past or present existence of aboriginal title is an element of the claim, and Act would be given retrospective construction so that entries under federal authorization and conditional state leases were not pre-Act trespasses as claimed.

Affirmed.

### 1. United States $\approx$ 105

The Alaska Native Claims Settlement Act, pursuant to which natives were granted in exchange \$962,500,000 and 40 million acres of land in fee simple, extinguished not only the aboriginal titles of all Alaska natives, but also every claim "based on" aboriginal title in the sense that the past or present existence of aboriginal title is an element of the claim, and Act would be given retrospective construction so that entries under federal authorization and conditional state leases were not pre-Act trespasses as claimed. Alaska Native Claims Settlement Act, §§ 2 et seq., 4(a-c), 43 U.S.C.A. §§ 1601 et seq., 1603(a-c).

### 2. United States $\approx$ 105

The Alaska Native Claims Settlement Act, under which natives were granted in exchange \$962,500,000 and 40 million acres

\* The Honorable Spencer M. Williams, United States District Judge for the Northern District of California, sitting by designation

1. Appellants are the United States and the Inupiat Community of the Arctic Slope. The Inupiat Community is composed of all the Eskimos on the North Slope. In *Edwardsen v. Morton*, 369 F.Supp. 1359 (D.D.C.1973), essentially a suit by the Inupiat against the United States, a claim that the United States breached its fiduciary

duty by authorizing the trespasses involved here survived summary judgment. The United States settled the *Edwardsen* suit by agreeing to sue the defendants here on behalf of the Inupiat. This suit resulted, and the Inupiat intervened.

### 3. Statutes $\approx$ 235

In cases of ambiguity, statutes are to be construed in favor of Indians, to avoid constitutional questions, to avoid taking vested rights and nonretroactively, but such rules constitute only guidelines, are not substantive laws and should not be used to defeat manifest intent of Congress.

Dirk D. Snel, Washington, D. C., for plaintiff-intervenor-appellant.

Richard O. Gantz, Anchorage, Alaska, Avrum M. Gross, Juneau, Alaska, argued for defendants-appellees; Robert L. Hartig, Joseph Rudd, Eugene F. Wiles, Anchorage, Alaska, William B. Rozell, Juneau, Alaska, on the brief.

Appeal from the United States District Court for the District of Alaska.

Before CHOY and KENNEDY, Circuit Judges, and WILLIAMS,\* District Judge.

CHOY, Circuit Judge:

Appellants protest the ruling of the district court that their trespass claims were extinguished by the Alaska Native Claims Settlement Act. We affirm.

### I. BACKGROUND

Appellants<sup>1</sup> represent all the Eskimos on the North Slope of Alaska. Appellees are

the Inupiat. This suit resulted, and the Inupiat intervened.

This opinion will refer generally to all the Eskimos and Indians inhabiting Alaska as "Natives," and specifically to the Eskimos inhabiting the North Slope as "Inupiat."

the State of Alaska<sup>2</sup> and companies involved in the effort to exploit North Slope petroleum. Until one or two decades ago the North Slope was essentially unpeopled except for a few Inupiat<sup>3</sup>; more recently, there has been a mighty "oil rush." For the purposes of this appeal, we assume that the Inupiat retained unrecognized aboriginal title to the North Slope until 1971. Such title is good against third parties (we assume *arguendo*) but can be extinguished without compensation by the United States. *Tee-Hit-Ton Indians v. United States*, 348 U.S. 272, 75 S.Ct. 313, 99 L.Ed. 314 (1955).

Pursuant to the Alaska Statehood Act, § 6, the state selected a large amount of oil-rich "vacant, unappropriated, and unreserved" North Slope land for its own in the 1960's. The United States tentatively approved these selections, and the state gave conditional leases to oil interests in exchange for \$912,000,000. Most of the alleged trespasses were under this color of state title. We assume *arguendo* that, because of the Inupiat's aboriginal title, the selections and leases were invalid and the entries were trespasses. *Cf. Alaska v. Udall*, 420 F.2d 938 (9th Cir. 1969) (aboriginal rights might prevent state selection), *cert. denied*, 397 U.S. 1076, 90 S.Ct. 1522, 25 L.Ed.2d 811 (1970). On petition of the Natives, Congress enacted the Alaska Native Claims Settlement Act, Pub.L. No. 92-203, 85 Stat. 688 (codified at 43 U.S.C. § 1601 *et seq.*) ("the Act") on December 18, 1971. Congress found and declared that "there is an immediate need for a fair and just settlement of all claims by Natives and Native groups of Alaska, based on aboriginal land claims," and that "the settlement should be accomplished rapidly, with certainty, in conformity with the real economic and social needs of Natives, without litigation." 43 U.S.C. § 1601(a), (b).

2. The State has a good record of environmental protection.

3. The North Slope comprises approximately 100,000 acres. According to the 1970 census, only 100 people inhabit the entire area, and not all of these were Inupiat. Over 900 Inupiat Eskimos and Aleuts live in one or more of the eight "villages" included in the area.

Appellants instituted this suit against the private defendants for pre-Act trespasses in the belief that the Act had not extinguished such claims. This belief found support in *Edwardsen v. Morton*, 369 F.Supp. 1359 (D.D.C.1973), but the district court in the present case disagreed and dismissed the claims. 435 F.Supp. 1009 (D.Alaska 1977).<sup>4</sup>

[1, 2] We hold that the Act extinguished not only the aboriginal titles of all Alaska Natives, but also every claim "based on" aboriginal title in the sense that the past or present existence of aboriginal title is an element of the claim.<sup>5</sup> In exchange, the Natives were granted \$962,500,000 and 40,000,000 acres of land in fee simple.

## II. STATUTORY LANGUAGE

This case requires a construction of § 4 of the Act, 43 U.S.C. § 1603, which reads:

(a) All prior conveyances of public land and water areas in Alaska, or any interest therein, pursuant to Federal law, and all tentative approvals pursuant to section 6(g) of the Alaska Statehood Act, shall be regarded as an extinguishment of the aboriginal title thereto, if any.

(b) All aboriginal titles, if any, and claims of aboriginal title in Alaska based on use and occupancy, including submerged land underneath all water areas, both inland and offshore, and including any aboriginal hunting or fishing rights that may exist, are hereby extinguished.

(c) All claims against the United States, the State, and all other persons that are based on claims of aboriginal right, title, use, or occupancy of land or water areas in Alaska, or that are based on any statute or treaty of the United States relating to Native use and occupancy, or that are based on the laws of

4. For a more complete explanation of the background of this case, see *id.* at 1013-14.

5. That claimant's alleged pre-Act aboriginal title, if any, included personal injury claims, claims for damage to personal property, and claims for the past or future value of the aboriginal title.

any other nation, including any such claims that are pending before any Federal or state court or the Indian Claims Commission, are hereby extinguished.

The parties agree, and so do we, that § 4(b) extinguished all aboriginal titles as of December 18, 1971, the date the Act was enacted.

A. Section 4(a)

There is disagreement over § 4(a). Appellants argue that it is retroactive, extinguishing aboriginal title as of the dates of the prior conveyances and tentative approvals of state selections. Appellants read the subsection as being prospective only, so that in post-1971 proceedings the conveyances and selections (and leases thereunder) should be regarded (through legal logéredemain) as unclouded and valid today even if they were invalid when made.<sup>6</sup> Appellants claim that their aboriginal title was not truly extinguished, however, until 1971. If the Inupiat's aboriginal title was not extinguished until 1971, they arguably have a good cause of action for pre-1971 trespasses; whereas if at the times of entry the oil companies held valid leases from the holders of the valid fee, the entries were not trespassory.

The district court held that § 4(a) was retroactive, and thus that the entries under federal authorization and the conditional state leases (the bulk of all the entries) were not trespasses. 435 F.Supp. at 1022-23. We agree. Both § 4(b) and § 4(c) say that Native interests are "hereby" extinguished; § 4(a) does not, suggesting that it extinguished title as of some past moment. We deem the retroactive interpretation of § 4(a) to be more logical, whereas the prospective interpretation creates a cumbersome legal fiction whose only apparent purpose is to preserve Native trespass claims which (as we hold herein) were immediately extinguished in § 4(c).

6. The Inupiat's argument is that § 4(a), "by ratifying pre-ANCSA federal conveyances, was intended to, and did, give good present title to parties whose land titles would otherwise have

If § 4(a) accomplished anything that § 4(b) and § 4(c) did not, it was to validate the state oil leases (as between the state and its lessees) by establishing that the state had good title to lease out. A retroactive reading serves this purpose directly and well; a prospective reading conspicuously fails actually to validate the leases, but instead directs the courts to regard the leases as if they were valid. Between these two readings, the retroactive one is obviously more reasonable.

B. Section 4(c)

Section 4(a), as we read it, had the effect of eliminating most of appellants' trespass claims. We further hold that § 4(c) specifically extinguished all trespass claims.

Without doubt, § 4(c) abolished all Native claims based on the actual "taking" (extinguishment) of aboriginal title. The question presented on appeal is whether or not the district court was correct to say that § 4(c) went farther and extinguished "all claims . . . that are based on . . . aboriginal right" in the sense that the past or present existence of aboriginal title is an element of the claims.

Several passages in the subsection clearly indicate that Congress intended to extinguish more types of claims than merely claims for the "taking" (extinguishment) of aboriginal title. Therefore, we conclude that the district court was correct.

The subsection reads, "All claims against the United States, the State, and all other persons that are based on claims of aboriginal right . . . are hereby extinguished." Since only the United States could extinguish the Natives' aboriginal title, only the United States could be the defendant in a suit based on extinguishment of title. Yet all claims against "the State, and all other persons" were extinguished as well. In order to make the language regarding "the State, and all other persons" meaningful, there is no choice

been void even after the general extinguishment of aboriginal title in Alaska effected by subsection 4(b)."

but to construe the statute to extinguish certain types of claims, "based on aboriginal right," that might be brought against the State and other persons. The quintessential action against private citizens, based on aboriginal title, is an action for wrongful invasion, use, and assertion of dominion over the property—trespass.

Moreover, such trespass claims might be brought by Natives in "state court," as § 4(c) contemplated, while claims against the United States for extinguishment of title could only be brought in federal court. Further, at the time the Act's language was drafted, no claim based on extinguishment of title was "pending" in any court, yet Congress extinguished all pending claims. Congress must have had in mind claims based on pre-1971 activities.

In short, when Congress said in §§ 2(a) and 4(c) of the Act, 43 U.S.C. §§ 1601(a), 1603(c), that it was settling "all claims," it meant just that. Congress intended to and did extinguish all Native trespass claims based on aboriginal title.

### III. LEGISLATIVE HISTORY

To be sure, the strict "plain meaning rule" has been relaxed, and we may examine legislative history to help us construe even seemingly clear statutory language. *Doyon, Ltd. v. Bristol Bay Native Corp.*, 569 F.2d 491, 494 (9th Cir.), cert. denied, 439 U.S. 954, 99 S.Ct. 352, 58 L.Ed.2d 345 (1978). Such examination, however, does not alter our reading of § 4(c). The House report stated,

Section 4 extinguishes all aboriginal titles in Alaska, and all claims based thereon, and

The section extinguishing aboriginal titles and claims based on aboriginal title is intended to be applied broadly, and to bar any further litigation based on such claims of title.

H.R.Rep. No. 523, 92d Cong., 1st Sess. 6, 8, reprinted in [1971] U.S.Code Cong. & Ad.

7. The House and Senate Committee Reports are cited in the S.Ct.Rep. No. 781, 92d Cong., 1st Sess. (1971), H.R.C. 112 p. No. 776, 92d

News 2196, 2198. The Senate report stated that the objective of the legislation was to avoid

a myriad of lawsuits which cannot provide justice to any of the parties involved but which may be expected to increase the existing antagonisms between Native people and other Alaskans.

S.Rep. No. 405, 92d Cong., 1st Sess. 73 (1971). The Conference Committee report<sup>7</sup> stated,

It is the clear and direct intent of the conference committee to extinguish all aboriginal claims and all aboriginal land titles, if any, of the Native people of Alaska and the language of settlement is to be broadly construed to eliminate such claims and titles as any basis for any form of direct or indirect challenge to land in Alaska.

Conf.Rep. 40, reprinted in [1971] U.S.Code Cong. & Ad.News 2253 (emphasis in original).

The statements of former Justice Arthur Goldberg, attorney for the Alaska Federation of Natives, before Congress in 1969 also support the district court's conclusion. Goldberg, under questioning by Senator Stevens of Alaska, said, "The position that the Natives have taken is that they are prepared for an extinguishment of anything that is based upon aboriginal title." *Alaska Native Land Claims: Hearings on S. 1830 Before the Senate Comm. on Interior and Insular Affairs*, 91st Cong., 1st Sess. 300-01 (1969). And Goldberg painstakingly informed Congressman Pollock of Alaska that the Natives would be unable to assert claims against private parties for pre-extinguishment trespasses, and that he said this just after conferring about it "with all of the Native representatives who are here and all their regional counsel." *Alaska Native Land Claims: Hearings on H.R. 15142 and 10193 Before the Subcommittee on Indian Affairs of the House Comm. on Interior and Insular Affairs*, 91st Cong., 1st Sess. 267 (1970). While these statements do not es-

7. The House and Senate Committee Reports are cited in the S.Ct.Rep. No. 781, 92d Cong., 1st Sess. (1971), H.R.C. 112 p. No. 776, 92d

top the Inupiat or other Natives, they do suggest what Congress meant by the language it enacted into law.

Indeed, in view of the repeated statements in the legislative history that the statute should be "broadly" applied to extinguish "all claims," and in view of Congress' knowledge of the Natives' trespass claims, it would be incomprehensible to us if Congress did not intend to extinguish the trespass claims, along with all other claims based on aboriginal title, when it gave the Natives over 60,000 square miles of fee simple land and almost a billion dollars.<sup>8</sup>

The Inupiat's only support from the legislative history is the following passage from S.Rep. No. 405, 92d Cong., 1st Sess. 110-11 (1971):

Subsection 4(a) [§ 4(c) of the Act as passed] declares that the provisions of this Act constitute a full and final extinguishment of any and all claims based upon aboriginal right, title, use or occupancy of land in Alaska. The language specifically includes submerged lands and any aboriginal hunting and fishing rights. The extinguishment is final and effective not only for claims against the United States but also for any claims against the State of Alaska and all other persons. Remaining in effect and unextinguished by this Act are all claims which are based upon grounds other than the loss of original Indian title land. Included in such unextinguished claims are suits for an accounting for funds belonging to Natives or Native groups in the custody of the United States, for tort or breach of contract, and for violations of the fair and honorable dealings clause of the Indian Claims Commission Act. Specifically included, and dismissed and extinguished under the terms of this Act, are all claims pending before the Indian Claims Commission and any court, Federal or State, which are based upon a claim of aboriginal right, title, use or occupancy.

8. Congress was aware that under *See Hit Ton Indians v. United States*, 348 U.S. 272, 75 S.Ct. 313, 99 L.Ed. 314 (1955), it was not obligated to give the Natives any compensation at all for the taking of aboriginal title. While Congress, as a matter of grace, surely intended a substan-

However, this language does not persuade us that Congress, or even the Senate, meant to preserve the Natives' trespass claims, for the following reasons:

(1) True, the report language preserves suits "for tort," and trespass is a tort. However, we think that the Senate's meaning, as indicated by the three other kinds of action it specifically preserved and by the legislative history, generally, was that all kinds of civil action were preserved if they were not based in any way on aboriginal title. Thus, such "tort" actions as those based on personal injury or damage to personal property would not be extinguished. The passage is no better than ambiguous on the issue of whether or not trespass actions based on aboriginal title were to be preserved.

(2) The report language preserves "all claims which are based upon grounds other than the loss of original Indian title land." But appellees correctly point out that this paragraph from the 1971 Senate report is identical to the corresponding paragraph in S.Rep. No. 925, 91st Cong., 1st Sess. 114 (1970), a report on an earlier bill that never became law. Yet there was a major difference between S. 35 (1971) and S. 1830 (1970). The following is the language of S. 35, with words added to S. 1830's language in italics and words deleted from it in brackets:

The provisions of this Act shall constitute a full and final settlement and extinguishment of any and all claims against the United States, the State and all other persons which are based on aboriginal right, title, use, or occupancy of land in Alaska . . . , including all [land] claims [(but not claims based on grounds other than loss of original Indian title land)] *based upon original right, title, use or occupancy pending before any court or*

nal part of the large settlement to be in exchange for the taking of title, we cannot but wonder if the settlement would have been so large if Congress did not believe it was also taking something for which it had to pay.

the Indian Claims Commission on the effective date of this Act.

The fact that the 1971 report said it was preserving claims based on "grounds other than loss of original Indian title land," when precisely that language had just been excised from the 1971 Senate bill, persuades us that the district court was correct in concluding that the verbatim carryover of the 1970 Senate report language into the 1971 Senate report was just a hasty mistake.

(3) The Inupiat claim that the 1971 change in the language of the Senate bill made and was meant to make no substantive change. The chronology of the change suggests otherwise, see 435 F.Supp. at 1028. At any rate, the very fact that the language of the Senate bill was changed, and from language that preserved the trespass claims to language that at the very best was ambiguous about the trespass claims, undermines the Inupiat's contention. They have advanced no reason why this change was made. In these circumstances, we are inclined to credit the post-Act testimony of Senator Stevens of Alaska, who said that the filing of the trespass-based *Edwardsen v. Morton* and the reporting of the House bill's broader extinguishment clause "caused us in the Senate to reconsider the language of our extinguishment provision, and we concluded that it should be broadened so as to leave no doubt that the settlement would be total." *Alaska Native Claims Settlement Act Amendments: Hearings on H.R. 2511 Before the Subcomm. on Indian Affairs of the House Comm. on Interior and Insular Affairs, 94th Cong., 1st Sess. 110 (1975), quoted in 435 F.Supp. at 1028 n.59.* We conclude that, whether or not in 1970 the Senate wanted to preserve Native trespass claims, in 1971 it intended to and did vote to extinguish them.

(4) Even in the absence of the foregoing, a strict reading of the 1970 Senate bill's language would compel the conclusion that the only trespass claims preserved by the post-Act statute are those based on grounds other than loss of original Indian

title land)" would be those "pending" before a court or agency on the Act's effective date. Since no Inupiat suit against the private defendants was pending on that date, we would have to hold the claims in this case extinguished even if the 1970 Senate bill (or its spirit) were the governing law.

(5) Finally, whatever the Senate bill and report entailed, it was the *House* version of § 4 that emerged victorious in the Conference Committee and was then approved by both houses. The Conference bill followed the House bill almost word-for-word, omitting only two words and adding a few phrases not material here. The organization of the Senate bill was substantially different. True, the conference report stated, "The conference report language is, in substance, the same as the language of the Senate amendment." Conf.Rep. 40, reprinted in [1971] U.S.Code Cong. & Ad. News 2253. However, this sentence was immediately followed by language quoted above to the effect that "all aboriginal claims" were extinguished, and that "the language of settlement is to be broadly construed to eliminate such claims," and was included in a section entitled "Major Differences Between the Conference Report and the Senate's Amendment in the Nature of a Substitute to the House Passed Bill." Thus it is clear that the conference bill followed the intent of the House. When it was said that its language was "in substance, the same as the language of the Senate amendment," this signified only that the conferees also interpreted the Senate's language to extinguish Native trespass claims.

In sum, nothing in the Senate report or the other legislative history convinces us that Congress really meant, in the teeth of the statutory language, to preserve the trespass claims asserted in this case.

#### IV. RULES OF CONSTRUCTION

(3) The Inupiat also advance several arguments based on rules of statutory construction. It is true that in cases of ambiguity, the courts follow the following

in favor of Indians. (2) to avoid constitutional questions; (3) to avoid taking vested rights; and (4) non-retroactively. However, these are only guidelines, not substantive laws, and should not be used to defeat the manifest intent of Congress. It cannot be doubted that Congress has power to pass a law that violates the spirit of all four of these rules, and we should not deny effect to such a law when it is enacted. Moreover, both the Conference and House reports direct, as we point out above, that § 4 be construed "broadly" to extinguish all claims and litigation, and this takes precedence over generalized rules of construction.

We add the following comments. The rule of construction of ambiguous statutes in favor of Indians is based on a concern that the powerful not take advantage of the helpless and uneducated. A similar concern guides modern law on the construction of contracts of adhesion. Where, as here, the Inupiat were represented before Congress by such illustrious counsel as former Supreme Court Justice Arthur Goldberg and former Attorney General Ramsey Clark, we think the rule of construction operates with less force.

We also find the rule to construe statutes to avoid constitutional questions to be less compelling than the rule, not implicated here, to construe statutes so as not to be forced to hold them unconstitutional. The constitutional question we are asked to obviate is whether or not under the Fifth Amendment compensation must be paid for taking the Inupiat's trespass claims. Our holding here clears the way for this question to be addressed in some other forum, but we express no opinion on what the answer should be.

Although we recognize the rules of construction regarding takings and retroactivity, we find that Congress has sufficiently clearly expressed its intent in these areas.

V. ISSUES NOT REACHED

Our disposition of this case makes it unnecessary for us to decide (1) whether or not the Inupiat ever had or retained aboriginal title to all the land they claimed;

(2) whether or not the aboriginal title had already been extinguished before the Act and before the trespasses alleged here; (3) whether or not Congress gave just compensation for the package of various Native properties and interests it took and extinguished by giving the Natives 40 million acres of land and nearly a billion dollars; and (4) whether or not any Fifth Amendment compensation is required at all for the Native properties and interests taken and extinguished by the United States. Perhaps these questions will be decided in *Inupiat Community of the Arctic Slope v. United States*, No. 77-596 (Cl.Ct., filed Dec. 16, 1977). We note that if they are decided favorably to the Inupiat there, the Inupiat might recover as just compensation from the United States the same amount that they could have recovered from the trespassing private defendants in the absence of the Act.

AFFIRMED.



UNITED STATES of America,  
Plaintiff-Appellee,

v.

John D. CLARDY, Defendant-Appellant.  
No. 78-2373.

United States Court of Appeals,  
Ninth Circuit.

Jan. 7, 1980.

Rehearing Denied Feb. 19, 1980.

Defendant was convicted in the United States District Court for the Northern District of California, William H. Orrick, Jr., J., on three counts of an indictment charging him with aiding or assisting three taxpayers in the preparation of fraudulent or false tax returns. Defendant appealed, and the

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# STATE OF ALASKA

## DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

C  
JAY S. HAMMOND, GOVERNOR

POUCH M  
JUNEAU, ALASKA 99811  
PHONE:

April 8, 1982

Mr. Craig Tillery  
Alaska Legal Services  
615 "H" Street  
Anchorage, Alaska 99501

Dear Craig:

The Department of Natural Resources has reviewed the location of all known native allotment applications currently on file for lands in the Haines area. Attached is a listing of all allotment applications which were reviewed.

Most of the allotments are located on State patented and tentatively approved lands, and subject to the Aguilar decision (August 8, 1979). In that decision, the court found that allotment applications should not be rejected solely because they were not filed prior to the State receipt of patent or tentative approval. If the applicant can show that use and occupancy commenced prior to the State receipt of patent or tentative approval and continued for sufficient duration to qualify under the Native Allotment Act, the application will be approved and court action initiated by the Federal government to rescind its conveyance to the State of Alaska.

Unfortunately, the Bureau of Land Management is not funded to perform its adjudication responsibilities for Native Allotments to the detriment of both the State and the allotment applicants. Further, should adjudication show the application is valid, a protracted court proceeding may be necessary to rescind the federal conveyance to the State.

As we discussed it would be mutually advantageous to the State and allotment applicants, if the State had the option to quit claim its interest on patented or tentatively approved land subject to valid allotment applications and BLM was required to convey such interest to the allotment applicant. While this option would only be used at the State's discretion, it would save considerable time and expense to all parties where it was exercised. Further, I would be generally consistent with the rationale used by

Mr. Craig Tillery  
April 8, 1982  
Page 2

Congress in Section 905 of ANILCA, where legislative approval was used to by pass the adjudication process in certain cases.

In addition, we have reviewed the proposed two stage adjudication process suggested by Regional Solicitor Jack Allen, and find it reasonable. The State will join with you in urging Congress that sufficient funds be made available to BLM to expedite adjudication on this or a similar process.

Finally, with regard to specific allotment applications in the Haines/Skagway area, we divided them into three categories: (1) those which the State would be willing to quit claim its interest if a mechanism is made available for this purpose by Congress or by administrative action of BLM), (2) those which the State would quit claim its interest provided that rights-of-ways were granted the State by allotment recipients, and (3) those that the State would insist on a full BLM adjudication process.

Provided that State legislation is adopted this year establishing the Haines State Forest and the Chilkat Bald Eagle Preserve, the State is willing to place the following allotment applications in categories (1) through (3) for the purpose of resolving land status and reducing expensive and time consuming court actions.

Sincerely,

Reed Stoops, Director  
Division of Research & Development

D

KLUKWAN IRA CHILKAT INDIAN VILLAGE COUNCIL

Klukwan, Alaska

3/8/82

Attached is a petition addressed to:

THE GOVERNOR OF ALASKA, THE STATE AND HOUSE RESOURCE COMMITTEES, THE LEGISLATIVE BODY, SENATOR BILL RAY, REPRESENTATIVE JIM DUNCAN AND TO WHOM IT MAY CONCERN

All correspondence and/or telephone communications, from addressees regarding this petition, should be directed to:

Mr. James Stevens, President  
IRA Council  
Box 220  
Haines, Alaska 99827  
Phones: Home 766 2404 Business 766 2805

AND ALSO

Mr. Joe Hotch, Vice President  
IRA Council  
Box 525  
Haines, Alaska 99827  
Phone: 766 2556

The Community of Klukwan was not considered as part of the Consensus sign-off, in a letter dated February 26, 1982 to Governor Jay Hammond from the Mayors of the City and Borough of Haines. Therefore; the residents of Klukwan are taking this opportunity to express their overwhelming opposition to any legislative vehicles or legislation that involves land selection or land designation in this area.

BEFORE THE GOVERNOR OF ALASKA, THE STATE AND HOUSE RESOURCE COMMITTEES, THE LEGISLATIVE BODY, SENATOR BILL RAY, REPRESENTATIVE JIM DUNCAN AND TO WHOM IT MAY CONCERN.....

In the Matter of Opposition to State Land Selections in the Haines Borough for the Purpose of Creating a Bald Eagle Preserve and a Forestry Resource Management Area under SB 796 and House Bill 881 or any other State Land Selection Legislation at this time.

A PETITION

Whereas: the Klukwan IRA Chilkat Indian Village Council and/or members oppose any State of Alaska selection or designation of lands within the Haines Borough until letter, dated April 26, 1977, to Mr. John Kelly, Field Solicitor, United States Department of Interior, relating to Trespass on 2.6 million acres of traditional lands is resolved, and

Whereas: the Klukwan IRA Chilkat Indian Village Council has gone on record as in opposition, and

Whereas: the IRA of the Chilkat Indian Village would like to establish that they are a separate entity from Klukwan, Inc., that Klukwan Inc. does not represent IRA, and that IRA may make decisions separate from Klukwan Inc. and that IRA decisions involve the Chilkat Indian Village located at Klukwan and should be respected as such, NOW

We, the undersigned, being all of clear mind and residents of the Village of Klukwan, DO HEREBY PETITION the Governor of the State of Alaska, the State and House Resource Committees of the State of Alaska's Legislative Body, the entire Legislative Body of the State of Alaska, Senator Bill Ray, Sponsor of SB796, Representative Jim Duncan, Sponsor of HB 881 and to whom it may concern to stop all action on SB796, HB881 and any other legislative vehicles that involve State land selection in the Haines Borough until all native lands to include pending native allotments are resolved.

NAME James D. Baker ADDRESS Klukwan AK  
Richard P. Hitch  
Robert M. Panger  
Richard P. Hitch  
Klukwan Alaska  
Klukwan  
Klukwan

59  
Signatures

PLEASE NOTE: THE PRECEDING PAGES WERE TREATED  
AS A UNIT IN THE ORIGINAL DOCUMENT.



# Alaska State Legislature

## SENATE Resources Committee

### Official Business

BETTYE FAHRENKAMP, Chairman  
VIC FISCHER, Vice-Chairman  
BRAD BRADLEY  
DICK ELIASON  
DON GILMAN  
BOB MULCAHY  
ARLISS STURGULEWSKI

### MEMBERS PRESENT

Senator Fahrenkamp  
Senator Fischer  
Senator Eliason  
Senator Gilman  
Senator Mulcahy  
Senator Sturgulewski

POUCH V  
STATE CAPITOL  
JUNEAU, ALASKA 99811  
(907) 465-3834  
(907) 465-3835

April 7, 1982  
1:35 p.m.

Beltz Room  
Room 211 - Capitol

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Hearing: TELECONFERENCE

SSSB 796 Providing for the management of state owned land in the Haines area, establishing the Alaska Chilkat Bald Eagle Preserve and the Haines State Forest Resource Management Area.

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Reed Stoops, Director, Division of Research and Development, Department of Natural Resources, expressed support for the bill, stating it was a cooperative effort, and the result of three years of intense research and a complete public review process. He noted one outstanding problem, 55 Native allotments. DNR is working with the allotment applicants, and is optimistic they can reach a negotiated conclusion.

Dave Cline, National Audubon Society, confirmed his support for the bill, stating that the balanced solution represented in SB 796 could serve as a model for solving other resource disputes in the state. He also praised the unprecedented local contribution to planning.

Joe Hotch, Vice President, Chilkat Indian Village, urged the postponement of passage of SB 796, stating that the matter has been rushed. He referred to the history of his village and the many times their lands have been taken away as reason for his people's opposition to the bill.

Jon Halliwill, Mayor of Haines, expressed support for SB 796, favoring the state control of lands with much local participation, and praising it as a bill of the majority of the people in the Chilkat Valley.

Dorothy Fossman, Secretary, Upper Lynn Canal Committee, said they are neither for or against the bill, and were not a signatory because they felt it was an inappropriate issue for their involvement.

Ray Menaker, Lynn Canal Conservation Society, Haines, supports SB 796 as a reasonable compromise. He suggested renumbering for clarification at the bottom of page 1.

Bob Henderson, Haines Borough Mayor, expressed approval for SB 796, stating it would benefit the tourism, fisheries, and lumber industries, and the Chilkat Natives.

John Schnabel, Schnabel Lumber Company, Haines, supports SB 796, stating that the current moratorium has caused a tremendous inconvenience.

Mel Palmer, Chairman, Haines Branch Alaska Miners' Association, expressed support for SB 796, stating that it addressed all of their concerns. The multiple-use state forest is compatible with mining interests; the large low-grade iron ore deposit bordering the area is provided for. He suggested two changes: Add "or his or her nominee" on page 6, lines 5 and 8; on page 6, line 1 include the Chilkoot Indian Association IRA on the advisory board.

Gary Howard, Chilkat Valley, supports the bill, stating that if SB 796 does not pass, he fears federal action will be taken.

Mildred Sparks, Klukwan, said the people of her village can't be blamed for their lack of support, for they have been hurt too many times in the past, and, in addition, don't fully understand what is happening.

Ron Johnson, Fairbanks, supports SB 796.

Charlotte Hok, Fairbanks, urged the passage of SB 796.

Steve Laroe, Interior Woodcutters' Association, Fairbanks, stated his support for SB 796.

Sally Kebisch, Sierra Club, Anchorage, expressed support for SB 796.

David Finkelstein, Anchorage, supports the bill.

The National Wildlife Federation, AKPIRG, and Friends of the Earth combined their statement of support.

Dr. M. Pat Wittakins, Audubon Society, Anchorage, supports SB 796.

Paul Wellman, City of Haines, expressed support for the bill and the economic growth it will allow.

Barry Gross, Ketchikan, supports SB 796, calling it a "historic compromise".

Michael DeMan, Central Council of the Tlingit and Haida Indian Tribes, expressed opposition to SB 796, stating that it was done without attention to the people of Klukwan. He read a resolution adopted by the Alaska Native Brotherhood Grand Camp opposing the bill, and urged postponement of its passage for one year until all the ramifications of the plan are fully understood.

Jim Stratton, Executive Director, Southeast Alaska Conservation Council, expressed support for SB 796.

Senator Fahrenkamp announced a meeting to resolve the existing technical problems with the bill for 9 a.m. the following morning.

The meeting was adjourned at 3:00 p.m.



# Alaska State Legislature

## SENATE

### Resources Committee

POUCH V  
STATE CAPITOL  
JUNEAU, ALASKA 99811  
(907) 465-3834  
(907) 465-3835

#### Official Business

BETTYE FAHRENKAMP, Chairman  
VIC FISCHER, Vice-Chairman  
BRAD BRADLEY  
DICK ELIASON  
DON GILMAN  
BOB MULCAHY  
ARLISS STURGULEWSKI

#### MEMBERS PRESENT

Senator Fahrenkamp  
Senator Fischer  
Senator Eliason  
Senator Gilman  
Senator Mulcahy  
Senator Sturgulewski

April 14, 1982  
1:35 p.m.

Beltz Room  
Room 211 - Capitol

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#### Hearing:

- SB 794 Establishing certain areas as units of the Alaska marine park system.
- SB 795 Relating to outdoor recreation and historic projects.
- SSSB 796 Providing for the management of state owned land in the Haines area, establishing the Alaska Chilkat Bald Eagle Preserve and the Haines State Forest Resource Management Area.

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#### SSSB 796

Resa King, Administrative Assistant, described the two meetings that had been held with Klukwan, Tlingit/Haida Central Council, Audubon Society, City of Haines, and the Department of Natural Resources since the April 7th hearing on SSSB 796, and stated that memos outlining those meetings were in the Committee members' packets. The meetings were to, 1) satisfy the concerns of Klukwan, and 2) answer questions raised by the legal division.

Jeff Haynes, Deputy Commissioner, Department of Natural Resources, expressed support for the bill, but indicated that technical amendments may need to be made before final passage.

Senator Mulcahy moved CSSSB 796 with individual recommendations.

#### SB 794

Phil Holdsworth, Juneau, expressed concern that the areas listed in Section 2 of the bill include many which are the only potential sites for log transfer facilities and industrial docks, especially in Southeast.

Jeff Haynes, DNR, explained that the areas listed in Section 2 are study areas, and will not necessarily be included in the marine park system. Decisions on which lands to include will involve a visible

Senate Resources Committee

April 14, 1982

Page 2

public process, and no lands will be included without legislative approval. Haynes stated that areas other than those listed in Section 2 can be studied also.

Senator Gilman expressed concern over language in the bill that would close the park lands to multiple use. He moved an amendment deleting page 1, lines 22-29 (CS) and asked unanimous consent.

Senator Fischer moved CSSB 794, as amended, with individual recommendations.

SB 795

Senator Fischer moved an amendment deleting page 3, lines 14-17 (CS #2) and asked unanimous consent. He then moved CSSB 795 as amended with individual recommendations.

The meeting was adjourned at 2:05 p.m.

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907-465-3800


LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 19, 1982

SUBJECT: Eagle Preserve/Haines Forest  
(CSSB 796 (Resources))

TO: Senator Bettye Fahrenkamp  
Chairman, Senate Resources Committee

FROM: Richard A. Bradley   
Legislative Counsel

I understand that the Resources Committee has reported out CSSB 796 (Resources). The bill is prepared as requested by Resa King; I gather that the parties to the proposals for an Eagle Preserve and the Haines State Forest have insisted that certain language be included in the bill and I believe that in each such case the language has been included.

Because I have reservations about the efficacy of some of the language, I believe that it is appropriate to state them for the record.

In sec. 507(c), the committee requested that the last line of that section read that "allotments . . . be treated as private land including but not limited to rights of way acquisition under AS 41.20.506 - 41.20.525". I have advised Resa King that I consider the language "are private lands" legally more accurate and more efficacious from the point of view of allottees.

Allotments are private land. The fact that the United States holds legal title for the benefit of the allottee is irrelevant.

I understand that the phrase "including but not limited to rights of way acquisition" is aimed at the Department of Transportation and Public Facilities in its acquisition of highway right of way. That point is beyond the subject of this bill.

Note that the phrase "under AS 41.20.506 - 41.20.525" which was left in made the section provide for the "right of way acquisition" "under the Eagle Preserve laws", a logically impossible situation. Since you apparently wanted the allotments to be treated as private property for all purposes, I deleted the AS 41.20 phrase and the rights of way phrase. Since the result is that allotments are now to be treated as private land without any qualification, I believe that I have achieved your purpose without the use of confused language and without intruding material into the bill that would violate the single subject rule.

I believe I have made no changes to sec. 507(g). I have reservations about its style and its apparent use of different words to mean the same thing. Because the parties seem to feel strongly about the existing language, I simply note that it could be improved on.

Sec. 507(h) could similarly be improved.

The proposed sec. 515(f) apparently made DNR an insurer of the safety of the sites identified. DNR is without the authority to do that, even if the legislature makes a direct authorization to that effect. After discussion with Resa King, I made some changes that are consistent with the goals of the parties.

I confess that sec. 41.20.525(a) is confused. I have been limited in solutions to the confusion because the parties have here also a rather complex understanding about what is brought in by the phrase "activity conduct in compliance with law". In my own view, the better drafting solution is to state explicitly what these understandings are. I believe my change to the material in the middle of the section is clearer than the suggested "adjacent to" language which, as my earlier memorandum to the committee suggested, created a series of problems.

Sec. 41.15.510(c) (Native Allotments) is treated as they are treated in the Eagle Preserve section.

Some final points. The descriptions have been revised to include lands omitted in the first descriptions. A portion of Section 4 in the April 16, 1982, draft has been moved to Sec. 41.15.520(b) and recast as permanent law. And material

Senator Bettye Fahrenkamp  
Page 3  
April 19, 1982

has been shorn from Sec. 41.20.525 and moved to the end of  
Sec. 41.20.507.

And my reservation about the language in a number of sections  
arises from my concern that the parties apparently have complex  
understandings about the impact of the language in these  
sections that is, at best, indirectly stated. There are, I  
gather, contrived ambiguities. While the parties may think  
they know what the words are intended to mean, after enact-  
ment that words mean not what the parties "think" they mean  
but rather what the words say. I hope there are no surprises.

If I may assist further, please advise.

RAB:ljb

Enclosure

Amendment

# 1

ADD NEW SECTION -

page 2  
line 2

(5) Protect and enhance the traditional and natural resource based lifestyle of the people within the areas designated by this act, as they so determine it to be. according to applicable law.

Revise: (5) Provide continued opportunity for the traditional and natural resource based lifestyle of the people within the area designated by this section, consistent with the other purposes of section 41.20.506 (a) & (b).

# 2

page 2  
line 11

ADD AFTER -

"in the future, except as provided herein."

12

unnecessary

# 3

page 2  
line 75

ADD AFTER -

Constitution, except as provided herein.

18

unnecessary

Amendment cont'd

# 4  
page 2  
line ~~17~~  
20

ADD AFTER -  
valid existing rights, except as provided herein.

*unnecessary*

# 5  
page 2  
line ~~22~~  
25

ADD AFTER -  
private land, including allotments as provided  
- *Gov. in 4120 507 (c)*

*(OK)*

# 6  
page 2  
line ~~23~~  
26

ADD AFTER -  
of this act and future land selections made by any  
other entitled community entity under applicable  
law.

*This is covered under amendment  
#10.*

4/15/82  
Page 3

Amendment  
# 7  
Page 3  
Line 3

2

ADD AFTER -

"preserve." The State hereby removes all objections to any pending allotments, commits applicable survey and adjudication costs to determine valid ownership of allotments within the confines of areas included in this bill during fiscal years 1983 and 1984. The State further quitclaims to the BLM for this purpose all rights to which the State has title to or tentative approval, concerning such valid allotments.

NO

The Department of Transportation is directed to submit for arbitration all trespass claims made by allottees or their representatives for right-of-way taken. All pending and approved allotments located partially or completely within the preserve shall be treated as private land under AS 41.20.506-41.20.525, including but not limited to rights-of-way acquisition.

*State has already made agreement with Alaska legal services on allotments*

Amendment  
# 8  
Page 3  
line 12

13

ADD AFTER -

service, the local governing bodies within the areas proposed and the... *are already on advisory committee*

OK