

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672

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Arctic National Wildlife Refuge
Land Exchange Briefing

For the past two years, representatives of the Department of the Interior have been discussing the possibility of acquiring certain lands within National Wildlife Refuges in Alaska owned or selected by Alaska Native Corporations. Acquisition would be accomplished by exchanging them for limited oil and gas interests in the coastal plain of the Arctic National Wildlife Refuge. The exchange is designed to benefit the National Wildlife Refuge System (System) and further the Congressionally mandated purposes for seven National Wildlife Refuges. At the present time 891,000 acres have been offered for exchange (see Table I) by the native corporations.

Table I

Lands to be Added to National Wildlife Refuge System

<u>Refuge</u>	<u>Acres</u>	<u>Native Corporation</u>
Alaska Maritime	87,000	Old Harbor, Native Lands Group
Innoko	125,000	Doyon, Gana-A'Yoo
Kanuti	75,000	Doyon
Kenai	33,000	Native Lands Group
Kodiak	260,000	Ahkiok-Kaguyak, Koniag Old Harbor
Nowitna	78,000	Doyon
Yukon Delta	<u>233,000</u>	Native Lands Group
Total	891,000	

Collectively, the lands being offered represent some of the highest priority acquisition needs within the System in Alaska. Their uniqueness is reflected in world class habitats for migratory birds, anadromous fish, and brown bears coupled with unsurpassed recreational opportunities. For example, 14.2 percent of the population of Pacific Flyway brant, 23.4 percent of the world population of crackling Canada geese, 20 percent of the world population of emperor geese, and 5 percent of the Pacific Flyway population of greater white-fronted geese nest in the lands offered by the Native Lands Group. Other lands offered would perpetually protect lands critical to the Kodiak Brown bear. While the proposed exchange would constitute the largest single acquisition of private lands for the System there remains over 12 million acres of native ownerships within Alaska refuges.

The Department is currently negotiating with six different native entities. Those are (1) Koniag Inc., a regional corporation which is merged with certain village corporations within its region, (2) Doyon, Ltd., a regional corporation (3) Gana-A'Yoo, Ltd., a consolidated corporation comprised of several former village corporations within the Doyon region, (4) Native Lands Group, L.P., a limited partnership consisting of a subsidiary of Cook Inlet Region, Inc., a regional corporation, The Aleut Corporation, a regional corporation, and several village corporations in the Cook Inlet and Calista regions, (5) Ahkiok-Kaguyak, Inc., a consolidated corporation comprised of two former village corporations

in the Koniag region and, (6) Old Harbor Native Corporation, a village corporation in the Koniag region. These 6 entities represent a total of 18 native corporations.

In the past two months the native entities and the Department reached agreement in principle on three important conditions, including: (1) agreement on the value, legal description and acreage the participant proposes to convey to the Fish and Wildlife Service, (2) agreement on the basic terms of the proposed exchange agreement with accompanying environmental stipulations designed to protect refuge resources and, (3) agreement on the process for identifying and allocating a limited number of tracts within the coastal plain to the various participants.

The tract identification process began on July 9th and was completed on July 11, 1987. As a result of the process, up to a total of 65 whole tracts (each tract is typically comprised of 4 sections containing approximately 2560 acres) and 8 partial tracts were identified from a total of 576 tracts within the coastal plain of the Arctic National Wildlife Refuge. The allocated tracts constitutes approximately 166,000 acres or about 10.8 percent of the approximately 1.53 million acre federally-owned coastal plain. Of the 73 tracts identified, 34 were on potential oil and gas containing structures mapped for the 1002 study and report to Congress. The 503 (85.5%) tracts not identified remain available for a federal leasing program and include 87.7% of the tracts over mapped structures. The value of the remain tracts is approximately \$3.5 billion.

Table 2

Acres and Values Offered and Identified to be Exchanged by Native Entities

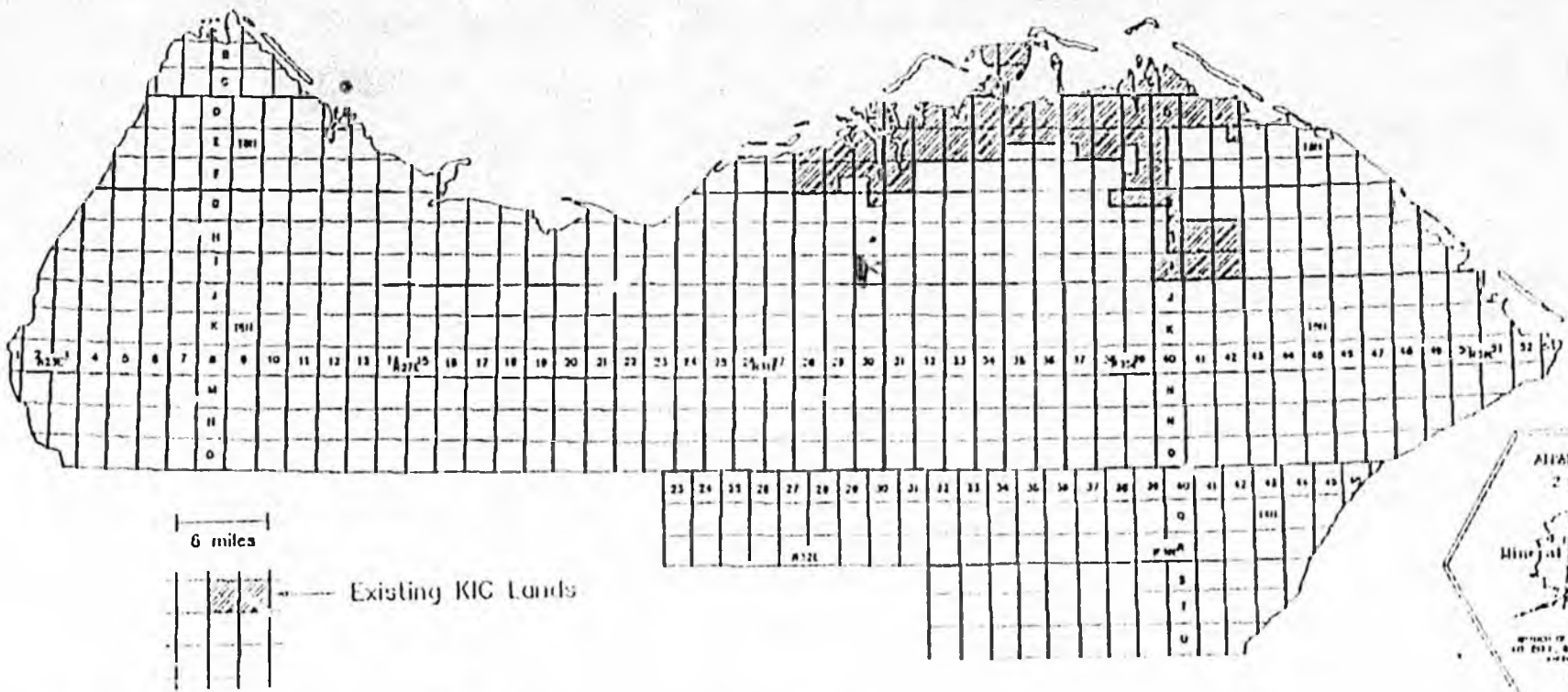
Corporation	Acres	Value (Millions of \$)	Acres of Limited Oil and Gas Interests in Arctic NWR
Ahkiok-Kaguyak	115,000	\$ 74.9	19,236.6
Doyon	220,000	\$121.7	43,367
Gana-A'Yoo	56,000	\$ 35.0	21,914
Koniag	112,000	\$ 77.4	3,183
Native Lands Group	298,000	\$184.0	20,898.4
Old Harbor	90,000	\$ 45.7	57,679
Total	891,000	\$538.7	166,278

*had 19 days +
all did proceed*

*wrong -
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Texaco val'n
WTO 45.7*

At present each potential land exchange participant is reviewing its position as a result of the tract identification process and will advise the Department whether it wishes to proceed in the near future. If the exchange proposals are to be forwarded to the Secretary and the Congress for approval there are further activities that need to be completed, including further contract negotiations, preparation and submission of any recommendations to the Secretary, and any renegotiation of the contracts that he may deem necessary, and the preparation and submission of recommendations that Congress approve any exchange agreements. This would include the preparation and circulation of an accompanying LEIS for public comment.

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United States Department of the Interior

FISH AND WILDLIFE SERVICE
1011 E. TUDOR RD.
ANCHORAGE, ALASKA 99503

IN REPLY REFER TO:
RE/5724e

APR 21 1987

The Honorable Sam Cotten
Co-Chairman, House Resource Committee
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811-0101

Dear Mr. Cotten:

Knowing of your interest in possible land exchanges involving Native and State inholdings in Alaska's National Wildlife Refuges and oil and gas interests in the coastal plain of the Arctic National Wildlife Refuge, I am pleased to enclose a recent copy of a letter from Assistant Secretary William P. Horn to Senator J. Bennett Johnson.

As expressed by the enclosed letter and previous testimony before your committee, it is the Department's intention, as a matter of policy, to seek Congressional approval of any such exchanges that might be consummated. The form of such approval will be at the discretion of Congress, but could include specific legislation, an amendment to new or existing legislation, or administrative approval through Congressional subcommittees. We intend to initiate discussions on the preferred form of approval with appropriate Congressional subcommittees when sufficient progress has been made in reaching agreement with the exchange participants.

We appreciate your continued interest in this important and complex effort. Please let us know if we may be of further assistance.

Sincerely,

Walter O. Stiglich

Acting Regional Director

Enclosure

Honorable J. Bennett Johnston
Chairman, Committee on Energy
and Natural Resources
United States Senate
Washington, D.C. 20510

MAR 31 1987

Dear Chairman Johnston:

The purpose of this letter is to inform you of the status of possible land exchanges involving National Wildlife Refuge System (NWRS) inholdings in Alaska and oil and gas interests in the coastal plain of Arctic National Wildlife Refuge ("the 1002 area").

Early in 1985, the Department of the Interior (Department) was approached by several Alaska Native corporations who sought to exchange their refuge inholdings for subsurface oil and gas interests in the 1002 area. These proposals were conditioned on the completion of the study underway pursuant to section 1002 of the Alaska National Interest Lands Conservation Act (ANILCA), submission of the Secretary's associated recommendation for management of the area, and appropriate legislation by Congress. Since the properties being offered constituted vast acreages of highly significant fish and wildlife habitats, this was an unparalleled opportunity to enhance the NWRS.

We have made it clear from the outset that any such exchanges will be forwarded to Congress for review and approval. It has been also understood that no exchange recommendation will be transmitted to the Secretary for consideration until he has independently determined what management regime to recommend for the coastal plain as part of the 1002(h) report. Further, any terms and conditions negotiated in connection with potential exchanges will be consistent with the Secretary's recommendation. Accordingly, no agreements will be executed until the 1002(h) report has been completed and the Secretary has notified Congress of his recommendation. We anticipate that the earliest exchange agreements might be available for congressional action would be this summer.

We appreciate the high level of public interest in the exchange proposals now being negotiated and look forward to a public review process at the appropriate time. Following agreement in principle between parties on the major ingredients of the

exchanges, we intend to provide for public review of tentative agreements prior to their final consideration and signature by the Secretary. Additional public scrutiny will be provided via the legislative deliberations attendant to congressional consideration of any contingent exchange agreements that might be approved by the Secretary.

At the present time the Department is negotiating with five Native entities: Koniag, Akhiok-Kaguyak, Old Harbor, Doyon, and Native Lands Group (a partnership of several Native corporations). These participants have offered over one million acres for exchange within the Kodiak, Kenai, Yukon, Delta, Innoko, Kanuti, and Nowitna National Wildlife Refuges. Collectively, the lands being offered represent some of the highest priority acquisition needs within the NWRS. Their uniqueness is reflected in world class habitats for migratory birds, anadromous fish, and brown bears coupled with unsurpassed recreational opportunities. For example, 14.2 percent of the population of Pacific Flyway brant, 23.4 percent of the world population of cackling Canada geese, 20 percent of the world population of emperor geese, and 5 percent of the Pacific Flyway population of greater white-fronted geese nest in the lands offered by the Native Lands Group. Other lands offered would enable us to return to public ownership and restore wildlife refuge status to the majority of the lands critical to the Kodiak Brown bear.

The value of the inholdings must be established through negotiation with the individual exchange participants since ANILCA prohibits other than willing seller inholder acquisitions from native corporations (i.e., no condemnation authority). Accordingly, negotiation is premised on consideration of fair market values, congressional precedents for acquisitions from Native corporations on other Alaska refuges, transactional economies, and management efficiencies to be realized.

The value of oil and gas interests on the 1002 area is being determined using procedures similar to those applied to a traditional Federal lease sale. This valuation process is not subject to negotiation.

Once values have been established on each side of the exchange equation, the Native corporations will be allowed to identify tracts on the coastal plain that are equal in value to the total negotiated value of their inholdings being offered in exchange. This tract identification process will not proceed until the parties have (1) an agreement in principle on the value, descriptions, and acreage of inholdings offered in exchange, (2) an agreement in principle on the basic terms of the exchange agreement, and (3) agreement on the ground rules to be used in identifying and allocating tracts to the various exchange participants. These matters are still subject to active discussion with the Native corporations.

The operational stipulations being negotiated as part of the exchange contract are premised on the "no unnecessary adverse effects" standard referred to in the 1002(h) report. Once the final report is released these stipulations will again be reviewed for consistency with the report. Accordingly, any mitigation measures that may be called for by the final 1002(h) report will be incorporated into these stipulations. This approach will assure the consistency necessary to provide adequate environmental safeguards while avoiding unnecessary duplication of infrastructures among potential oil and gas operators. The proposed waiver of the provision of ANILCA Title XI inholder access rights by the exchange participants is directed at this same objective.

Another important feature of the exchange is the availability of rescission options to the Native corporations. These options provide an incentive to those Native corporations that might be willing to exchange virtually all of their existing refuge inholdings if they can do so while minimizing the risk of losing essentially all of their land assets through these exchanges. We have attempted to be responsive to this need by drafting two rescission options that would allow them to (a) rescind due to institutional frustration beyond their control and (b) rescind for failure of consideration. These options are not open-ended, and they are not cost free. They do not guarantee that the exchange participant will fully recover the value of their inholdings in the form of oil and gas revenues, and provide that in the case of the failure of consideration option the Fish and Wildlife Service shall retain a substantial portion of exchanged inholdings.

We were recently disappointed when Alaska Governor Steve Cooper withdrew the State as an active exchange participant. The State's involvement in the exchange process dated back to August 1985 when I personally invited then Governor Bill Sheffield to join in this endeavor. At the time of the State's departure, we had tentatively reached an agreement to acquire approximately 800,000 acres of State lands with important fish and wildlife values through exchange. Had the State continued to participate, this acreage would have represented about 40 percent of the total lands being considered for exchange.

In considering the exchanges now being negotiated, we have been mindful of the need to balance the interests represented by the exchanges against those interests that are represented by disposal of 1002 area oil and gas interests through a traditional Federal leasing program. Given these dual program interests, we have been careful to design the exchanges to ensure that the bulk of subsurface values on the 1002 area will be available for disposition through subsequent lease sales if that is the approach approved by Congress.

We will continue to pursue the negotiations as a prospective means of adding hundreds of thousands of acres of vital fish and wildlife habitat to the National Wildlife Refuge System. Please let us know if you have additional questions or need for additional information. The concepts described here reflect the current thinking, but the ultimate positions to be taken by the Department regarding the ANWR exchanges have yet to be determined.

Similar letters are being sent to the Honorable James A. McClure, Committee on Energy and Natural Resources, United States Senate; Honorable Don Young, Subcommittee on Fisheries and Wildlife Conservation and the Environment, House of Representatives; the Honorable Robert W. Davis, Committee on Merchant Marine and Fisheries, House of Representatives; the Honorable Walter B. Jones, Chairman, Committee on Merchant Marine and Fisheries, House of Representatives; and the Honorable Morris K. Udall, Chairman, Committee on Interior and Insular Affairs, House of Representatives.

Sincerely,

/Sgn/ William P. Horn

Assistant Secretary for Fish
and Wildlife and Parks

cc: Senator Stevens
Senator Murkowski

OIL AND GAS LEASING STATUS OF ANWR

JAN. 22, 1943- PLO 82 WITHDREW ALL PUBLIC LANDS IN NORTHERN ALASKA FROM SALE, LOCATION, SELECTION, AND ENTRY UNDER PUBLIC LAND LAWS, INCLUDING THE MINING LAWS, AND FROM LEASING UNDER THE MINERAL LEASING LAWS.

APR. 15, 1958- PLO 1621 AMENDED PLO 82 TO PERMIT LOCATIONS UNDER THE MINING LAWS AND ISSUANCE OF MINERAL LEASES PURSUANT TO THE 1920 ACT EXCEPT FOR NPR-A AND ALL LANDS EAST OF THE CANNING RIVER AND NORTH OF THE BROOKS RANGE.

DEC. 6, 1960- PLO 2214 CREATED THE ARCTIC NATIONAL WILDLIFE RANGE, WITHDRAWN FROM ALL FORMS OF APPROPRIATION UNDER THE PUBLIC LAND LAWS, INCLUDING THE MINING BUT NOT THE MINERAL LEASING LAWS. UNDER THE REGULATIONS IN EFFECT AT THE TIME, NO LEASING COULD OCCUR UNTIL LEASING MAPS WERE PREPARED AND AGREEMENT WAS REACHED BETWEEN BLM AND USFWS.

IN THE LATE 60'S BLM PREPARED LEASING MAPS CONSISTING OF 2560 ACRE BLOCKS. SOME OF THESE BLOCKS STRADDLED THE CANNING RIVER. AN AGREEMENT BETWEEN BLM AND USFWS ALLOWED 15 "STRADDLE LEASES" TO BE ISSUED. ALL LEASE APPLICATIONS TO THE EAST OF THESE LEASES WERE REJECTED. THESE REJECTIONS WERE LITIGATED IN WALLER Y HICKLE AND THE COURT FOUND IN FAVOR OF THE GOVERNMENT.

WITH THE EXCEPTION OF THESE "STRADDLE LEASES", ANWR HAS NEVER BEEN OPENED TO MINERAL LEASING UNDER THE 1920 ACT. SUCH LEASING WOULD HAVE REQUIRED AN AFFIRMATIVE ACTION ON THE PART OF THE SECRETARY. NO ACTION WAS TAKEN.

THE FOLLOWING DOCUMENT(S) MAY NOT FILM
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United States Department of the Interior

FISH AND WILDLIFE SERVICE

WASHINGTON, D.C. 20240

FEB 20 1966

Honorable Alfonso M. D'Amato
United States Senate
Washington, D.C. 20510

Dear Senator D'Amato:

This is in response to your recent inquiry on behalf of Ms. Elizabeth U. Levers concerning the exchange of National Wildlife Refuge System (NWRS) lands in Alaska.

We would first like to assure you and Ms. Levers that the Fish and Wildlife Service (FWS) is committed to fulfilling the intent of Congress as specified in the Alaska National Interest Lands Conservation Act (ANILCA) and has neither taken nor contemplated any action that would bypass the mandates of that Act. The FWS has conducted the resource assessments of the coastal plain of the Arctic National Wildlife Refuge (ANWR) as required by section 1002 of ANILCA and will provide a report to Congress by the September 2, 1968, deadline.

Several Alaskan Native corporations have contacted the Department of the Interior regarding the feasibility of exchanging private inholdings on a number of NWRS units in Alaska for mineral interests in areas of the ANWR. Such an exchange could result in very substantial benefits to the NWRS and the public due to the large amount of valuable wildlife habitat that would be acquired. This proposal is therefore being given serious consideration, and an extensive analysis of all possible implications of such an action is being conducted.

A team of FWS appraisers was sent to Alaska for the purpose of evaluating the Native inholdings on several refuges. Although this action was taken with the potential land exchange in mind, the information obtained will be of use in any future attempts to acquire these lands.

We disagree with the suggestion that an exchange of this nature would violate the provisions of section 1302 of ANILCA. Although an exchange would create private interests on the ANWR, it would actually result in a net reduction of private inholdings on Alaska refuges because of the multiple return expected for each acre of ANWR subsurface exchanged. Also, only the subsurface estate of the coastal plain lands would be considered for exchange, with surface ownership remaining vested in the Federal Government. Exchange agreements would contain such surface use provisions that are necessary to ensure protection of refuge resources and maintain the integrity of the area.

Pl. Exhibit 10

Regional Director, Region 7 (w/copy of incoming)

It is the Department's intention that implementation of an exchange involving subsurface interests in the AIVR will be contingent upon ratification or authorization by Congress. Furthermore, no exchange will take place unless Congress decides to open the AIVR to oil and gas exploration, development and production.

If an exchange proposal is presented to Congress, it will be pending before that body concurrently with, or after, the section 1002 report and the Secretary's recommendations regarding oil and gas development. All decisions on these issues will ultimately be made by the Congress, and members of the public will have ample opportunity to voice their opposition or support to any land exchange proposal.

No further points of clarification are required in response to your constituent's letter. First, there have been no wells drilled within the section 1002 study area. The well Ms. Levers refers to is probably the exploratory well drilled outside of this area on land where both the subsurface and surface are owned by native corporations. Nevertheless, this exploration was conducted in accordance with protective stipulations imposed by the FWS and no oil and gas development or production can occur on the native-owned land within AIVR unless authorized by Congress in accordance with section 1002 of ANILCA. Second, we are unaware of any opposition to an exchange being expressed by natives living on or near the AIVR.

Ms. Levers' sincere concern for the protection of the AIVR resources is certainly appreciated. However, we feel that our present course of action is in compliance with ANILCA and other applicable authorities, and in the best interest of the AIVR.

Sincerely,

Walter C. Steflitz

Acung Associates
Director

Regional Director, Region 7 (w/copy of inclosing)
Refuge Manager, Arctic IWR (w/copy of inclosing)

It is the Department's intention that implementation of an exchange involving subsurface interests in the ANWR will be contingent upon ratification or authorization by Congress. Furthermore, no exchange will take place unless Congress decides to open the ANWR to oil and gas exploration, development and production.

If an exchange proposal is presented to Congress, it will be pending before that body concurrently with, or after, the section 1002 report and the Secretary's recommendations regarding oil and gas development and wilderness preservation. All decisions on these issues will ultimately be made by the Congress, and members of the public will have ample opportunity to voice their opposition or support to any land exchange proposals that may be under consideration.

Two further points of clarification are required in response to your constituent's letter. First, there have been no wells drilled within the section 1002 study area. The well Ms. Levers refers to is probably the exploratory well drilled outside of this area on land where both the subsurface and surface are owned by Native corporations. Nevertheless, this exploration was conducted in accordance with protective stipulations imposed by the FWS and no oil and gas development or production can occur on the Native-owned land within ANWR unless authorized by Congress in accordance with section 1003 of ANILCA. Secondly, we are unaware of any opposition to an exchange being expressed by Natives living on or near the ANWR.

Ms. Levers' sincere concern for the protection of the ANWR resources is certainly appreciated. However, we feel that our present course of action is in compliance with ANILCA and other applicable authorities, and in the best interest of the ANWR.

Sincerely,

/s/ Ronald E. Lambertson

Acting Deputy Director

cc: Regional Director, Region 7 (w/copy of incoming)
 Refuge Manager, Arctic NWR (w/copy of incoming)



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

FEB 12 1986

Honorable Benjamin A. Gilman
House of Representatives
Washington, D.C. 20515

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DIAWR
RE
RF(N)
(S)

Dear Mr. Gilman:

This is in response to your January 7, 1986, inquiry on behalf of Ms. Elizabeth L. Levers concerning the exchange of National Wildlife Refuge System (NWRS) lands in Alaska.

We would first like to assure you and Ms. Levers that the Fish and Wildlife Service (FWS) is committed to fulfilling the intent of Congress as specified in the Alaska National Interest Lands Conservation Act (ANILCA) and has neither taken nor contemplated any action that would bypass the mandates of that Act. The FWS has conducted the resource assessments of the coastal plain of the Arctic National Wildlife Refuge (ANWR) as required by section 1302 of ANILCA and will provide a report to Congress by the September 2, 1986, deadline.

Several Alaskan Native corporations have contacted the Department of the Interior regarding the feasibility of exchanging private inholdings on a number of NWRS units in Alaska for mineral interests in areas of the ANWR. Such an exchange could result in very substantial benefits to the NWRS and the public due to the large amount of valuable wildlife habitat that would be acquired. This proposal is therefore being given serious consideration, and an extensive analysis of all possible implications of such an action is being conducted.

A team of FWS appraisers was sent to Alaska for the purpose of evaluating the native inholdings on several refuges. Although this action was taken with the potential land exchange in mind, the information obtained will be of use in any future attempts to acquire these lands.

We disagree with the suggestion that an exchange of this nature would violate the provisions of section 1302 of ANILCA. Although an exchange would create private interests on the ANWR, it would actually result in a net reduction of private inholdings on Alaska refuges because of the multiple return expected for each acre of ANWR subsurface exchanged. Also, only the subsurface estate of the coastal plain lands would be considered for exchange, with surface ownership remaining vested in the Federal Government. Exchange agreements would contain such surface use provisions that are necessary to ensure protection of refuge resources and maintain the integrity of the area.

It is the Department's intention that implementation of an exchange involving subsurface interests in the ANWR will be contingent upon ratification or authorization by Congress. Furthermore, no exchange will take place unless Congress decides to open the ANWR to oil and gas exploration, development and production.

If an exchange proposal is presented to Congress, it will be pending before that body concurrently with, or after, the section 1002 report and the Secretary's recommendations regarding oil and gas development and wilderness preservation. All decisions on these issues will ultimately be made by the Congress, and members of the public will have ample opportunity to voice their opposition or support to any land exchange proposals that may be under consideration.

Two further points of clarification are required in response to your constituent's letter. First, there have been no wells drilled within the section 1002 study area. The well Ms. Levers refers to is probably the exploratory well drilled outside of this area on land where both the subsurface and surface are owned by Native corporations. Nevertheless, this exploration was conducted in accordance with protective stipulations imposed by the FWS and no oil and gas development or production can occur on the Native-owned land within ANWR unless authorized by Congress in accordance with section 1003 of ANILCA. Secondly, we are unaware of any opposition to an exchange being expressed by Natives living on or near the ANWR.

Ms. Levers' sincere concern for the protection of the ANWR resources is certainly appreciated. However, we feel that our present course of action is in compliance with ANILCA and other applicable authorities, and in the best interest of the NWRs.

Sincerely,

Walter O. Stieglitz

Acting Associate

Director

Regional Director, Region 7 (w/copy of incoming)
Refuge Manager, Arctic NWR (w/copy of incoming)

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

NOV 1 1986

Honorable Dale L. Bumpers
United States Senate
Washington, D.C. 20510

Note dates!
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Dear Senator Bumpers:

Thank you for your letter of August 15, 1986, urging the Department of the Interior to suspend its efforts to negotiate an exchange of native-owned inholdings in national wildlife refuges in Alaska for subsurface rights in the coastal plain of the Arctic National Wildlife Refuge. I regret the delay in providing a response to your concerns.

Since I have had no personal involvement in this matter, I have referred your letter to the responsible official, Assistant Secretary for Fish and Wildlife and Parks William P. Horn. Mr. Horn's explanation of the Department's position regarding this exchange is enclosed for your information.

I share and appreciate your desire to ensure that the future use of the coastal plain's resources be premised upon a sound and objective basis. I am confident that the current departmental efforts at exploring an exchange that will be subject to Congressional approval will not jeopardize our mutual goal.

Sincerely,

DONALD PAUL HODEL

Enclosure

cc: Regional Director, Region 7
Refuge Manager, Arctic NWR

Carl [initials] [initials]
Rick [initials] [initials]
Bon [initials] [initials]
Chuck [initials] [initials]
[initials] [initials]



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

File
Akhiok-Kaguyak
Edwards
[Signature]

Mr. Jack Wickers
2143 Larson Lane
Mount Vernon, Washington 98273

MAY 16 1985

Dear Mr. Wickers:

Thank you for your April 4 and 10, 1985, letters concerning the possibility of a land exchange between the Department of the Interior and Akhiok-Kaguyak, Inc. Akhiok-Kaguyak, Inc., a native corporation, is researching the possibility of acquiring on behalf of Akhiok-Kaguyak a land exchange involving the Arctic NWR. As you are aware from conversations with the Fish and Wildlife Service (FWS) in Alaska, the Department, through the FWS, is interested in acquiring certain high quality brown bear habitat and other lands owned by Akhiok-Kaguyak, Inc., located within the Kodiak National Wildlife Refuge (NWR). As you suggest in your letters that the corporation would be interested in a "surface for subsurface" exchange involving the Arctic NWR, similar to the one with Arctic Slope Regional Corporation (ASRC).

Before we could consider your proposal actively, the Department would need to address the issue of whether we should engage in any additional exchange involving Arctic NWR. You should understand that the ASRC exchange was attractive in large part due to the fact that ASRC had the potential right to acquire subsurface on the Arctic NWR pursuant to section 1431(o) of the Alaska National Interest Lands Conservation Act.

We will keep your interest in mind. Should the Department conclude that active consideration of further exchanges involving Arctic NWR would be appropriate, the FWS Regional Director in Alaska will contact you. Thank you again for your suggestions on behalf of Akhiok-Kaguyak, Inc.

Sincerely,

William P. Horn
Deputy Under Secretary

cc: Regional Director, Region 7 (w/copy of incoming)
Refuge Manager, Kodiak NWR (w/copy of incoming)

Jim Hansen *Eisen*

Tape Transcription (from telephone address to IOCC, December 9, 1987)
Bill Horn

Unidentified Speaker

...carefully with you with an eye on its long range applica-
tion as well as its immediate applications. So why don't
you proceed and tell us from your vantage point, what the
proposal means.

Bill:

Alright. Let me see if I can go through it from top to
bottom with just enough of the history and to answer any of
the questions you all may have. The proposed exchanges, and
they're in a preliminary stage of proposal. As a result of
negotiations between the Department of the Interior and 18
Alaska Native Corporations, the State of Alaska was a
participant in the negotiations for 14 months until the
State voluntarily withdrew this last March. The purpose of
the negotiations was to see if we could structure a land
exchange which would permit the Department, primarily the
Fish and Wildlife Service to acquire approximately 900,000
acres of inholdings within the National Wildlife Refuges in
Alaska. In return the Native Corporation receive approxi-
mately 106,000 acres of oil and gas subsurface rights in the
coastal plain of the Arctic Wildlife Refuge and we had made
it clear from the outset that this type of an exchange will
be expressly subject to congressional review and

congressional approval. There is no intent to undertake any executive exchange. Now the Native Corporations are somewhat different from what most folks in the lower 48 are used to dealing with. They are for profit, business corporations chartered under state law. They are not tribes, they is no aspects of sovereignty in tribal jurisdiction intended to them. They are business entities that have native individuals as their shareholders and these corporations were created by 1971 act of Congress. The lands we are after, the 900,000 acres of refuge inholdings, are some of the premiere wildlife habitat in the State of Alaska. The centerpiece of the trade would basically reacquire for public ownership Kodiak Island which is the home of the largest brown bears and probably the finest brown bear habitat in Alaska. We'd pick up the most popular salmon stream in the State of Alaska for public ownership and other important waterfowl nesting areas. So our biologist are very keen on acquiring this particular acreage.

On the Oil and Gas side, the Coastal Plain of ANWR is approximately 1.5 million acres in size. Under this proposed exchange the Natives would receive 166,000 acres of subsurface estate. That represents approximately 11% of the acreage. Based on all of our geologic analysis and using the same valuation procedures that we've used to valuate onshore and offshore oil and gas tracts on the Federal side, it is our estimate that that acreage represents 15% of the

value of the coastal plain. What that means is that what is left on the table for disposition to a future oil and gas sale, assuming that is what Congress approves, would be 89% of the total acreage of the coastal plain in ANWR.

Eighty-nine percent on structure acreage, that would be acres that overlay identified oil and gas drilling structures. We estimate that 85% of the value is still on the table for disposition to a competitive least sale, and that this remaining acreage and intended value would be expected to generate between 2 and 4 billion dollars in bonus revenues that obviously would be shared between the State of Alaska and the Federal Government.

We are still working through on these exchanges. Our expectation is that if they are approved by the Secretary, and they have not gone beyond my level, we would not be in a position to submit them to the Congress for its review and prospective approval until sometime in the late summer of 1988. That's kind of a short course and I'd be glad to answer any questions.

Unidentified Speaker

Bill, let me start. What kind of acreage are you taking over on the surface ownership for Fish and Wildlife.

Bill:

That would be 900,000 acres. And it's, it's, aah, as I said we... unintelligible... in the negotiations we asked the Fish and Wildlife Service to identify with those corporations that came to see us, the finest stuff they had. And so it's really premiere, Grade A wildlife habitat.

Unidentified speaker:

Well Bill, how much do you own and how much does Fish and Wildlife own in Canada or aah in Alaska right now?

Bill:

Well, right now we have approximately 70 million acres of land. All of these acres are inholdings. That happen to be inside the refuges. And the natives obviously, just like the state, when the state was at the table with us, are interested in trading out the inholding, because it's generally difficult notwithstanding laws and statutes, to go ahead with economic development projects within the boundaries of refuges and parks and stuff. They would much rather trade us those inholdings and eliminate those kinds of conflicts and pursue their economic opportunities outside.

Unidentified speaker:

Are you aware that the Western Governor's have unanimously passed a resolution asking for the return of imminent domain over such lands and is that part of the consideration here?

Bill:

It's not. Frankly, in Alaska, the Federal Government, we the Federal Government does not have imminent domain in the boundaries of parks and refugees boundaries in Alaska. At least as it relates to state land and native corporation land. So...

Unidentified speaker:

So the state would retain imminent domain here.

Bill:

Well, let's put it this way. I'm not sure that the State has it right now. Aah, we have not done anything under this exchange issue to upset the relative rights and duties of the different parties. This would merely be a land transaction. Without any other intended change in statutes toward rights and responsibilities.

Unidentified Speaker:

Well in respect, it is very much like a lower 48 indian reservation then.

Bill:

No, no quite to the contrary. These lands are held in sea by the four profit corporation. They are subject to state criminal and civil jurisdiction. They are subject to state taxation. The corporations are indeed chartered under state law. So they are totally different than what you deal with in the lower 48.

Unidentified speaker:

So then the State must have imminent domain.

Bill:

Then it probably does.

Unidentified Speaker:

Ok.

Let me see what I have, questions for the rest of these folks.

The valuation of the 900,000 acres, versus the 166,000 acres subsurface rates.

Bill:

The way we did it, we negotiated with the Natives to assign a dollar value to their land at which point each corporation based on how much acreage they put in and how relatively valuable it was, basically received in essence kind of a credit. One of the corporations put in 220,000 acres of land that as a result of our negotiations we valued at 121.7 million dollars and then each corporation thought a tract identification process was allowed to pick surface tracts in ANWR that equalled the value of land they were putting up. So by all rights we are obtaining 538 million dollars worth of land and tendering onto this exchange to the natives 538,000 million dollars worth of subsurface estate to the natives. It was done on a value per value basis.

Unidentified Speaker:

If the 900,000 that's being exchanges had been put out for bids, what's your best guess as to what the tribe would have received for it?

Bill:

It's really hard to say. In much of the parts in Alaska there is very little market for land. What we did was over the last years, Congress starting in 1976, has approved a whole series of land transactions in the State of Alaska, and with those land transactions, they set some values. So we figures that since we were going back to Congress, we would utilize the valuation approach that Congress has previously employed. And I'll give you some examples now. In this particular case, the aggregate value of the 900,000 acres of land we are getting comes in at 602 dollars per acre. For comparison purposes, Congress approved a acquisition in the Islands off the coast of Alaska, and we paid 767 dollars per acre in 1987 dollars, according to the Congressional valuation. Congress settled some land claims with one of these Corporations in 1976 and assigned a value of 935 an acre which frankly did not have the environmental value of what we are picking up here. The way that stacks up against National acquisition, all of our federal acquisitions under land and water conservation fund in 1986 averaged \$1227 dollars per acre and our average purchases under the migratory bird conservation act came up to \$665 dollars an acre, so in essence we pegged ourselves to what Congress had done in the past then compared it to what our other acquisitions of like kind...unintelligible...- environmental land came out and compared that to the acquisition price here is lower than what Congress has shown an

inclination to approve and lower than what our lower 48 acquisitions are running at.

Unidentified Speaker:

Bill, the next question is how do you anticipate getting public bidding on subsurface rights before this transaction is finalized?

Bill:

What we had in mind was basically to have this transaction finalized as part of or possibly at some time shortly thereafter, Congressional action to open up the Arctic Refuge to Federal Oil and Gas leasing program. And given the fact, as I said, 89% of the acreage is still there, eighty five percent of the value, we then presumed that this particular piece of the 11% would in essence be taken off the table through the land exchange. It's the remaining 89% that we would dump for competitive bidding and then based on our analysis, we would expect a competitive lease sale on that remaining almost 90% of the acreage to generate somewhere between two and four billion dollars.

Unidentified Speaker:

So no other U.S. group could bid on that tract.

Bill:

No. In other words, what we would do if the exchange is approved, the natives would own fee interest in the subsurface of the tracts they selected. Now they obviously then have the ability to have a private transactional arrangement with an oil company and have a private sector to private sector lease arrangement.

Unidentified Speaker:

And how did you determine the value of that tract?

Bill:

The subsurface tracts were all valued using the same methodology that our Minerals Management Service, BLM, and U.S. Geological Survey used, when we valued tracts for competitive bid oil and gas sales, both onshore and off. The minerals economist, have got the computer models. They've built in the risk factors, then look at the available geologic information. Then that say, it spits out a number that says tract X under our system is worth 25 million dollars. And then in order for a bidder to acquire that tract, he or she must bid at least \$25 million dollars. If it comes in at \$21 million dollars, we reject the bid as being insufficient. We use that same system to fix the

value of these tracts, and some tracts were valued as millions and millions of dollars, and some were valued at 85 million dollars based on the risk factors of the same model. And then the Natives of course can select. They tender this about 120,000 acres of land. We estimated and we valued that land at about \$77 million dollars. And they used all of their credit so to speak to select one tract that we valued at \$77 million dollars. Some other corporations went for more acreage and took an awful lot of minimally valued tracts. Those numbers on the subsurface valuation were not negotiable, they were set by the standard Federal process. The Natives could then acquire it by giving up X amount of the value of the land they offered to us.

Unidentified speaker:

I have a question from Dale Nations from Arizona.

Dale Nations:

Wouldn't it be a valid assumption that the 11% that has been selected of all that available acreage would be the prime oil and gas producing or the areas with the highest producing potential?

Bill:

No, frankly some of the highest value areas were so valuable and had such large price tags attached to them that many of the corporations avoided them. Now to take some of the bigger structures and then some of the tracts up on the crest were up in the \$70 and 80 million dollar range and some of those were selected, but many of them were left behind because some of the corporations in our exchanges didn't have enough value to pick it up. One corporation spent all of its time in picking minimally valued off structure acreage. They got alot of acreage, but none of it is over structures, at least identified by our people. They frankly didn't have enough value to go out and hygrade the place and take all the creme de la creme. So there is an enormous number of ...89% of the on structure acreage is still there and 85% of the value is still there, which is clearly indicative that there is an awful lot of valuable stuff still on the table for disposition to a competitive lease sale.

Unidentified speaker:

I have a question from Phil Patman of Texas.

Bill Horn:

Mr. Secretary, do you have an opinion as to how the timing of exploration or oil and gas might be affected by your

procedures for exchanges as compared with a set of circumstances whereby you would proceed completely by the competitive bidding process?

Bill:

That has been a major issue that has been the subject of a whole lot of debate. The way proposal is presently constituted within the Department is that once Congress authorizes the ANWR opening and once Congress would approve these exchanges, the Natives would be able to go out and immediately be conducting the seismic and exploratory drilling work on their property in advance of the Federal lease sale. Now, some people in the oil industry have said that that puts 10 or 11 companies that have gotten contractual arrangements with these Native Corporations at a competitive advantage in a subsequent lease sale. Our economists have looked at it and said well we like the idea because if the prospects and potential for oil discoveries are as high as we think they are and these guys make discoveries, share the information with us, the value on our surrounding tracts are going to go up and so we are going to make more than 2 to 4 billion dollars worth of revenue. Frankly, some of the environmental community has criticized us because they see the exchange as a guarantee that there is a drilling program immediately without having to wait for all the Federal environmental stuff where they can bring legal action, so

this whole question of timing is still up for grabs and they said our current proposal is let the Natives proceed after Congress opens the area if the exchanges are approved. But I do know that that's probably one of the more controversial aspects of the pending proposal. And it is still subject to change either by the Secretary or by the Congress.

Unidentified Speaker:

Follow up then, I take it it's at least possible that the speed of exploration might in fact be greater, as I understood your comments, should you proceed with the exchange rather than wait and proceed entirely by bidding situation?

Bill:

Absolutely, because we look at the following even if Congress were to act in the next week to open up the ANWR. We have to go through the normal environmental impact statement process and all the consultations with EPA and everything. We are probably looking at 24 months before we could conduct a least sale. So let's assume we start working in January of 1988, we don't conduct a lease sale until probably December 1989 or January 1990. You would then get the applications in for the exploratory drilling. You probably don't have the drilling commencing until sometime in 1991 or 92. And that is assuming that somebody

doesn't successfully sue us and string it out for a couple of years. If however, the current proposal were adopted, the Natives of course are permitted to go out and drill and secure the permits without waiting for environmental impact statements and the rest and while we are being or writing our EIS's and improving exploration plans and being sued by certain groups, the natives can be out there drilling with their industry partners right off the bat. So there is a significant chance that exchanges could accelerate the beginnings of ...unintelligible...exploration by a couple of years. Of course that has been one of the concerns that oil companies that aren't part of this exchange. They are worried about the competitive disadvantage by these other people getting the head start.

Unidentified Speaker:

To follow up on that, there are a couple of other questions, so very quickly, do most of these groups have pre-established arrangements with oil companies?

Bill:

Yeah. Everyone of them did. You see, when we went to...they wanted to make the selections in the coastal plan and we would not let them see the proprietary information that we have acquired from the private sector about what's

under the ground. Most of the native corporations went out and made those contractual arrangements with partners in the oil industry. And of course that's where the Natives got the information as to which tracts they ought to select, whether or not at least in their partners mind, we had valued it properly. Right now, I think at last count, the Native groups have got eleven oil companies that are in the partnership arrangements, in different forms and combinations with the Native entities.

Unidentified Speaker:

We have a questions from Diane Nielson from Utah.

Diane Nielson:

I'd like your response sir on the concern that's been raised that you are essentially rewriting policy and procedure in terms of offering or disposing of Federal oil and gas lands.

Bill:

Could you repeat that? We had a jet airplane go by the window.

Diane Nielson:

:

I would like your response to the concern that you are rewriting the policy and procedure for disposing the Federal oil and gas lands by effecting these trades in place of competitive lease sales.

Bill:

We have routinely engaged in land exchanges for many years using both surface and subsurface assets. I'm familiar with various exchanges that involve coal lands for example. Now, I am not cognizant of any exchanges that the Federal government has engaged in that involved oil and gas rights, but we have done exchanges involving coal rights, phosphate and other subsurface mineral estates. In that sense we are just dealing with a different commodity here. You know, there is pretty clear precedent for this type of an approach and since we have gone through a rather rigorous evaluation procedure, we've made sure that it's on a value for value basis and of course the fact that we are going to submit it to congress for review and approval, I think builds in some guarantee that, I suspect that this is not going to be a run of the mill operation.

Unidentified Speaker:

Mr. Secretary, I have a question from Mr. Tom Segal from Michigan.

Tom Segal:

Mr. Secretary, in determining this, estimating this surface values of the tracts you are look at, were the surface values just purely real estate type of estimates or were environmental values, were dollar values tagged as far as environmental values that aah...

Bill:

What we used in Alaska, Congress has given us frankly the only State in the Union where we have this, we can either purchase land based on a standard fair market determination or what is a public interest determination. We've looked at both angles here and our valuation was based on kind of a four corner box. We look at the fair market value, we looked at the relative environmental values as to how important are these lands environmentally we looked at what congress has been willing to assign value for comparable land and then lastly we have what we call sort of an efficiency index. Giving two examples, under the terms of Federal law most of this land has to be surveyed and ultimately conveyed to the Native Corporations with a standard patent. It costs us millions of dollars to put people out in the remote corners of Alaska, to stick the monument corners down and convey the land. Obviously because if we're getting a land exchange we wouldn't have to through the cost of

conveyance. We're also required by Federal law to provide free fire control services on Native land so if a fire breaks out the corporation calls us and says send your smoke jumpers to put the fire out. ...Unintelligible...obligation terminates so we looked at as a fourth component, by acquiring this land and mocking up the areas we didn't have these inholdings, what types of savings would we accrue over time in terms of reduced fire prevention, in terms of reduced conveyance requirements and that was the fourth feature of our sort of valuation box. We did put the values together using that matrix and then as I said we compared it to be sure we were in line, we compared it to what we had acquired in Alaska previously, what the prices were there and then we compared it to what we were acquiring in environmental comparable land in the lower 48 for, and found out that our values were on the low end of the scale.

Unidentified Speaker:

I have a question from Bill Smith from the State of Colorado.

Bill Smith:

Mr. Secretary, was any consideration given prior to the innovation of this particular exchange to perhaps exchanging some of the presently owned 70 million acres of less

valuable wildlife resources for these more valuable wildlife resources?

Bill:

We looked at some of that the problem is this. Once you're inside the refuge boundaries, and I think many of you may know, the law may give valid existing rights but politically it has proven exceedingly difficult for people to exercise those rights inside refuges or parks. Many times somebody wants to go ahead with their mining claim or drill and oil well in a wilderness area where they had a pre-existing lease, you know the environmental community get into an enormous uproar, we get dragged up here for an oversight hearing and so the general approach is that most of the private land owning people say look, we want out of being inside of your refuges and your parks because notwithstanding all these statutory promises, getting those promises redeemed by the governments and the courts is exceedingly difficult and yes we talked about trading other lands but most of them said look, we want something that will have some real economic opportunity to it, we want to be partners in the future development of the North Slope, ANWR is the place where the action is and we the Native Corporations would like to basically be partners in that operation at least to some limited extent and so offering them other lands and opportunities was basically rejected by them.

Unidentified Speaker:

We have a question from Fred Steese from the State of South Dakota.

Fred Steese:

Mr. Horn, I'd like to know if in your opinion if there is a danger if these trading action will set precedence for land disputes with American Indians elsewhere in the United States, ve sa ve???a bill of Senator Bradly from New Jersey relative to the Black Hills of South Dakota?

Bill:

I don't think so, because say if you were dealing with Native Corporations, the arrangement of Alaska is radically different than from the lower 48. They acquire these lands in fee, they are subject to State and Federal taxation and are subject to all State controls, if we ever try to engage in a land exchange with a lower 48 indian tribe, we get all fouled up because most indian land, United States holds it in trust for the indians, so we are kind of trading with ourselves, plus of course when indians acquire another piece of land, that's right now in the private sector, it frequently then gets taken into trust at which point, the state jurisdiction is significantly and substantially diminished.

Because we are dealing here with these Corporations which are chartered under state law, it's a totally different legal animal, and frankly we shouldn't even stop...they happen to be Native Corporations because they have Native shareholders but there are non-native shareholders in these organizations and they are by law non-racial institutions, so I think there is enough ...unintelligible...differences in the Corporations in Alaska and the tribal institutions in the lower 48 that I don't think we are setting up any precedent. We are not intending to because, I've had to deal with enough indian problems in different places that the headaches that get attended to creation of new trust lands, I personally would rather do without.

Unidentified Speaker:

Question from Craig Newman of Wyoming.

Craig Newman:

Mr. Horn, the value that was utilized to trade for the tracts in ANWR could that be a combination of value assigned to the surface estate and cashed from the industry participants or only surface values as determined under your process?

Bill:

The thing that we did was take the surface value of the lands we're acquiring for the refuge system, negotiated out the value which in this case came out to \$538 million and then the Corporation were allowed to pick the tracts in ANWR that did not exceed an aggregate \$538 million dollars in whatever combinations they wanted. So it was, we made it on a value for value basis, nobody offered up any cash to us, we want to keep it a pure land exchange without getting the cash component into the deal.

Unidentified Speaker:

We have one final question from from Diane Nielson again from Utah.

Diane Nielson:

How much money or what is the difference in revenue to the Federal Government in the land trade as opposed to offering these lands to competitive leasing, the 11% that is being traded?

Bill:

The math is fairly straightfoward. Our people estimate that 11% acreage is worth \$538 million dollars. That \$538 million dollars represents 15% of the aggregate subsurface

value of the coastal plain. We in order again to maximize the up front value to the United States and minimize our risks, the exchange does not reserve any royalty to the United States Government. That was basically built in up front in the valuation. The result is that the tracts are valued between 30 and 40 percent higher than they would be if we were reserving 1/6th or 1/8th royalty. We basically made the Native Corporations pay us for the royalty up front even if they don't find anything. In terms of foregone bonus revenue, take the 538 discount it by approximately 30 to 40 percent, that would be the amount of money roughly that we expected to get if we put those tracts up for competitive bids. Our estimate in rough terms is that this land exchange costs us approximately \$400 million dollars in cash bonus bids that we otherwise would have gotten.

Diane Nielson:

Does that include bonus and royalty? Thirty to 40 percent includes bonus and royalty?

Bill:

No, that's just basically the bonus.

Diane Nielson:

Where is the royalty consideration?

Bill:

As I said we have taken the royalty and built it in. That's why the tracts are valued at basically 538. They were inflated 30 to 40 percent because we did not reserve the royalty. We built that risk factor in. In essence we have already collected for the royalty in the difference between 400 and 538.

Unidentified Speaker:

Mr. Secretary, we've got a busy schedule so we've got to get back. Thank you very, very much for your availability and for your straightfowardness in answering these questions. I think everyone here is very grateful. We anticipate being back to work with you on a discussion of this because these people involved here are probably the most knowledgeable in oil and gas leasing and operational problems in the United States and they are very interested in the States, and through the IOCC probably will take a vigorous stand, either for or against or in favor of revision of this proposal. So this has been very, very helpful to us. I want to thank you on behalf of the group.

Bill:

Thank you and I appreciate the flexibility and any other questions just please feel free to call.

DEAN K. DUNSMORE
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Anchorage, Alaska 99513
(907) 271-5452

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

TRUSTEES FOR ALASKA, et al.,)
)
 Plaintiffs,)
)
 v.)
)
 WILLIAM P. HORN, Assistant)
 Secretary of the Interior)
 for Fish, Wildlife and Parks;)
 et al.,)
)
 Defendants,)
)
 and)
)
 KONIAG, INC., et al.,)
)
 Intervenor-Defendants.)
)
)

Case No. A87-118 Civil

SUPPLEMENTAL DECLARATION OF WILLIAM P. HORN

William P. Horn, upon personal knowledge, deposes and states as follows:

1. This declaration is submitted to supplement my declaration of May 20, 1987 and is given to inform the court of the current status of the Arctic National Wildlife Refuge (ANWR) exchange negotiations.

2. On June 1, 1987, Secretary Hodel formally transmitted the final 1002(h) report and legislative environmental impact statement (LEIS) to Congress. Congressional consideration of the Secretary's report is proceeding. The Secretary and I testified on the 1002(h) report before the House Subcommittee on Water and Power Resources in April and May of this year, before the Senate Committee on Energy and Natural Resources on June 2, 1987, and before the House Subcommittee on Fisheries and Wildlife Conservation and the Environment on June 24, 1987. Questions concerning the potential ANWR exchanges were addressed during the hearings before the House Subcommittee on Water and Power Resources and the Senate Committee on Energy and Natural Resources. Members of all of the above-mentioned committees are planning to visit the 1002 study area during the month of August, 1987. Furthermore, members of two of these committees are also planning to visit some of the native-owned lands under consideration for acquisition through the contemplated ANWR exchanges during their August trip to Alaska.

3. During the first two weeks in June of 1987, the ANWR negotiating team met collectively and separately with representatives of Koniag, Inc.; Doyon, Ltd.; Native Lands Group, L.P.; Akhiok-Kaguyak, Inc.; Old Harbor Native Corporation; and

Gana-A' Yoo, Ltd., for the purpose of further exchange negotiations. During this period, I also met with the ANWR negotiating team and the representatives of these six native entities to address issues raised in the negotiations. By June 12, 1987, I reached agreements in principle on the terms, subject to tract identification outlined in my prior declaration and in paragraph 4 below, of the land exchange proposals embodied in the six draft exchange agreements being negotiated with these entities and two of the appendices intended to be attached thereto. However, these draft exchange agreements and their appendices do not have formal departmental clearance and all of the parties to these negotiations recognize that these documents may be changed upon further review.

4. I, acting for the Department of the Interior, and representatives of the above-mentioned native entities, have also entered into an agreement, which became effective June 15, 1987, establishing the procedures for the identification and allocation of a limited number of tracts within the coastal plain portion of ANWR to these potential land exchange participants. In entering into that agreement, the parties expressly agreed that nothing in it or its implementation constituted a commitment, assurance or guarantee that any, some or all of the contemplated exchange agreements would ever be executed or that the interests identified for exchange in the ANWR tracts allocated pursuant to that agreement would ever be conveyed to the participants. The decision whether to enter into, conditioned upon subsequent approval by

Congress, any of the contemplated exchanges still has yet to be made, and, as indicated in my declaration of May 20, 1987, I do not expect it to be made for several months following the completion of the ANWR tract identification process and circulation of a draft LEIS for public comment. On July 6, 1987, the procedures governing the ANWR tract identification process were modified slightly by agreement of the parties to the June 15 agreement so as to eliminate certain ambiguities and redundancies and to correct certain technical deficiencies.

5. By July 6, 1987, I also reached agreements in principle with the above-mentioned six native entities on the values, legal descriptions, and acreages of the lands and selection rights that they propose to convey or relinquish as their part of the contemplated exchanges. As a result of our negotiations, these six entities, which represent eighteen native corporations, are tentatively offering to exchange approximately 895,000 acres of native-owned surface estate within seven national wildlife refuges in Alaska for oil and gas interests of comparable value within the ANWR's coastal plain.

6. On July 9, 1987, representatives of Department and the above-mentioned six native entities met for the purpose of identifying which particular ANWR tract or tracts each native entity might acquire should the proposed exchanges subsequently be completed. That tract identification session ended on July 11, 1987. As a result of the tract identification process, up to a total of 65

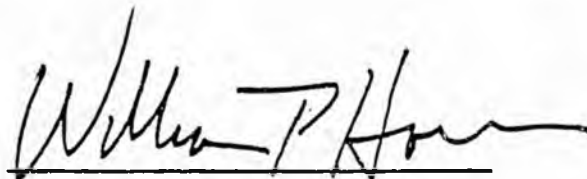
whole tracts and 8 partial tracts from a total of 576 tracts within the ANWR's coastal plain were allocated among these six native entities. The allocated tracts constituted approximately 166,000 acres or up to 10.8 percent of the approximately 1.53 million acres in the federally owned portion of the coastal plain. For the purpose of the ANWR tract identification process, the coastal plain was divided into tracts which are each approximately 2560 acres, but not all of these tracts are uniform in size. The parties to the identification process recognize that this allocation of tracts does not guarantee that the Department will ever convey the interests identified for exchange in a particular tract to the prevailing participant.

7. Under the provisions of the ANWR tract identification procedures, each potential land exchange participant has ten working days following the end of the tract identification session to notify the Department whether it wishes to proceed with the land exchange process. This ten-day period may be extended for good cause. Therefore, I do not expect to know before July 24, 1987 whether all of the native entities with whom we have been negotiating will wish to proceed with the exchange proposals. And, because of the provision allowing for an extension, it may be some time after that before the Department actually receives notice of a participant's position on the desirability of continuing the exchange process. Accordingly, the numbers given in paragraph 6 of this supplemental declaration represent the maximum amount of federally owned land within the coastal plain that might be

conveyed as a result of the contemplated exchanges. The withdrawal of one or more of the above-mentioned native entities from the exchange process would reduce these figures.

8. Further exchange negotiations and certain other administrative actions that we are still committed to doing if the exchange proposals are to be forwarded to the Secretary and the Congress for approval have been suspended pending the outcome of further congressional consultations requested by the Chairman of the Senate Committee on Energy and Natural Resources. These activities include further contract negotiations, the preparation and submission of any recommendations to the Secretary that he execute the contemplated exchange agreements, any renegotiation of the exchange agreements that the Secretary deems necessary, the preparation and submission of any recommendations that Congress approve any executed exchange agreements, and the preparation and circulation of an accompanying LEIS. The duration of this suspension is unknown.

I declare under penalty of perjury that the foregoing is true and correct. Executed on July 14th, 1987.

A handwritten signature in cursive script, reading "William P. Horn", written over a horizontal line.

William P. Horn

DEAN K. DUNSMORE
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

TRUSTEES FOR ALASKA, et al.,)

Plaintiffs,)

v.)

WILLIAM P. HORN, Assistant)
Secretary of the Interior)
For Fish, Wildlife and Parks;)
et al.,)

Defendants,)

and)

KONIAG, INC., et al.,)

Intervenor-Defendants.)

Case No. A87-118 Civil

DECLARATION OF WILLIAM P. HORN

William P. Horn, upon personal knowledge, deposes and states as follows:

1. I am the Assistant Secretary for Fish and Wildlife and Parks, United States Department of the Interior. As such, I supervise the Director, United States Fish and Wildlife Service (FWS), pursuant to the authority found in section 3 of the Fish and Wildlife Act of 1956, as amended, 16 U.S.C. § 742b. I became the Assistant Secretary for Fish and Wildlife and Parks on August 2, 1985. Before that, I was the Deputy Under Secretary of the Interior. I was appointed to that position in March, 1981. In that capacity, I was the Secretary of the Interior's representative within the Department responsible for providing policy guidance on Alaska matters. Before that, I worked as the Minority Staff Consultant on the Subcommittee on Alaska Lands and subsequently the full Committee on Interior and Insular Affairs, U.S. House of Representatives, during the passage of the Alaska National Interest Lands Conservation Act (ANILCA).

2. For approximately the past two years, representatives of the Department have been discussing the possibility of acquiring certain lands within national wildlife refuges owned or selected by Alaska native corporations by exchanging them for limited interests in lands in the coastal plain of the Arctic National Wildlife Refuge (ANWR). Within the Department, the responsibility for pursuing such potential exchanges has, subject to my ultimate supervision and control, been divided between the FWS's Regional Director in Alaska, the ANWR negotiating team, and the Assistant Secretary for Fish and Wildlife and Parks. The Regional Director is primarily responsible for identifying the refuge inholdings

sought to be acquired through exchange and preparing the administrative record associated with the exchange process. The ANWR negotiating team, which is comprised of representatives of FWS, the Solicitor's Office, and the Bureau of Land Management (BLM), is primarily responsible for negotiating the terms and conditions of the proposed exchange agreements. I, as the Assistant Secretary for Fish and Wildlife and Parks, am primarily responsible for providing policy guidance to the FWS and the ANWR negotiating team and for negotiating the values of the refuge inholdings sought to be acquired from the native corporations. While departmental efforts are proceeding on these three fronts, I am periodically informed by the Regional Director and the ANWR negotiating team of the status and results of their efforts and consulted on policy questions that arise during this process.

3. The Department is currently negotiating potential ANWR exchanges with five different native entities. These are (1) Koniag, Inc., a regional corporation which is merged with certain village corporations within its region, (2) Doyon, Ltd., a regional corporation on behalf of itself and Gana-a' Yoo, Ltd., a merged corporation comprised of several former village corporations within the Doyon region, (3) Native Lands Group, L.P., a limited partnership consisting of a subsidiary of Cook Inlet Region, Inc., a regional corporation, The Aleut Corporation, a regional corporation, and several village corporations in the Cook Inlet and Calista regions, (4) Akhiok-Kaguyak, Inc., a merged corporation comprised of two former village corporations in the Koniag region,

and (5) Old Harbor Native Corporation, a village corporation in the Koniag region. They are hereinafter referred to as the "native corporations."

In the past, discussions have also been held with representatives of the State of Alaska and the Arctic Slope Regional Corporation (ASRC) as potential participants in the ANWR exchanges currently under consideration by the Department. Departmental representatives may continue to confer with State representatives because of the State's asserted regulatory interest in oil and gas activities and fish and wildlife matters, and with ASRC's representatives because ANWR is located in ASRC's region and ASRC owns subsurface interests within ANWR. But, the Department is not presently negotiating any exchange involving ANWR lands with either the State of Alaska or ASRC. The State's withdrawal from the negotiations was noted by me on page 2 of a March 6, 1987 letter to Sam Cotten, Co-Chairman, House Resources Committee, Alaska State Legislature, which is attached hereto as Attachment 1.

As the negotiations continue, it is possible that the alignment of the corporations described above may change; that some of the above corporations may, for reasons of their own, drop out of the negotiations; and that other parties may seek to join or rejoin the negotiations. The identities of the parties with whom the Department is negotiating ANWR exchange agreements and their relationship to each other is still fluid at this point. Obviously, these two factors, i.e., the identities of the potential

exchange participants and their relationships, have a direct bearing on the exchange proposals being formulated and the terms of the exchange agreements being drafted.

4. The exchange agreements being negotiated contemplate the trading of dissimilar interests in lands, i.e., primarily native-owned or selected surface estates for federally owned oil and gas interests. Since the interests to be exchanged are so dissimilar, their monetary value, rather than acreage, is intended to be the basis for the exchanges. In addition, since section 1302(b) of ANILCA, 16 U.S.C. § 3192(b), precludes the Department from condemning refuge inholdings owned by native corporations, acquisition of such lands can only be accomplished by the Department on a willing-seller basis. These factors necessitate that an agreement in principle be reached between each native corporation and the Department on the identity of the refuge inholdings or selection rights that each native corporation proposes to convey or relinquish, and the monetary values to be ascribed to those lands and selection rights.

These two steps have required the performance of several preliminary tasks, including the evaluation and ranking of native inholdings, the development of property descriptions, the calculation of acreages, the review of resource and other public interest values, the determination of the legal status of the parcels under consideration, and the preparation of real estate appraisals.

5. The exchanges now being actively discussed would involve the acquisition by the FWS of approximately one million acres in seven different refuges. These refuges are the Alaska Maritime, Innoko, Kanuti, Kenai, Kodiak, Nowitna, and Yukon Delta National Wildlife Refuges. An acquisition project of this magnitude requires considerable time and effort in the performance of the above-described tasks. The Department is at different stages in reaching agreements in principle with the native corporations on the identification of the refuge inholdings proposed to be acquired and the establishment of the values proposed to be given for those native interests. We hope to reach agreements in principle on these two issues with all the parties with whom we are negotiating some time in June of this year.

Reaching agreements in principle on the lands proposed for acquisition from the native corporations and their contemplated values is essential to the development of the ANWR exchange proposals. The refuge inholdings constitute the native corporations' trading stock. Without agreements in principle on the value of that trading stock, the parties cannot ascertain which subsurface tracts in the ANWR's coastal plain the native corporations could possibly afford to acquire. The approach that I am using to value the native corporations' refuge inholdings is more fully explained in a February 20, 1987 memorandum from me to the ANWR negotiating team, attached hereto as Attachment 2. This memorandum also served as the enclosure to Attachment 1.

6. Identifying the lands proposed for acquisition from the native corporations and their proposed values addresses, however, only half of the bilateral trades being discussed. Yet to be determined are the particular tracts within ANWR in which the Department would propose to convey the oil and gas interests to the native corporations. The native corporations have repeatedly informed the Department that, without knowing which particular ANWR tracts that they might be able to acquire oil and gas interests in through exchange, they cannot determine whether they have a real interest in going forward with the exchange process.

We have informed the native corporations and others who have inquired about our plans that we will allow the native corporations to commence the ANWR tract identification process once three conditions precedent are satisfied. These include: (1) an agreement in principle between the Department and each potential exchange participant on the value, legal description, and acreage of the lands which that participant proposes to convey to the Department through exchange; (2) an agreement in principle on the basic terms of the proposed exchange agreement and the accompanying operating stipulations designed to protect ANWR resources and values; and (3) an agreement on the ground rules to be used in identifying and allocating ANWR tracts to the various potential exchange participants. See page three of Attachment 1.

The reason for the first condition precedent has been explained above. The reason for the second condition is that the rights and interests proposed to be conveyed, as well as retained, within ANWR by the Department and the manner of their enjoyment

will affect the values ascribed by the Department to the ANWR tracts. The nature of these rights and limitations (e.g., the proposed determinable fee in the ANWR tracts) will be set forth in the proposed land exchange agreements. The BLM is responsible for ascribing value to the oil and gas interests in the coastal plain in a manner which conforms to standards required for federal oil and gas evaluations. BLM's evaluation includes a technical review and interpretation of data relating to the recoverable oil and gas resources and the economic inputs associated with the type of activities contemplated in the proposed exchange agreements. The values being established by BLM are not subject to negotiation.

The third condition precedent is needed because the Department is negotiating bilateral exchange agreements with five native corporations simultaneously. We anticipate that these corporations may seek to acquire some of the same ANWR tracts through the exchange process, and, therefore, we are attempting to design an tract identification process which will be fair and orderly. The third condition precedent will ensure that the potential exchange participants agree to abide by common procedures before tract identification commences and conflicts arise.

7. While the first condition precedent to tract identification has yet to be fully satisfied, further negotiations between the ANWR negotiating team and the native corporations' representatives are necessary before the second and third conditions precedent to tract identification can be satisfied. The continuation of these negotiations, presently scheduled for the first week of June, 1987,

will address revisions in (1) the terms of the proposed exchange agreements, (2) a proposed subsistence easement intended to be reserved by the native corporations on the lands that they convey to the FWS, (3) the operational stipulations proposed to govern the exercise of the native corporations' rights in ANWR, (4) the proposed ANWR tract identification procedures, and (5) the agreement proposed to govern the ANWR tract identification process. Items (2) and (3) are intended to be appended to item (1), and item (4) to item (5). It is our hope that agreements in principle will be reached between the ANWR negotiating team and the native corporations' representatives on the proposed exchange agreements and the easement and stipulations (which are modeled after the recommendations in the 1002(h) report) in June. It is our further hope that the Department and the native corporations will also agree to the ANWR tract identification procedures and the accompanying cover agreement for the ANWR tract identification process in June.

8. Because Koniag first submitted a draft exchange agreement to the Department in May of 1986, the proposed Koniag contract has served as the basis for developing a model exchange agreement. We envision a series of bilateral exchange agreements in which the basic contractual terms are the same, but which also contain differences based upon the differences in the histories and structures of the various potential exchange participants, the status of their lands, and their corporate needs. Therefore, this means that the exchange agreements being negotiated have to reflect

the generic terms found in the Koniag draft contract that are intended to be common throughout all of the exchange agreements, but also the special provisions which are intended to be unique to each of the five native corporations with which the ANWR negotiating team is negotiating.

9. Once agreement is reached on the ANWR tract identification procedures and cover agreement, and agreements in principle are reached on the refuge inholdings to be acquired by the FWS, their values, and the terms of the proposed exchange agreements, the Department and the native corporations who still have an interest in pursuing the potential exchanges plan to proceed with ANWR tract identification. The earliest time at which the various native corporations could identify the tracts that they would like to acquire is some time in July of this year.

The purpose of this tract identification process is to identify which particular ANWR tract or tracts each native corporation might acquire should the proposed exchanges subsequently be implemented. In other words, the purpose of the tract identification process is to ascertain the other half of the proposed exchange transactions, i.e., which ANWR tracts would be proposed for conveyance by the Department to the native corporations through the exchanges. Thus, completion of the ANWR tract identification process serves to enable the parties to outline yet another major ingredient of the exchange proposals.

Allocation of the identified ANWR tracts to the potential exchange participants through the tract identification process in no way guarantees that the native corporations will ultimately receive title to the oil and gas interests in those tracts. Even if the native corporations express an interest in pursuing the proposed exchanges after ANWR tract identification has been completed, the proposed exchanges will not be implemented until several other contingencies are satisfied. These include, among others, submission of a recommendation from me to the Secretary of the Interior that he enter into the proposed exchange agreements, approval and execution of the proposed exchange agreements by the Secretary and the native organizations, enactment by Congress of legislation opening ANWR to further oil and gas activities and ratifying the ANWR exchanges, and native shareholder ratification in those instances where such ratification is required as a matter of corporate law.

10. I myself have not yet made a final decision whether to recommend that the Secretary approve the proposed exchanges. Such a judgment on my part would be premature given the current status of the negotiations. That judgment depends on the nature of the total exchange proposal package. If, after the negotiations and tract identification are concluded, only one corporation wishes to pursue an exchange, it is possible that I might recommend that the Department forgo the exchange. Moreover, I have made it clear to the native corporations that Secretary Donald Paul Hodel has the

right to reject the proposed exchanges, and may choose to do so, despite any affirmative recommendation that I might make in their favor.

11. The ANWR exchange proposals are being negotiated pursuant to the authority found in section 22(f) of the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. § 1621(f), and section 1302(h) of ANILCA, 16 U.S.C. § 3192(h). Although the Secretary has the authority under these statutes to enter into these exchanges administratively (i.e., to convey title to the native corporations), I have consistently represented to the native corporations and the public that we would not carry out these exchanges without congressional approval. See page 1 of Attachment 1.

12. Plaintiffs characterize these exchange proposals as an alternative program for managing the coastal plain. I do not approach the exchanges from that perspective. The Secretary's proposed program recommendation is that the Congress open the coastal plain to further exploration, development and production by authorizing him to make federal lands throughout the coastal plain available for oil and gas leasing. I see the proposed exchanges as a parallel realty transaction, should Congress choose to make the coastal plain available for leasing, which is intended to be consistent with such leasing.

We seek congressional approval of the exchanges for reasons of policy. First, whereas we have the authority to convey legal title in interests in lands within ANWR to the native corporations now, they would not have the opportunity to enjoy the economic benefits that they seek from the exchanges until Congress enacts post-1002 and 1003 legislation. We recognize that it would be unrealistic and unfair for us to expect the native corporations to convey their refuge inholdings to the FWS before having any prospect for obtaining any real economic benefit from the ANWR tracts in return. Therefore, the parties to the negotiations mutually concur that making the exchanges contingent on future congressional action is the better course. Second, we recognize that in enacting sections 1002 and 1003 of ANILCA, 16 U.S.C. §§ 3142 and 3143, Congress reserved for itself the decision as to whether further exploration, development and production would be allowed to occur within ANWR's coastal plain. Therefore, it has been our feeling that Congress should have the prerogative to pass judgment on the merits of creating these inholdings within the coastal plain and to confer its endorsement on the exchanges if it finds them to be in the public interest.

13. Some persons, who have not been a part of the ANWR exchange negotiations, have been critical of our pursuit of these exchange proposals concurrently with the preparation of the report to Congress required by section 1002(h) of ANILCA, 16 U.S.C. § 3142(h). Plaintiffs have expressed the concern that the prospect of these exchanges would bias the Secretary's report

recommendations and subsequent congressional action in favor of opening the coastal plain to further oil and gas activities. The timing of these negotiations has been driven largely by the corporate needs of the native corporations, as well as the number and scope of preliminary administrative tasks that must be performed in order for the Department to participate in the formulation of the exchange proposals.

Nonetheless, I have been sensitive to the concern expressed over the objectivity of 1002(h) report. Therefore, I made the commitments that we would not forward any ANWR exchange recommendation to Secretary Hodel for his approval until after he had independently determined what type of future management regime for the coastal plain he wanted to recommend to Congress in the 1002(h) report, and that we would not submit any exchange agreement to Congress if for its approval until after the 1002(h) report had been formally submitted to it. See pages one and two of Attachment 1. I have kept both of these commitments.

Although Secretary Hodel has known in a very general sense that the ANWR negotiations have been ongoing, he was not briefed on the specifics of the exchange proposals until April 16, 1987. On that date, I personally briefed him on the identities of the parties with whom we are negotiating, the size and importance of lands that they are offering, and the nature of the contractual terms being considered. Well before that date, Secretary Hodel had selected full leasing as his preferred alternative for the future management of the coastal plain and the final 1002(h) report had been sent to the printer for printing. The report was released to

the public on April 20, 1987. I expect the 1002(h) report to be formally transmitted to Congress on June 1, 1987, but I do not expect any ANWR exchanges to be submitted to Congress -- assuming I choose to proceed, the native corporations concur, and Secretary Hodel approves them -- until the early part of 1988.

14. I have also made the commitment that we would provide an opportunity for the public to participate in the ANWR exchange process. This commitment was reiterated on page two of Attachment 1 and on pages one and two of my March 31, 1987 letter to Senator J. Bennett Johnston, Chairman of the Senate Committee on Energy and Natural Resources, which is attached hereto as Attachment 3. At the time that plaintiffs filed this lawsuit, no final decision had been made as to how such public participation would be handled.

There are a number of different ways that an opportunity for public participation might be afforded. These include undertaking voluntary public meetings, intergovernmental consultation, and circulation of analyses prepared in accordance with the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 et seq., among others. The FWS had already initiated the preparation of ascertainment reports on the proposed exchanges, which are the functional equivalent of an environmental impact statement (EIS) in that they describe the proposed action, its impacts and alternatives. The use of ascertainment reports in lieu of NEPA compliance has been previously employed in Alaska in the 1983

Chandler Lake exchange, which was done administratively, and more recently in the Red Dog - Cape Krusenstern National Monument exchange, which was approved by Congress.

Because section 910 of ANILCA, 43 U.S.C. § 1638, provides that NEPA shall not be construed in whole or part as requiring the preparation or submission of an EIS for conveyances or other actions leading to the issuance of conveyances to native corporations pursuant to ANCSA or ANILCA, and because the proposed exchanges are being negotiated pursuant to exchange authorities found in ANCSA and ANILCA, it has been and still is our view that the proposed exchanges and any actions leading to the proposed exchanges are exempt from compliance with NEPA. This view is reflected in the Department's responses to public comments on the draft 1002(h) report, at page 206 of the final 1002(h) report, which is attached hereto as page two of Attachment 4.

15. However, the mere existence of the section 910 NEPA exemption does not require that the Department invoke the exemption on its behalf or preclude the Department from voluntarily preparing an impact statement. Inasmuch as the FWS had already planned to examine many of the factors that would be covered in an EIS, I have decided that the circulation of a draft legislative environmental impact statement (LEIS) would be a good vehicle for providing an opportunity for public review and comment on the proposed exchanges. Accordingly, I have directed the FWS to voluntarily prepare a two-step LEIS (i.e., a draft and final LEIS) to accompany the ANWR exchanges.

A meaningful opportunity for public understanding, analysis and comment on the proposed exchanges can only be provided once the major ingredients (i.e., the exchange parties, the lands to be traded, and the other basic terms of the exchange contracts) of the proposals have been outlined. Therefore, we do not plan to complete and circulate a draft LEIS for public comment until after the ANWR tract identification process has been completed and the participants in that process express an interest in going forward with exchange process. Until these preliminary steps are completed we will not have a clear picture of which lands we might be able to acquire or which lands we might convey through the exchanges.

Without this information, impact assessment for the ANWR beyond that which has already been described in the 1002(h) report will be highly speculative. Until the tract identification process is completed, we have no way of knowing whether the tracts that the native corporations would get if the exchanges are carried out will be compact and contiguous to each other or dispersed throughout the coastal plain, whether they will be situated over one or more hydrocarbon structures, whether they will be located in the western, eastern, northern, or southern part of the coastal plain, or whether they will be adjacent to the existing private inholdings within the coastal plain or surrounded by federal lands. All of these variables will affect the manner and pace with which these lands, assuming they contain oil and gas, might be further explored, developed and produced.

Assuming we are able to reach an agreement in principle on the property interests to be traded, we hope to circulate a draft LEIS for public review and comment in September of this year. Public comments received on the draft LEIS will be summarized and responded to in the final LEIS, and further changes in the proposed exchange agreements will be negotiated if needed. We do not expect the final LEIS to be completed before January of 1988. When the final LEIS has been written, it will be forwarded to the Secretary, along with any recommended exchange agreements. Provided that Secretary Hodel and the native corporations first choose to approve the proposed exchange agreements, the final LEIS will then accompany a departmental proposal to Congress that it ratify the referenced exchange agreements. We have not yet begun to draft the proposed ratifying legislation. We do not plan to do so until later this summer, assuming that the parties are at that time still interested in going forward with the exchange process.

16. While we have not yet solicited any public comments on the proposed exchanges because we are still in the midst of formulating the exchange proposals, we have not precluded anyone from expressing an opinion about or commenting on the proposed exchanges. Indeed, the Department has already received some letters in opposition and in support of them. Examples of such letters and the Department's responses are attached hereto as Attachment 5. They include a September 23, 1985 letter to Secretary Hodel from the Defenders of Wildlife, Sierra Club, and The Wilderness Society, and a November 7, 1985 reply from the

Deputy Director, FWS; a December 11, 1985 letter to the Regional Director from the National Audubon Society, and a January 31, 1986 reply from the Deputy Regional Director; an August 15, 1986 letter to Secretary Hodel from Senator Dale Bumpers and ten other Senators, and a November 6, 1986 reply from Secretary Hodel transmitting an October 15, 1986 response from me; and a September 5, 1986 letter to me from Congressman Don Young, and my reply of October 7, 1986. It is noteworthy that the Deputy Regional Director informed the National Audubon Society, one of the plaintiffs, that he agreed that public review and comment should be an important element in the consideration of the proposed land exchange and that he was planning to seek public review and comment before any agreement is finalized. See page eleven of Attachment 5.

17. While the exchange negotiations are ongoing, I have given no instructions to alter in any way the management of the coastal plain on account of the negotiations. No management changes, other than those that might be expected due to normal refuge operations, have been effected in the coastal plain during the exchange negotiations. Moreover, the draft exchange agreements essentially provide that the parties will not substantially alter the physical condition or otherwise materially change the management of the lands proposed to be traded before the contemplated conveyances occur. As explained earlier, these conveyances are contingent upon future legislation, as well as other contingencies. Therefore, the mere negotiation of these exchange proposals, and even the signing

of the exchange agreements themselves, cannot and will not change the management of ANWR, and thus they cannot and will not have any adverse, physical effect on the coastal plain.

18. Plaintiffs criticize the Department for pursuing exchange negotiations while simultaneously excluding the 1002 area from the comprehensive planning process being undertaken for the ANWR pursuant to section 304(g) of ANILCA, 94 Stat. 2394. The proposed exchanges are premised on the principle that Congress, not the Secretary of the Interior, will decide what are the appropriate future uses for the coastal plain. For this reason, and because the exchange negotiations themselves will not alter the management of the coastal plain, it is appropriate to forgo comprehensive planning for the coastal plain until Congress acts on the 1002(h) report and the contemplated exchanges. Moreover, nothing in section 304(g) of ANILCA expressly precludes undertaking administrative actions which are preparatory to entering into exchanges under ANCSA or ANILCA until refuge planning is completed. Finally, it has been one of the negotiating principles of these negotiations that any oil and gas activities that may eventually be authorized on the divested ANWR tracts should be conducted in a manner which is consistent with similar activities on the remaining federal tracts, of which I expect there to be a considerable number because of the relative values involved and the other constraints being built into the tract identification procedures.

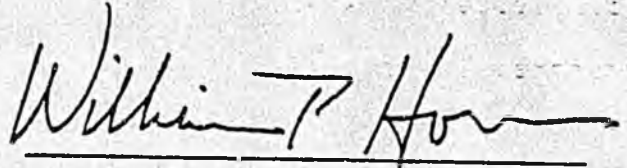
17. Collectively, the lands being offered by the native corporations represent some of the highest priority acquisition needs with the National Wildlife Refuge System (NWRS). They contain world class habitats for migratory birds, anadromous fish, and brown bears, coupled with unsurpassed recreational opportunities. For example, 14.2 percent of the population of Pacific Flyway brant, 23.4 percent of the world population of cackling Canada geese, 20 percent of the world population of emperor geese, and 5 percent of the Pacific Flyway population of greater white-fronted geese nest on the lands being offered by the Native Lands Group. Lands being offered by Koniag, Akhiok-Kaguyak, and Old Harbor would enable the FWS to return to refuge status the majority of the lands critical to the Kodiak brown bear.

Accordingly, I view the potential acquisition of the approximately one million acres being offered as a unparalleled opportunity to enhance the NWRS, which makes the exchange proposals worthy of active consideration by the Department. If the plaintiffs are successful in their efforts to enjoin the ANWR negotiations until after Congress acts on the 1002(h) report, they may cause the Department to lose the "window of opportunity" reflected in the native corporations' offers and thus waste the resources already expended in developing the exchange proposals. They will also limit our flexibility in forwarding to Congress information that it may wish to consider during its deliberations on the 1002(h) report. Indeed, if, because of a busy legislative

calendar, Congress prefers to consider all ANWR-related legislative proposals at one time, this postponement might cause the Department to lose this opportunity to enhance the NWRS.

If the plaintiffs are successful in their efforts to enjoin the ANWR negotiations, including ANWR tract identification, until after the Department has prepared an EIS or LEIS, they will hamper our ability to adequately describe and evaluate the exchange proposals and their possible consequences for the reasons previously stated. Moreover, the delay that would occur in the native corporations' learning which specific ANWR tracts they might obtain, if the proposed exchanges were carried out, might cause the native corporations with the most pressing financial needs to begin looking at other economic alternatives, e.g., developing their lands for residential purposes. Such development would threaten the refuge resources and values that the proposed exchanges are intended to benefit and would most likely make the eventual acquisition of these refuge inholdings more difficult and costly. My greatest concern in this context is for the lands in the Koniag region. Congressman Young expressed the same concern in his September 5, 1986 letter to me, which is attached hereto as pages 17 and 18 of Attachment 5.

I declare under penalty of perjury that the foregoing is true and correct. Executed on May 20, 1987.

A handwritten signature in cursive script, reading "William P. Horn", written in dark ink. The signature is fluid and somewhat stylized, with a long horizontal stroke at the end of the name.

William P. Horn

Attachments

COTTEN → HORN
FEB 87

REPRESENTATIVE
SAM COTTEN
DISTRICT 15



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ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES

February 26, 1987

The Honorable William Horn
Assistant Secretary for
Fish, Wildlife and Parks
U.S. Interior Department
Washington, D. C. 20240

Dear Secretary Horn:

I am writing on behalf of the House Resources Committee of the Alaska Legislature to present a set of questions about the possible Arctic National Wildlife Refuge land exchanges. The Committee appreciated the appearance of Bob Gilmore at our meeting February 13th on ANWR land exchanges. However, several issues remained unresolved at the hearing either because time ran out or because Mr. Gilmore was not prepared to discuss them. The Committee's next meeting on this issue is expected to occur during the week of March 9th; it would be our hope to have your responses in hand before this meeting occurs.

Land Exchange Contracts

With regard to the exchange contracts, we understand that a negotiating session is occurring in Washington this week, and that the documents produced so far are not available for public distribution. We also are led to understand that the contracts will not be made available to the public until after they are completed and perhaps signed. I encourage you to allow the release of current draft documents related to the exchange proposals, as repeatedly requested by representatives of the State of Alaska.

From our review of the state's comments on the draft contracts, and from discussion at the committee meeting last week, there appear to be major unresolved issues that should be considered in the negotiations. These include:

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February 26, 1987

(a) Overriding revenue retention for the State of Alaska. According to Mr. Gilmore the negotiations would have to be redirected, and draft agreements and appraisals would have to be adjusted, to protect the State's existing entitlement to oil and gas revenues from public lands in Alaska. Senator Murkowski has supported the concept of retained revenue for the State. The State should not be expected to agree to land exchanges that could remove the best geologic structures from public ownership unless the State is assured of revenue protection. Has the Interior Department revised the agreements and appraisals to include this provision; if not, why?

(b) We understand that Interior is proceeding with the exchange of ANWR lands claimed by the State of Alaska on grounds of navigability, and that some lands claimed by the State may be included among trade packages offered by Refuge inholders. What consideration is being provided for these claims in the contracts?

(c) The issue of ANCSA 7(i) subsurface revenue sharing has been raised with regard to trade lands already acquired by the Arctic Slope Regional Corporation in ANWR. Will the trade lands within the proposed ANWR coastal plain exchanges be subject to 7(i)? Will any provision be made in these contracts for subsurface revenue sharing? If not, how will disputes be resolved in the future?

(d) The agreement is reported to contain a provision allowing the original inholder to retain a subsistence easement. What are the reasons for including this provision? How does it affect the value of the inholdings? Does it protect other hunting and fishing interests?

(e) Mr. Gilmore was unable to describe a reported contractual provision allowing some corporations to rescind an exchange after exploring ANWR tracts for oil and gas. The inclusion of such a provision seems contradictory, if the purpose of the exchanges is to acquire and hold valuable Refuge inholdings in perpetuity. What is the reason for the rescission clause? How is it structured?

(f) Mr. Gilmore stated that the contract will waive ANILCA Title XI standards for access across ANWR lands. How will access rights and needs be protected, particularly on lands that lie in important transportation corridors?

Public Process

As one legislator stated at the House Resources Committee meeting, there appears to be a stampede underway to accomplish

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the proposed land trades, even though basis documentation, planning, and public review are incomplete or unavailable. Proponents of the land exchanges, including representatives of ANCSA corporations and Interior, have said that there are political advantages to moving forward with the land trades now so that they can be put before Congress soon after the 1002(h) study is presented. What public process does Interior intend for the proposed agreements?

Appraisals

The appraisal process for affected lands is very unclear, but information provided to date indicates that the process allows for a large amount of discretion and guesswork in the establishment of both subsurface ANWR values and the value of surface acreage of other Refuge inholdings. Mr. Gilmore stated that the BLM's ANWR subsurface appraisal "needs to go through several levels of approval (at Interior) in Washington" before it will be available. He also said inholdings cannot be appraised by standard procedures alone because these do not allow for consideration of wildlife (i.e. public interest) values, and that "any value over and above (the standard appraised value) will be determined by negotiation between the Department and the Native corporations." Mr. Gilmore said that the Department expects to "know precisely" what the inholdings are worth based on highest and best use and future value, as opposed to present value for ANWR subsurface. Please describe the appraisal process for both surface acreage and subsurface oil and gas values, including the discretion that may be exercised within the Secretary's Office. Will the appraisal process and negotiations be documented? Is there a written appeal process for participants? What considerations and criteria will guide the Department in the negotiations to establish surface values?

Inclusion of National Park Inholdings

Mr. Gilmore stated that the exchanges have proceeded "a long way down the road," but that he doesn't think it is too late to include National Park lands in this exchange proposal. The State of Alaska has been approached by the Park Service numerous times since the passage of ANILCA toward the purpose of eliminating state-owned inholdings in Alaska parks, including Denali and Wrangells-St. Elias. Acquisition of some of these lands by the Interior Department would appear to be in the national interest. Can you explain why the Department's only interest at this time centers on acquisition of Refuge inholdings? Has the Department established a priority list for Refuge and Park inholdings throughout Alaska, ranking them as a single group? Has the Department

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reviewed all inholdings in Alaska parks and refuges to be certain that this apparent opportunity to acquire state or private inholdings is best used? Are the planned acquisitions consistent with applicable Refuge management plans?

Tract Selection

Even though tract selection may occur in the next four to six weeks, it seems that the ANWR tracts have not yet been identified. Mr. Gilmore stated that virtually all of the coastal plain would be available for exchange. In the past, we have heard that anywhere from 25,000 to 250,000 acres may be exchanged and we are informed that Senator Stevens has pressed for agreement that no geologic structure will be traded in its entirety. Obviously, the location of the trade tracts will be very important; 250,000 acres would more than encompass the Prudhoe Bay Unit Participating Area, and spread across the coastal plain could segregate the most promising geologic structures. When will the public know which tracts may be traded? Why has the Department chosen to keep the tract identification and selection process secret? How will conflicts be resolved between parties which nominate and seek to obtain the same tract?

State of Alaska Participation

When asked whether he regarded the State of Alaska as a supporter or advocate of the exchanges, Mr. Gilmore stated that it is "my impression from the sincerity of the negotiations and the people involved in the negotiations...that the state is proceeding as an active, interested participant in the exchange." On the other hand, the State has indicated that it is not committed to the exchange process and does not at this time endorse the concept of trading ANWR subsurface to eliminate inholdings in other Refuges. Is Interior fully aware of the State's land trade statute (AS 38.50), which requires legislative approval of any exchange agreement before it can be finalized?

Prior Existing Rights


One committee member raised the question of the State of Alaska's prior existing rights to the ANWR subsurface. As you know, the State regards its entitlement to 90% of oil and gas revenues produced in Alaska refuges as part of the solemn compact between Alaska and the United States leading to Alaska Statehood. This revenue entitlement is very important to the people of the State. Mr. Gilmore stated that he believes that Congress will attempt to reduce this entitlement to 50% on the basis of the NPRA model, and that this would serve as the basis for any retention mechanism preserving the State's

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entitlement. Is it the Interior Department's view that this existing right may be traded away without the State of Alaska's concurrence?

Again, we appreciate the willingness of Interior Department officials to respond to the Legislature's questions and concerns. We will contact you when the Committee schedules its next meeting on the proposed ANWR trades.

Sincerely,


Representative Sam Cotten
Co-Chairman, House Resources Committee

cc: Governor Steve Cowper
Senator Frank Murkowski
Senator Ted Stevens
Representative Don Young
Bob Gilmore, USFWS
Boyd Evison, USNPS



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

March 6, 1987

HORN → COTTEN
MAR 87
see p. 5 on
overriding
royalties

Honorable Sam Cotten
Co-Chairman, House Resources Committee
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811-0101

Dear Mr. Cotten:

Thank you for your letter of February 26, 1987 on behalf of the House Resources Committee, Alaska State Legislature. Your letter raises a number of questions about the Arctic National Wildlife Refuge (ANWR) land exchanges now under consideration by the Department of the Interior, following the appearance of Fish and Wildlife Service Regional Director Robert Gilmore before your committee on February 13, 1987. We appreciate the opportunity to provide you with more information about these exchanges.

As you know, native corporations own millions of acres of land within national wildlife refuges and parks throughout Alaska. Some of these lands have unsurpassed fish and wildlife values which warrant their acquisition for inclusion in the national wildlife refuge and park systems. At the same time, many of the native corporations, which are organized under the business for profit laws of the State of Alaska, are under pressure from their shareholders to put their lands to economic use. Knowing of federal budgetary constraints and the study underway pursuant to section 1002 of the Alaska National Interest Lands Conservation Act (ANILCA), several native corporations have, during the past two years, offered their inholdings in exchange for oil and gas interests in ANWR. At the same time, the State of Alaska also expressed some interest in possibly participating in the ANWR land exchanges, and the State was invited to participate via personal communication with then Governor Bill Sheffield in 1985.

Because of this unique opportunity to acquire vast acreages of desirable lands from a relatively few landowners, I decided that these offers were worth pursuing. However, although we have the administrative authority to consummate such exchanges under section 1302(h) of ANILCA, these exchanges will not be implemented without congressional approval. We have also made the commitments that no ANWR exchange recommendation will be forwarded to the Secretary for his consideration until he has independently determined what management regime to recommend for the future administration of the ANWR's coastal plain as a part of his section 1002(h) report and that no ANWR exchange will be forwarded to Congress, if agreed to by the Secretary, for its approval before the Secretary's 1002(h) report is submitted to Congress. We have consistently informed the

native corporations with whom we are discussing the ANWR exchanges and other interested persons that this is how we intend to proceed.

We have had active exchange negotiations with the native corporations and the State during the past several months. These negotiations have been aimed at drafting a satisfactory model contract which could serve as the basis for a series of bilateral exchange agreements. Because of the number of potential land exchange participants, the variety of entities involved, and the innovative nature of the concepts being discussed, this has proved to be a lengthy, complex and difficult task. Although Governor Steve Cowper announced the State's withdrawal from the negotiations as a potential exchange participant on February 27, 1987 (an announcement that I find disappointing), the negotiations with the native corporations are continuing.

Your first question relates to the public availability of the draft documents currently being developed. Elsewhere you request further information on the public review process contemplated for the exchanges. We appreciate your interest and the interest of various members of the public in these documents and we fully intend to make them available for public review before the exchange agreements are signed. However, the release of the draft contracts for public review prior to reaching an agreement in principle with the parties on what interests are to be exchanged and how they are to be enjoyed would be premature and would undermine the good faith efforts now underway to draft mutually acceptable terms. It will not serve the public to go forward with a process for public involvement until the major ingredients of the ANWR exchanges have at least been scoped out. While good progress has been made in delineating the lands proposed for acquisition by the Department, the particular subsurface tracts within ANWR that will be proposed for disposal through the exchange process have yet to be identified.

Because the exchanges being contemplated involve the trading of very dissimilar types of interests, i.e., essentially surface interests for subsurface interests, the parties seek to use value as the basis for the exchanges. The approach being used to ascribe value to inholdings being offered for exchange is described by my February 20, 1987 memorandum, a copy of which is enclosed for your reference. In addition, the Fish and Wildlife Service will soon have completed fair market value appraisals on all inholdings being offered, as well as classifications of all of the parcels involved based on their public interest attributes. The Bureau of Land Management is determining values for subsurface tracts in ANWR using the same methodology that it would use for evaluating tract values for lease sales. The valuation of the surface inholdings is subject to negotiation because we can only acquire lands from native corporations on a willing-seller basis, but the valuation of ANWR subsurface tracts is not. Both of these valuation processes will be documented for our administrative record.

The native corporations have consistently informed us that they cannot evaluate whether they will really want to go forward with the exchanges until they learn which ANWR tracts they might be able to acquire. Thus, the identification of the ANWR tracts to be proposed for exchange is a preliminary task that needs to be done before the parties will be able to represent to the public whether they desire to proceed with the exchange process. Consequently, the earliest time that we anticipate releasing the draft exchange agreements is after the identification of the particular ANWR tracts that would be proposed for exchange. Then, if the native corporations represent to us that they wish to continue pursuing the exchanges, the Department will have concrete exchange proposals worthy of public review. At that point, we intend to provide for public review of the exchange agreements prior to their consideration and signature by the Secretary. During the interim, if you find that you have any further questions, we will be pleased to discuss any of the concepts now under consideration as part of the exchange process.

No firm date has yet been established for the identification of the ANWR tracts sought by the native corporations with whom we are now dealing. We are still in the midst of designing the procedures that will govern tract identification. In doing this, we are mindful of the need to design a simple process which safeguards the public's interest and is fair to the potential exchange participants. We are seriously considering making some tracts unavailable for identification. In addition, we recognize that more than one corporation might identify the same ANWR tract for acquisition and, therefore, we are looking at several alternative means of resolving such conflicts. We have informed each of the potential exchange participants that the conditions precedent to the commencement of ANWR tract identification are (1) an agreement in principle by the Department and the participant on the value, legal description and acreage of the lands that it proposes to convey to the Department through exchange, (2) an agreement in principle on the basic terms of the exchange agreement and operating stipulations designed to protect environmental values, and (3) agreement on the ground rules to be used in identifying and allocating ANWR tracts to the various potential exchange participants. All of these matters are still subject to active discussions with the native corporations.

Your letter also raises a number of questions about certain substantive elements of the model exchange agreement now being discussed. The proposed exchanges are contingent upon congressional approval, as well as enactment of legislation opening the coastal plain to further oil and gas activities. One of our objectives has been to assure coordination in the exercise of whatever rights might be granted by contract and those rights granted under whatever leasing or other oil and gas program might be authorized by Congress so as to afford a greater measure of resource protection for the coastal plain. Consequently, we are seeking a contractual waiver of the normal access rights granted under Title XI of ANILCA. In this way, we hope to exercise greater

control over access to areas within ANWR so as to avoid unnecessary adverse effects and minimize unnecessary duplication of facilities, while incorporating sufficient provisions into the contract to provide access reasonably necessary to the enjoyment of the rights proposed to be conveyed.

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Your letter suggests that you misunderstand the purpose of the rescission provisions being discussed with the native corporations. Rather than being contrary to our exchange objectives, they provide an incentive to those native corporations which are willing to exchange virtually all of their existing refuge inholdings in return for appropriate risk-sharing provisions. We have attempted to be responsive to those needs by drafting two separate rescission options which would enable a corporation which chooses to incorporate them (a) to rescind due to institutional frustration beyond its control and (b) to rescind for failure of consideration. These options are not open-ended, and they are not cost-free. They do not guarantee that an exchange participant will fully recover the value of its inholdings in the form of oil or gas revenues. Their invocation will be cut off by certain events.

Any party that wishes to avail itself of rescission due to frustration will have to agree, as consideration for that option, to the permanent retention by the United States of traded inholdings equal in value to whatever net revenues it has received in the interim as a result of its participation in the exchange. The required consideration for rescission for failure of consideration is the permanent retention by the United States of a substantial percentage of traded inholdings, which may increase further based on net revenues, plus an overriding royalty in favor of the United States. These two forms of consideration may be regarded as insurance premiums for the Department's willingness to share the risks with those corporations that do not wish to risk losing essentially all of their land assets through the ANWR exchange process.

Where consistent with statutory refuge purposes, we do propose to enable the exchange participants to reserve a "subsistence easement" for the benefit of local residents in the lands being conveyed to the United States. While the terms of this easement are still being worked out, an attempt is being made to assure continued access to the lands being conveyed to the United States so as to enable the enjoyment of a non-exclusive, preferential right to engage in hunting, fishing and other gathering activities. Inholding values will be discounted for those parcels where such interests are retained. We are willing to entertain this approach for several reasons. First, it is not unlike what we have done with acquisitions from hunting clubs elsewhere in the United States. Second, our acquisition of these inholdings, even though subject to such an easement, will mean that other hunting and fishing interests will be enhanced by eliminating the prospect that these lands could be closed by the corporations to public access. Third, the exercise of such reserved interests will remain subject to State hunting and fishing laws and regulations.

The inholdings currently under active consideration for acquisition by the Department would not trigger revenue sharing amongst the regional native corporations pursuant to section 7(i) of the Alaska Native Claims Settlement Act (ANCSA). Again, there are several reasons for this, including the fact that we are seeking to acquire surface interests with wildlife values. We are still studying the prospect of including a subsurface component in the ANWR exchanges, although we are concerned that doing so might work contrary to our exchange objectives (i.e., subsurface interests offer no wildlife values per se). In the context of the current exchange proposals, we are unaware of any significant subsurface resources that might be developed in the foreseeable future. If there are developable subsurface resources available, their exchange value, if high, may inhibit our exchange objectives by reducing the amount of ANWR interests that might otherwise be available for the acquisition of surface inholdings.

Finally, in addition to the above matters, your letter addresses several issues of special concern to the State of Alaska. These include revenue sharing, the State's claim to the title of certain submerged lands within ANWR and elsewhere, and the exchange of State-owned park inholdings. In several places, you suggest that the State has a vested interest in receiving 90% of the proceeds from the mineral development of Federal lands in Alaska. The only existing mineral revenue-sharing commitment made to the State is that found in section 28 of the Alaska Statehood Act. That originally gave the State 90% of the proceeds earned under the Mineral Lands Leasing Act or the Alaska Coal Lands Leasing Act. The latter statute has been repealed. Proceeds derived from exchanges, disposals or leases under other authorities are not covered by section 28 of the Alaska Statehood Act. This is why Congress had the discretion to set the revenue-sharing formula at 50% in the legislation that authorized leasing of the National Petroleum Reserve-Alaska, Pub. L. No. 96-514 (Dec. 12, 1980). Congress possesses similar discretion if it chooses to enact new legislation opening ANWR to oil and gas activities.

disputed by Katz 3/24/87 to Cotton

Your letter further suggests that we should retain an overriding royalty for the benefit of the State in the exchanges with the native corporations, apparently to protect the State's revenue-sharing expectations. There has been no attempt to create a contractual provision allowing for any form of "overriding revenue retention" for the State. Notwithstanding comments provided at the February 13th hearing before your committee, the State has never formally requested consideration of such a retained revenue feature. In any event, the Department lacks the authority to confer a financial benefit, such as your letter suggests, administratively through contract without consideration from the State. Such a benefit would be tantamount to a grant to the State and therefore would require Federal legislation. Of course, we were hopeful that, had the State chosen to be an active exchange participant, an exchange of oil and gas interests within ANWR for State inholdings elsewhere in Alaska would not only have enabled us

to meet our acquisition objectives, but also would have provided the State with an opportunity to generate unshared revenues by leasing the ANWR interests that it would acquire through exchange.

Your letter alludes to the possibility that submerged lands claimed by the State on the grounds of navigability might be involved in the ANWR exchanges, even if the State is not an exchange participant. The submerged lands beneath navigable inland waters within ANWR, if there are any, have been reserved since early 1943 and, thus, were retained in Federal ownership under the terms of the Submerged Lands Act, which was incorporated by reference in section 6(m) of the Alaska Statehood Act. All of the coastal plain was within the boundaries of the withdrawal made by Public Land Order 82 (January 22, 1943), which was not repealed until December 6, 1960, well after statehood, by Public Land Order 2215. The entirety of the coastal plain was withdrawn as part of ANWR on December 6, 1960 by Public Land Order 2214. Accordingly, at no time since January 22, 1943 has any part of the coastal plain been unreserved and, therefore, no submerged lands could have passed to the State at statehood. For this reason, we plan to proceed in our exchange negotiations without acknowledging the State's submerged lands claim or the existence of any inland navigable waters in the coastal plain. Both the Department's and the State's representatives in the exchange negotiations have, however, notified the native corporations of the State's claims. Moreover, if the native corporations are concerned about the State's claims, they have the means through the identification process of avoiding ANWR tracts claimed by the State.

Elsewhere in Alaska, the native corporation may in some instances purport to convey to the United States submerged lands which are ultimately claimed by the State. We are willing to give valuable consideration to the corporations for these lands because, even if it should turn out that they belong to the State, the corporations are willing to have their acreages charged against their ANCSA entitlements. Thus, the corporations are forgoing their opportunity to obtain additional upland acreages where they have existing selections in refuges and elsewhere should the State's claims be sustained. Originally, the State also objected to our willingness to attribute the value of these lands to the corporations because the State thought it would work to the State's competitive disadvantage during the ANWR tract identification process. However, as the Governor has withdrawn the State from the exchange process, this fear should no longer be a consideration in your evaluation of the ANWR exchanges.

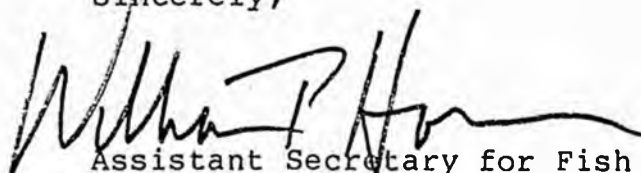
Several of the parties to the ANWR exchange negotiations, including the State of Alaska, have expressed an interest in trading their park inholdings for interests within ANWR. The Department has informed each of those who have expressed such an interest that it does not wish to close the door to such park acquisitions, but that, inasmuch as the lands being proposed for disposal are coming from a refuge, refuge acquisition priorities ought to be accommodated first. Nonetheless, the Department has been, and

continues to be, interested in the acquisition of State-owned park inholdings. Indeed, we have made numerous, unsuccessful overtures to the State since 1982 to effect such exchanges (e.g., "McCarthy" exchange, Dunkle Mine exchange, Katmai/Kamishak exchange, etc.), and priority acquisition lists have been developed for both parks and refuges in Alaska. However, our administrative capacity to process several major exchanges simultaneously is also limited. Therefore, we have informed the State, as well as other landowners, that park acquisitions will receive affirmative consideration if any subsequent ANWR exchange efforts are undertaken. Unfortunately, the State's withdrawal from the current ANWR exchange negotiations appears to make the prospect of obtaining State-owned park inholdings through an ANWR exchange unlikely.

Of course, we are aware of the requirements in AS 38.50 for review by the Alaska State Legislature of exchanges involving State lands. Indeed, AS 38.50 was discussed by the State's representatives with our negotiating team during the ANWR exchange negotiations. Should the State participate in future exchanges, we fully expect that the Department of Natural Resources and the Governor's Office would satisfy the requirements of State law.

Thank you again for your letter. We have tried to answer your questions clearly so that you will have a better understanding of how we are proceeding. The concepts described here reflect our current thinking, but the ultimate positions to be taken by the Department regarding the ANWR exchanges have yet to be determined. Please do not hesitate to contact me if you have further questions.

Sincerely,



Assistant Secretary for Fish and
Wildlife and Parks

Enclosure

cc: Governor Steve Cowper
Senator Frank Murkowski
Senator Ted Stevens
Representative Don Young
Senator Jack Coghill
Regional Director Robert Gilmore, FWS
Regional Director Boyd Evison, NPS
John Katz, Director for State/Federal Relations and Special
Counsel to the Governor of Alaska
Walter Ebell, Esq.
Authur Lazarus, Esq.
Alan Mintz, Esq.
Mark Rindner, Esq.
William Timme, Esq.
James Wilkens, Esq.



United States Department of the Interior

OFFICE OF THE SECRETARY

WASHINGTON, D.C. 20240

February 20, 1987

Memorandum

To: Arctic National Wildlife Refuge Exchange Negotiating Team

From: Assistant Secretary for Fish and Wildlife and Parks *[Signature]*

Subject: Factors to Be Considered in the Valuing Non-federal Lands to Be Acquired by Exchange

This memorandum is to inform you of factors I will consider in the valuation of lands that are being offered in exchange for oil and gas interests in the coastal plain of the Arctic National Wildlife Refuge (ANWR).

The subject lands are owned by numerous Alaska Native Corporations and the State of Alaska and are located within the boundaries of 12 Alaska national wildlife refuges. The subject lands comprise approximately 2 million acres in aggregate.

In order to allow the preparation of proposed exchange contracts that will be subject to Secretarial approval (after the Secretary has made an independent decision on the ANILCA section 1002(h) report) and to Congressional approval, it is necessary to reach agreement in principle over values of the subject lands. These values will then be used as the basis for identifying tracts in the ANWR that the State and Native Corporations want to acquire through the exchange. The valuation of State and Native inholdings is a difficult task. The Fish and Wildlife Service (FWS) has undertaken fair market appraisals of these lands. These standard appraisals attempt to test the value of the lands for private investment purposes. The lands in question have not previously been on the market for sale and there are few comparable sales. Moreover, the lands impart public benefits, typically not reflected in market transactions.

A further problem in valuation is that the owners of the Native Corporations place a value on their lands that far exceeds their investment value. Sale of these lands would not only remove a source of financial wealth, but would permanently separate Native people from control over the fate of lands of deep cultural meaning.

The FWS, with its Congressional mandate as manager of the National Wildlife Refuge System, also places an intangible value on the subject lands for uses other than development. This value may, indeed, be quite significant as most of these lands contain unique, high value wildlife resources. Consequently, acquisition of the subject lands clearly will enhance the ability of the FWS to meet the Congressionally mandated purposes for the Alaska refuges. The lands being offered from within the boundaries of existing national wildlife refuges

in Alaska are an important portion of the outstanding inholdings that exist today primarily as a result of the Alaska Native Claims Settlement Act (ANSCA) and the Alaska National Interest Lands Conservation Act (ANILCA). In the Kodiak Refuge, for example, the lands to be acquired are essential to the life cycle of the Kodiak brown bear that the refuge was established to protect. Migratory bird habitats being offered as a part of the exchange are key to sustaining populations of worldwide significance, including those species showing dramatic population declines. These lands and resources associated with them are ~~critical to achieve the objectives set forth by Congress for these Conservation System Units.~~

Another consideration is that this opportunity is unique in that never before have so many lands containing such wide-ranging, diversified resources been simultaneously offered for acquisition by the United States for conservation purposes. The opportunity to acquire these lands may not occur again. Moreover, ~~the ability to acquire such enormous acreage scattered across Alaska in essentially one transaction provides significant administrative savings to the FWS.~~

The value I am seeking to determine is ~~essentially the negotiated price at which both the Native Corporations and the State as sellers, and the U.S. Government, as buyer, would be able to agree to the exchange being proposed. Unlike most acquisition situations in which the Department is involved, negotiated, mutually agreed upon, values are imperative here since the Department lacks authority to condemn the subject lands.~~ The Department cannot look to the courts to settle the question of the lands' exchange value.

In the past, the value of some Alaska Native Corporation lands has been determined by Congress. These valuations can be used as precedents for valuation of the subject lands, and it is appropriate to accord considerable weight to the prior judgments of the legislative branch.

In prior discussions, I have outlined four primary factors which I am persuaded are important: (1) fair market values, (2) environmental/public interest values, (3) transactional values, and (4) Congressional "comparables" or precedents. The specific factors which relate to these are:

- A. their ~~fair market value appraisals;~~
- B. their ~~unique environmental qualities and productivity;~~
- C. their ~~recreational value;~~
- D. the ~~economic value of associated resources;~~
- E. the ~~threat of inconsistent land uses;~~
- F. the effect of any ~~easements and other interests retained;~~
- G. the effect of section 22(g) and ~~14(n)~~ restrictions as applicable,
- H. the statutory ~~prohibition against condemning the lands;~~
- I. the unique opportunity to acquire the lands from a few landowners, including the cumulative size of the proposals being offered;

9 of 11

- J. the management efficiencies to be gained; and
- K. the established Congressional precedents.

Congress has recognized the unique problems associated with land exchanges in Alaska. In the other 49 states, land exchanges are normally negotiated on the basis of equal value as determined by standard appraisal practices focusing solely on tangible economic factors. In Alaska, Congress has twice authorized exchanges to occur on the basis of "public interest" values: section 22(f) as amended of ANSCA in 1976, and section 1302(h) of ANILCA in 1980. Using nontraditional valuation procedures for the negotiations now being undertaken is clearly consistent with the will of Congress.

Some evidence of public interest values which Congress considered appropriate is found in earlier legislation authorizing or requiring the purchase of native lands in Alaska. These legislative precedents are scattered across the State; each block of land is different from the other and many are different from the lands now being offered. Therefore, these values should not be deemed as controlling but simply as providing guidance.

On January 2, 1976, Public Law 94-204 became law. Section 12 of that act approved a three-way settlement among Cook Inlet Region, Inc. (CIRI), the State of Alaska and the United States. The underlying purpose of the settlement with CIRI was to clear the CIRI and village claims from around Lake Clark in order to expand the Congressional options in creating Lake Clark National Park (a goal very similar to our present effort to explore means of reducing National Wildlife Refuge System inholdings). This is an extremely complicated settlement. However one part of the settlement does provide affirmative guidance. After naming numerous specific tracts that would go to CIRI, they were guaranteed receipt of 138,240 acres of land with economic opportunities or its equivalent in higher value lands that would be based on acre-equivalents of \$500 per acre. The original settlement also provided that a substantial portion of the lands to go to CIRI were to come from remote interior areas well away from any cities or villages. Even these remote areas proved difficult to transfer, so Congress authorized the liquidation of those areas at a value of \$250 an acre to be used in purchasing property in the lower 48 states.

In Section 1417 of ANILCA, Congress mandated the acquisition of a minimum of 8000 acres of important sea bird habitat on islands owned by the village corporations representing the communities on St. Paul and St. George Islands, Alaska for \$5.2 million. Under the subsequent negotiations between the United States and the two village corporations, the surface estate in 8,247 acres was acquired at an average cost of \$630 per acre. Congress appropriated the money for this acquisition.

A third example was the proposed legislation to purchase all of the inholdings in the Kodiak Refuge from Koniag and its villages. That legislation proposed to exchange bidding rights on Outer Continental Shelf leases for refuge lands. HR 6471 passed the House of Representatives on September 30, 1982, but the 97th Congress expired before the Senate took action. The House passed the measure after being advised in the supporting committee report that the lands might be valued at \$600 per acre.

From the above examples we have seen Congressionally approved values that range from \$250 per acre to \$630 per acre. Numerous other substantial land transactions have been approved by Congress involving thousands of acres of Native, State and Federal land without the benefit of land appraisals or specific valuations (i.e., Title XIV of ANILCA).

In summary, [REDACTED] and [REDACTED] being offered in this exchange [REDACTED] through negotiations [REDACTED] intent to [REDACTED] on the public interest attributes ascribed to the properties and the Congressional process described above. The negotiations are safeguarded by our requirement for Congressional review and approval of these exchanges, thus assuring the broadest possible public scrutiny concerning the ultimate value of the resources to be acquired.

KATZ → COTTEN 3/87
overriding royalties



STEVE COWPER
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
WASHINGTON, D.C.

March 24, 1987

The Honorable Sam Cotten
Co-Chairman, House Resources Committee
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811-0101

Dear Sam:

In correspondence to you dated March 6, 1987, Assistant Secretary of the Interior Bill Horn stated with respect to the possibility of the State's receiving an overriding royalty or other retained interest in oil and gas rights transferred to Native Corporations in the Coastal plain of the Arctic National Wildlife Refuge (ANWR) that: "Notwithstanding comments provided at the February 13th hearing before your committee, the State has never formally requested consideration of such a retained revenue feature."

Perhaps I do not know what Bill meant by the word "formally." If he meant that the State did not chisel its request for an overriding royalty into the cornerstone of the U.S. Department of the Interior, then he is correct. If he means virtually anything else, Bill is wrong.

In fact, in almost every meeting and telephone conversation with Assistant Secretary Horn over a several month period, we requested the inclusion in any ANWR land trades of an overriding royalty which would help compensate the State for the potential loss of its 90-10 revenue share under the Mineral Leasing Act of 1920. Since Bill is the principal policy person (other than the Secretary) at Interior with responsibility for ANWR, and since his staff indicated that the question of an overriding royalty is a major policy issue within Bill's purview and not theirs, we concentrated our advocacy efforts at his level on numerous occasions. It is my understanding that members of the Alaska Congressional delegation have also discussed the overriding royalty issue with the Assistant Secretary.

On each occasion when we raised the matter of an overriding royalty, Bill's response was in the negative. He said that to grant the State such a royalty would increase the amount of oil and gas interests in ANWR which must be conveyed out