

ALASKA LAND BANK PROTECTION

SEPTEMBER 17, 1996.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. YOUNG of Alaska, from the Committee on Resources,
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 2505]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (H.R. 2505) to amend the Alaska Native Claims Settlement Act to make certain clarifications to the land bank protection provisions, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. AUTOMATIC LAND BANK PROTECTION.

(a) **LANDS RECEIVED IN EXCHANGE FROM CERTAIN FEDERAL AGENCIES.**—The matter preceding clause (i) of section 907(d)(1)(A) of the Alaska National Interest Lands Conservation Act (43 U.S.C. 1636(d)(1)(A)) is amended by inserting “or conveyed to a Native Corporation pursuant to an exchange authorized by section 22(f) of Alaska Native Claims Settlement Act or section 1302(h) of this Act or other applicable law” after “Settlement Trust”.

(b) **LANDS EXCHANGED AMONG NATIVE CORPORATIONS.**—Section 907(d)(2)(B) of such Act (43 U.S.C. 1636(d)(2)(B)) is amended by striking “and” at the end of clause (ii), by striking the period at the end of clause (iii) and inserting “; and”, and by adding at the end the following:

“(iv) lands or interest in lands shall not be considered developed or leased or sold to a third party as a result of an exchange or conveyance of such land or interest in land between or among Native Corporations and trusts, partnerships, corporations, or joint ventures, whose beneficiaries, partners, shareholders, or joint venturers are Native Corporations.”.

(c) ACTIONS BY TRUSTEE SERVING PURSUANT TO AGREEMENT OF NATIVE CORPORATIONS.—Section 907(d)(3)(B) of such Act (43 U.S.C. 1636(d)(3)(B)) is amended by striking “or” at the end of clause (i), by striking the period at the end of clause (ii) and inserting “; or”, and by adding at the end the following:

“(iii) to actions by any trustee whose right, title, or interest in land or interests in land arises pursuant to an agreement between or among Native Corporations and trusts, partnerships, or joint ventures whose beneficiaries, partners, shareholders, or joint venturers are Native Corporations.”.

SEC. 2. RETAINED MINERAL ESTATE.

Section 12(c)(4) of the Alaska Native Claims Settlement Act (43 U.S.C. 1611(c)(4)) is amended—

(1) by redesignating subparagraphs (C) and (D) as subparagraphs (D) and (E), respectively, and by inserting after subparagraph (B) the following new subparagraph:

“(C) Where such public lands are surrounded by or contiguous to subsurface lands obtained by a Regional Corporation under subsections (a) or (b), the Corporation may, upon request, have such public land conveyed to it.”; and

(2) in subparagraph (D) (as so redesignated), by striking “(A) or (B)” and inserting “(A), (B), or (C)”.

SEC. 3. ELIM NATIVE CORPORATION LAND RESTORATION.

(a) WITHDRAWAL AND AVAILABILITY FOR SELECTION.—The lands described in subsection (b) are withdrawn from disposition under the public land laws, entry or appropriation under the mining laws of the United States, and the operation of the mineral leasing laws of the United States, subject to valid existing rights, for a period of one year from the date of enactment of this Act, for selection by the Elim Native Corporation under this section.

(b) LANDS DESCRIBED.—The lands described in this section are a parcel of land in the vicinity of Elim, Alaska, at approximately latitude 64 50 N. Longitude 162 00 W, more particularly described as follows:

Beginning at the point of intersection of line 3–4, U.S. Survey No. 2548 with the protracted West Boundary of T8S, R18W KRM, Alaska;

Thence North, along the west boundary of the aforementioned township, approximately 4½ miles to the protracted position for the corner of sections 1, 6, 7, and 12;

Thence Northeasterly, parallel with line 4–3 of U.S. Survey No. 2548, approximately 20½ miles, to a point;

Thence East approximately 6 miles to corner no. 3 U.S. Survey No. 2548;

Thence Southwesterly along lines 3–4, U.S. Survey 2548 approximately 27½ miles to the point of beginning, containing, 52,799.3 acres, more or less.

(c) AUTHORIZATION TO SELECT LANDS; RESERVATION OF EASEMENT.—The Elim Native Corporation is authorized to select the lands described in subsection (b) to satisfy its land entitlements under section 19(b) of the Alaska Native Claims Settlement Act (43 U.S.C. 1618(b)). The Secretary is authorized to receive, adjudicate and convey the lands to the Elim Native Corporation subject to (1) valid existing rights, and (2) an easement reserved to the United States for the benefit of the public. An easement in the lands shall be reserved to the Iditarod National Historic Trail.

(d) WITHDRAWAL AND SELECTION OF ADDITIONAL LANDS.—The Secretary is authorized to withdraw, and Elim Native Corporation is authorized to select, within 18 months after the date of the enactment of this Act additional lands adjacent to the lands withdrawn by subsection (a) to fulfill Elim Native Corporation’s land entitlements equal to the total acreage of the Norton Bay Reservation as withdrawn by Executive Order No. 2508, dated January 3, 1917.

SEC. 4. PROPOSED AMENDMENT TO PUBLIC LAW 102-415.

Section 20(f) of the Alaska Land Status Technical Corrections Act of 1992 (106 Stat. 2129) is amended by adding at the end of the following new paragraph:

“(4) The Region shall be deemed to have 3,250 acres of subsurface entitlement pursuant to this section, which entitlement shall be satisfied in the manner prescribed for the Region in section 14(h)(9) of the Alaska Native Claims Settlement Act (43 U.S.C. 1613(h)(9)).”.

SEC. 5. CALISTA CORPORATION LAND EXCHANGE.

(a) CONGRESSIONAL FINDINGS.—Congress finds and declares that—

(1) the land exchange authorized by section 8126 of Public Law 102-172 should be implemented without further delay;

(2) lands and interests in lands in the exchange are within the boundaries of the Yukon Delta National Wildlife Refuge established by the Alaska National

Interest Lands Conservation Act (ANILCA) and include wetlands, grasslands, marshes, and riverine and upland fish and wildlife habitat lands, which represent the premier habitat area for waterfowl and other birds in the Pacific and other flyways—

(A) for nesting, breeding, and staging grounds for countless thousands of migratory waterfowl, including species such as Spectacled Eider, Tundra Swan, White-fronted Goose, many song birds and neotropical migrants, Harlequin Duck, Canvasbacked Duck, Snow Goose, several species of diving and dabbling ducks, Cackling and other subspecies of Canada Geese, and Emperor Goose; and

(B) as habitat for other wildlife and fish such as wolf, brown and black bear, moose, caribou, otter, fox, mink, musk ox, salmon, grayling, sheefish, rainbow trout, blackfish, pike, and dolly varden;

the acquisition of which lands and interests in lands would further the purposes for which the refuge was established by ANILCA;

(3) the Yukon-Kuskokwim Delta Region is burdened by some of the most serious and distressing economic, social, and health conditions existing anywhere in the United States, including high incidence of infant mortality, teenage suicide, hepatitis, alcoholism, meningitis, tuberculosis, and unemployment (60 to 90 percent);

(4) the Calista Corporation, the Native Regional Corporation organized under the authority of the Alaska Native Claims Settlement Act (ANCSA) for the Yupik Eskimos of Southwestern Alaska, which includes the entire Yukon Delta National Wildlife Refuge—

(A)(i) has responsibilities provided for by the Settlement Act to help address social, cultural, economic, health, subsistence, and related issues within the Region and among its villages, including the viability of the villages themselves, many of which are remote and isolated; and

(ii) has been unable to fully carry out such responsibilities; and

(B) the implementation of this exchange is essential to helping Calista utilize its assets to carry out those responsibilities to realize the benefits of ANCSA;

(5) the parties to the exchange have been unable to reach agreement on the valuation of the lands and interests in lands to be conveyed to the United States under section 8126 of Public Law 102-171; and

(6) in light of the foregoing, it is appropriate and necessary in this unique situation that Congress authorize and direct the implementation of this exchange as set forth in this section in furtherance of the purposes and underlying goals of the Alaska Native Claims Settlement Act and the Alaska National Interest Lands Conservation Act.

(b) LAND EXCHANGE IMPLEMENTATION.—Section 8126(a) of Public Law 102-172 (105 Stat. 1206) is amended—

(1) by inserting “(1)” after “(a)”; and

(2) by inserting after “October 28, 1991” the following: “(hereinafter referred to as ‘CCRD’) and in the document entitled, ‘The Calista Conveyance and Relinquishment Document Addendum’, dated July 16, 1996 (hereinafter referred to as ‘CCRD Addendum’)”;

(3) by striking “The value” and all that follows through “*Provided, That the*” and inserting in lieu thereof the following:

“(2) Unless prior to October 1, 1996, the parties mutually agree on a value of the lands and interests in lands to be exchanged as contained in the CCRD or the CCRD Addendum, the Secretary of the Treasury shall credit the property account to be established by subsection (c) with an amount determined by paragraph (5) of the CCRD Addendum. The”;

(4) in the last sentence, by inserting a period after “1642” and striking all that follows in that sentence; and

(5) by adding at the end the following new paragraph:

“(3) The amount credited to the property account is not subject to adjustment for minor changes in acreage resulting from preparation or correction of the land descriptions in the CCRD or CCRD Addendum or the exclusion of any small tracts of land as a result of hazardous materials surveys.”

(c) EXCHANGE ADMINISTRATION.—Section 8126(c) of Public Law 102-172 (105 Stat. 1207) is amended—

(1) by inserting “(1)” after “(c)”; and

(2) by inserting after “subsection (a) of this section,” the following: “upon conveyance or relinquishment of the remaining lands in the CCRD and the CCRD Addendum.”; and

(3) by adding at the end the following new paragraphs:

“(2) Notwithstanding any other provision of law, Calista Corporation may assign, without restriction, any or all of the account upon written notification to the Secretary of the Treasury and the Secretary of the Interior.

“(3) Calista will provide to the Bureau of Land Management, Alaska State Office, appropriate documentation to enable that office to perform the accounting required by paragraph (1) and to forward such information, if requested by Calista, to the Secretary of the Treasury as authorized by such paragraph.

“(4) For the purpose of the determination of the applicability of section 7(i) of the Alaska Native Claims Settlement Act (43 U.S.C. 1606(i)) to revenues generated pursuant to this section, such revenues shall be calculated in accordance with paragraph (4) of the CCRD Addendum.”.

SEC. 6. MINING CLAIMS.

Paragraph (3) of section 22(c) of the Alaska Native Claims Settlement Act (43 U.S.C. 1621(c)) is amended—

(1) by striking out “regional corporation” each place it appears and inserting in lieu thereof “Regional Corporation”; and

(2) by adding at the end the following: “The provisions of this section shall apply to Haida Corporation and the Haida Traditional Use Sites, which shall be treated as a Regional Corporation for the purposes of this paragraph, except that any revenues remitted to Haida Corporation under this section shall not be subject to distribution pursuant to section 7(i) of this Act.”.

SEC. 7. SALE, DISPOSITION, OR OTHER USE OF COMMON VARIETIES OF SAND, GRAVEL, STONE, PUMICE, PEAT, CLAY, OR CINDER RESOURCES.

Subsection (i)(1) of section 7 of the Alaska Native Claims Settlement Act (43 U.S.C. 1606(i)(1)) is amended—

(1) by striking “Seventy per centum” and inserting “(A) Except as provided by subparagraph (B), seventy percent”; and

(2) by adding at the end the following:

“(B) In the case of the sale, disposition, or other use of common varieties of sand, gravel, stone, pumice, peat, clay, or cinder resources made after the date of enactment of this subparagraph, the revenues received by a Regional Corporation shall not be subject to division under subparagraph (A). Nothing in this subparagraph is intended to or shall be construed to alter the ownership of such sand, gravel, stone, pumice, peat, clay, or cinder resources.”.

SEC. 8. ALASKA NATIVE ALLOTMENT APPLICATIONS.

Section 905(a) of the Alaska National Interest Lands Conservation Act (43 U.S.C. 1634(a)) is amended by adding at the end the following:

“(7) Paragraph (1) of this subsection and section (d) shall apply, and paragraph (5) of this subsection shall cease to apply, to an application—

“(A) that is open and pending on the date of enactment of this paragraph,

“(B) if the lands described in the application are in Federal ownership, and

“(C) if all protests which were filed by the State of Alaska pursuant to paragraph (5)(B) with respect to the application have been withdrawn and not reasserted or are dismissed.”.

SEC. 9. VISITOR SERVICES.

Paragraph (1) of section 1307(b) of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3197(b)(1)) is amended—

(1) by striking “Native Corporation” and inserting “Native Corporations”; and

(2) by striking “is most directly affected” and inserting “are most directly affected”.

SEC. 10. REPORT.

Within nine months after the date of enactment of this Act, the Secretary of the Interior shall submit to Congress a report indicating the actions taken in carrying out subsection (b) of section 1308 of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3198). The report shall also address the recruitment processes that may restrict employees hired under subsection (a) of such section from successfully obtaining positions in the competitive service. The Secretary of Agriculture shall cooperate with the Secretary of the Interior in carrying out this section with respect to the Forest Service.

PURPOSE OF THE BILL

The purpose of H.R. 2505 is to amend the Alaska Native Claims Settlement Act and the Alaska National Interest Lands Conserva-

tion Act to make certain clarifications to the land bank protection provisions, and for other purposes.

BACKGROUND AND NEED FOR LEGISLATION

The Alaska Native Claims Settlement Act (ANCSA) helped settle the aboriginal land claims of Alaska Natives. The goals of ANCSA were two fold: (1) to establish property rights of Native Alaskans in their aboriginal land, and (2) to secure an economic base for their long-term survival as a people. ANCSA created thirteen regional corporations, 200 village corporations and granted these entities 44 million acres and \$962.5 million to implement these goals.

In 1980, Congress enacted the Alaska National Interest Lands Conservation Act (ANILCA) to designate and conserve certain public lands in Alaska, including the designation of units of the National Park, National Wildlife Refuge, National Forest, National Wild and Scenic River and National Wilderness Preservation Systems.

This bill is a result of the legislative council of the Alaska Federation of Natives and Congress to address some of the technical problems which have arisen since passage of ANCSA and ANILCA. Two of these issues are discussed in further detail, below.

RESTORATION OF ELIM CORPORATION LANDS

By Executive Order 2508, January 3, 1917, President Woodrow Wilson set aside the Norton Bay Reservation "for the use of the United States Bureau of Education and of the natives of indigenous Alaskan race", including adjacent islands within three miles of the coast. This area contained 350,000 acres.

In 1919, Congress mandated that the withdrawal of public lands for use as Indian reservations could only be made by an Act of Congress. 43 U.S.C. 150, 41 Stat. 34. Congress in 1927 declared that no changes could be made in the boundaries of Executive Order reservations for the use of Indians except by an Act of Congress. 25 U.S.C. 398d, 44 Stat. 1347. The 1927 Act is applicable to Alaska. 70 I.D. 166 (1963). After the 1927 Act, President Herbert Hoover issued Executive Order 5207 which revoked approximately 50,000 acres of land from the Norton Bay Reservation for use of homesteading by ex-servicemen of World War I. No ex-servicemen applied for any land within the old Norton Bay Reservation. The Committee is somewhat puzzled by the apparent change of heart within this Administration in regard to the Elim 50,000 acre entitlement. When this issue was discussed during the 102d Congress, the Secretary of the Interior agreed that Elim was entitled to the 50,000 acres. See April 21, 1992, letter from Deputy Assistant Secretary for Land and Minerals Management to Chairman George Miller, Committee on Interior and Insular Affairs, in Appendix. The Administration is simply ignoring the fact that only Congress can revoke Reservation lands. Therefore, the Committee feels that Elim Native Corporation is entitled to the 50,000 acres and that the Administration should disregard Executive Order 5207 issued by President Hoover and restore the 50,000-acre Elim entitlement.

CALISTA CORPORATION LAND EXCHANGE

Section 5 of H.R. 2505, the Calista Corporation land exchange provision, would amend Section 8126 of Public Law 102-72, which authorized a land exchange between the United States and Calista Corporation. It would also provide for a limited exemption from the ANCSA 7(i) revenue sharing requirements for a portion of the value realized by Calista from the exchange, pursuant to a 1990 Mutual Assistance Agreement between Calista and other interested Alaska Native corporations.

The Calista region of Alaska is one of the poorest and most socially troubled areas in the Nation. The exchange was authorized to provide Calista with a means of economic self sufficiency in furtherance of the purposes of ANCSA. Under Section 8126, the Secretary of the Interior and Calista were to determine a mutually agreeable value for Calista's lands and interests which are to be exchanged, subject to a maximum per acre value of \$300. The two parties have been unable to arrive at a mutually agreeable value, however. Moreover, the Secretary's appraisals did not comply with the requirements of Section 8126 and as a result, in the Committee's opinion, significantly underestimated the value of Calista's lands and interests. Section 5 would eliminate this impasse by establishing a total value to be ascribed to Calista's lands and interests, as Congress has had to do in numerous other instances since 1976. See, Public Law 94-204; Public Law 99-664; Public Law 100-383; Public Law 102-415 and section 1417 of ANILCA.

In doing so Congress would simply be providing the figure which Calista and the Secretary of the Interior were unable to determine. The Committee is continuing to discuss the issue of what an appropriate value should be with Calista and the Secretary and it is expected that there will be further changes to the language of Section 5.

COMMITTEE ACTION

H.R. 2505 was introduced by Congressman Don Young (R-AK) on October 18, 1995. The bill was referred to the Committee on Resources. The Committee held hearings on March 19, 1996, and June 11, 1996, to hear testimony from the Administration, the Alaska Federation of Natives, Calista Native Corporation, Ahtna Native Corporation and Elim Native Corporation on the bill.

On July 17, 1996, the Committee met to consider H.R. 2505. Congressman Young offered an amendment in the nature of a substitute to reflect ongoing discussions and a partial resolution of several outstanding issues. The amendment was adopted by voice vote. The bill, as amended, was ordered favorably reported to the House of Representatives by voice vote in the presence of a quorum.

SECTION-BY-SECTION ANALYSIS

SECTION 1. AUTOMATIC LAND BANK PROTECTION

Section 1 would amend ANILCA to extend the automatic land protections to lands trades between village corporations, intra-regional corporation land trades and Native Corporation land trades with federal or state governments.

SECTION 2. RETAINED MINERAL ESTATE

Section 2 would allow a Native Regional Corporation the option of obtaining the retained mineral estate of the Native Allotments that are totally surrounded by ANCSA 12(a) and 12(b) land selections of the village corporations.

SECTION 3. ELIM NATIVE CORPORATION LAND RESTORATION

Section 3 would replace approximately 50,000 acres which were taken away from the people of Elim by an Executive Order in 1929. This provision would allow this land to be returned to the Elim people using Elim Native Corporation, a 19(b) ANCSA corporation for the village of Elim.

Section 3 was considered in the 102d Congress in H.R. 3157. At that time, the Elim land restoration provision was supported by the Administration and the Alaska Federation of Natives; however, the neighboring village of Koyuk objected on the land selection area boundaries. Due to the objection, the Elim provision was removed from H.R. 3157. The Alaska Federation of Natives and the village of Koyuk currently support this revised Elim land restoration provision.

The Committee is deeply disappointed in the inconsistency of the Department of the Interior with regard to the Elim land restoration provision and include in this report the Department of Interior's letter to the Honorable George Miller, Chairman of the Committee on Interior and Insular Affairs, dated April 21, 1992, outlining the Department's directive that the proposed amendment tie authority for conveyance of Elim's rightful additional acreage to some existing entitlement. Section 3 of H.R. 2505 does so. *See also*, the testimony of the Department of the Interior of March 19, 1996, on section 3 of H.R. 2505, attached in the appendix to this report.

SECTION 4. PROPOSED AMENDMENT TO PUBLIC LAW 102-415

Section 4 would amend Public Law 102-415 to grant subsurface rights to the Cook Inlet Region Corporation in fulfillment of their entitlement under 14(h)(2) of ANCSA.

SECTION 5. CALISTA CORPORATION LAND EXCHANGE

Section 5 would direct the Secretary of the Interior to determine the value of Calista Corporation's lands by a given set of minimum values for the lands and interests. Further, any value realized by Calista from the exchange would be exempted from the 7(i) revenue sharing provision of the Alaska Native Claims Settlement Act.

SECTION 6. MINING LAWS

Section 6 would amend section 22(c) of ANCSA to include the Haida Corporation in the transfer of the administration of certain mining claims.

SECTION 7. SALE, DISPOSITION, OR OTHER USE OF COMMON VARIETIES OF SAND, GRAVEL, STONE, PUMICE, PEAT, CLAY OR CINDER RESOURCES

Section 7 would make revenues derived by the Regional Corporations from the sale of sand, rock and gravel exempt from 7(i) revenue sharing without affecting the ownership of the affected material spelled out in this proposal. This provision will codify an agreement that was reached between the ANCSA Regional Corporations in June of 1980 after years of litigation.

SECTION 8. ALASKA NATIVE ALLOTMENT APPLICATIONS

Section 8 would address the Native allotment applications that the State of Alaska protested per ANILCA. In those instances where the State of Alaska filed a protest against the legislative approval of Native allotments under ANILCA, and the State subsequently lifts its protest, that allotment will then be considered legislatively approved per ANILCA. In addition, if the courts or the Department of the Interior Bureau of Land Appeals dismisses the State of Alaska's protests, the affected Native allotments would also be considered legislatively approved under this provision.

SECTION 9. VISITOR SERVICES

Section 9 would allow the Secretary of the Interior the flexibility of working with affected Native Corporations rather than just one Native Corporation on the implementation of Section 1307 of ANILCA for the contracting for visitor services, except sport fishing and hunting guiding activities, within any conservation unit. Currently, Section 1307(b)(1) requires the Secretary of the Interior to give preference to *the* Native Corporation which the Secretary determines is most directly affected by the establishment or expansion of a conservation unit.

SECTION 10. REPORT

Section 10 addresses Section 1308 of ANILCA, which authorizes the Secretary of the Interior in limited circumstances to hire local people who do not completely qualify under certain job descriptions through appointments. A problem has arisen under this authority, in that when these people appointed through this process later acquire all the necessary skills, they are unable to become permanent employees of the Department of the Interior, with all the attendant benefits. This provision will direct the Secretary of the Interior to complete a report within nine months of enactment to address the recruitment process that may restrict employees hired under ANILCA Section 1308 from successfully obtaining positions in the competitive service.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

With respect to the requirements of clause 2(1)(3) of rule XI of the Rules of the House of Representatives, and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee on Resources' oversight findings and recommendations are reflected in the body of this report

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(1)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that the enactment of H.R. 2505 will have no significant inflationary impact on prices and costs in the operation of the national economy.

COST OF THE LEGISLATION

Clause 7(a) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out H.R. 2505. However, clause 7(d) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974.

COMPLIANCE WITH HOUSE RULE XI

1. With respect to the requirement of clause 2(1)(3)(B) of rule XI of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, H.R. 2505 does not contain any new budget authority, credit authority, or an increase or decrease in revenues or tax expenditures. H.R. 2505 would increase direct spending over because of provisions which would result in loss of federal receipts from property sales and lease-related income.

2. With respect to the requirement of clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives, the Committee has received no report of oversight findings and recommendations from the Committee on Government Reform and Oversight on the subject of H.R. 2505.

3. With respect to the requirement of clause 2(1)(3)(C) of rule XI of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 2505 from the Director of the Congressional Budget Office.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 13, 1996.

Hon. DON YOUNG,
*Chairman, Committee on Resources,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2505, a bill to amend the Alaska Native Claims Settlement Act to make certain clarifications to the land bank protection provisions, and for other purposes.

Enacting H.R. 2505 would affect direct spending; therefore, pay-as-you-go procedures would apply to the bill.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JAMES L. BLUM
(For June E. O'Neill, Director).

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: H.R. 2505.
2. Bill title: A bill to amend the Alaska Native Claims Settlement Act to make certain clarifications to the land bank protection provisions, and for other purposes.
3. Bill status: As ordered reported by the House Committee on Resources on July 17, 1996.
4. Bill purpose: H.R. 2505 would affect the terms and conditions of various property transactions involving Alaska Native Corporations. Under this bill, native corporations could obtain the subsurface rights retained by the federal government in lands granted to individuals or villages if the public lands are surrounded by or contiguous to corporation-owned properties. The bill also would extend certain protections to land exchanges among corporations, clarify the status of applications involving land allotments, and exempt a corporation's revenues from sand, gravel, and certain other resources from the income distribution requirements that apply to regional corporations' development of subsurface property.

Several provisions would affect the property rights of specific native corporations. H.R. 2505 would amend existing law by assigning a value of \$60 million to properties that are to be conveyed by the Calista Corporation in exchange for rights to certain federal properties if the parties to the exchange have not agreed on a valuation by October 1, 1996. It also would authorize the Secretary of the Interior to convey to the Elim Corporation about 53,000 acres to fulfill the corporation's entitlement under the Alaska Native Claims Settlement Act. Another provision would expand the entitlement of the Cook Inlet Region Incorporated (CIRI) to include subsurface rights to an additional 3,520 acres.

Finally, the bill includes several administrative provisions related to contracting preferences for visitor services, hiring preferences for certain positions, and managing mining claims related to the Haida Corporation or Haida Traditional Use sites.

5. Estimated cost to the Federal Government: CBO estimates that enacting this bill would increase direct spending by about \$43 million over the next six years. Enacting this bill would increase administrative costs at the Department of the Interior, subject to the availability of appropriated funds, but the effect on discretionary spending would not be significant. The following table shows the estimated budgetary impacts over the 1997–2002 period.

[By fiscal year, in millions of dollars]

	1997	1998	1999	2000	2001	2002
DIRECT SPENDING						
Spending under current law:						
Estimated budget authority	0	5	0	-1	-1	-1
Estimated outlays	0	5	0	-1	-1	-1

[By fiscal year, in millions of dollars]

	1997	1998	1999	2000	2001	2002
Proposed changes:						
Estimated budget authority	60	-5	-3	-3	-3	-3
Estimated outlays	60	-5	-3	-3	-3	-3
Spending under H.R. 2505:						
Estimated budget authority	60	0	-3	-4	-4	-4
Estimated outlays	60	0	-3	-4	-4	-4

The costs of this bill fall within budget functions 300 and 800.

6. Basis of estimate:

Direct Spending. CBO estimates that enacting H.R. 2505 would increase direct spending by about \$43 million over the next six years because of provisions that would result in a loss of federal receipts from property sales and lease-related income.

Most of the costs of this bill would result from the provisions prescribing the value of the Calista Corporation's properties to be exchanged with the Department of the Interior. Under current law, the department is authorized to exchange properties of a value equal to those that would be conveyed to the government by the Calista Corporation. Existing law vests the initial authority for determining the value of the Calista properties with the Secretary of the Interior and provides that the parties may pursue arbitration if they cannot agree on the valuation. The valuation must be consistent with certain standards and procedures and cannot exceed an average of \$300 per acre (or about \$63 million in total). The statute also requires the government to award monetary credits to the Calista Corporation on October 1, 1996, equal to the value of the properties remaining to be conveyed by Calista to the department at that time. The corporation is authorized to use these monetary credits to purchase properties owned by any federal agency or instrumentality. The value of monetary credits counts as direct spending in the year they are issued and as receipts in the years in which they are redeemed. If the credits are used to acquire property that otherwise would have been sold by the government, the use of the credits would result in a corresponding loss of receipts from such sales.

The two parties to the Calista exchange currently disagree on the valuation of the properties, but they have not yet pursued administrative remedies to settle their differences. The gap between the valuations is substantial: the department's appraisal assigned a value of about \$5 million to the properties, while the corporation asserts that the property is worth significantly more. Given the differences in methodologies and values, this impasse could last for some time. Because the department would probably not award monetary credits until there is an agreement, it is possible that, under current law, Calista would not receive any monetary credits for several years. For the purpose of this estimate, however, we assume an agreement will be reached in fiscal year 1998, because of Calista's interest in acquiring property with the credits. While a negotiated valuation could exceed the department's \$5 million appraisal, CBO has no basis for estimating whether and to what extent the Secretary would agree to a higher value. Hence, we assume for this estimate that Calista would receive monetary credits of about \$5 million in the absence of this legislation. We would ex-

pect Calista to use at least half of its monetary credits to acquire properties that otherwise would have been sold, which suggests that the exchange would cost the federal government at least \$3 million under current law.

Because it is unlikely that the parties will have agreed on a valuation prior to October 1, 1996, CBO assumes that enacting H.R. 2505 would set the value of Calista's monetary credits at the \$60 million level specified in the bill in fiscal year 1997. As shown in the table above, this action would change the amount and timing of the monetary credits, resulting in a net increase in the value of the credits of \$55 million relative to a base case of \$5 million. Increasing the value of the credits would increase the cost of the exchange to the extent that Calista's use of the credits would result in a loss of receipts from the property. Assuming that Calista would use at least half of its monetary credits to acquire such income-producing properties, CBO estimates that this legislative valuation would increase the net cost of the Calista exchange by about \$27 million over the next 10 years. The net increase in outlays over the 1997–2002 period would be \$43 million. These costs would be lower if the monetary credits to be awarded under current law were greater than \$5 million.

Increasing CIRI's subsurface entitlement by 3,520 acres could result in a loss of receipts from oil and gas leases. While it is impossible to predict which properties the corporation would select, information from CIRI representatives strongly suggests that the corporation would choose properties near its other holdings in the Kenai National wildlife Refuge. The federal government currently retains 10 percent of the royalties from oil and gas leases in this area and would forgo some of this income if the corporation chose productive acreage. Because the federal share of royalties from the entire refuge totaled only \$300,000 in 1995, we estimate that the budgetary effect of this provision would not be significant.

Although the federal government collects income from leases for some of the lands that would be conveyed to the Elim Corporation, CBO estimates that the loss of receipts from that conveyance would not be significant over the 1997–2002 period. Likewise, allowing native corporations to acquire the government's retained mineral rights to certain properties would have no significant budgetary impact in the near term, because it is unlikely that the affected acreage would be in areas where the government has active oil or gas leases or production. We estimate that other provisions in the bill would have no significant effect on direct spending or receipts.

Spending Subject to Appropriations. Based on information provided by the Department of the Interior, we estimate that the administrative cost of implementing this bill would total less than \$500,000. Most of this spending would occur in fiscal year 1997, assuming that this bill and the necessary appropriations are enacted by the beginning of the fiscal year.

7. Pay-as-you-go considerations: Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 sets up pay-as-you-go procedures for legislation affecting direct spending or receipts through 1998. As shown in the following table, CBO estimates that enacting H.R. 2505 would affect direct spending by increasing the value of monetary credits for the Calista Corporation.

Other provisions could also affect direct spending by giving various native corporations the rights to income-producing federal lands, but we estimate that any such additional effects would be negligible.

[By fiscal year, in millions of dollars]

	1996	1997	1998
Change in outlays		60	-5
Change in receipts		(¹)	

¹ Not applicable.

8. Estimated impact on State, local, and tribal governments: H.R. 2505 contains an intergovernmental mandate as defined in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4), but this mandate would impose no significant costs on state, local, or tribal governments.

Section 1 of this bill would amend the Alaska National Interest Lands Conservation Act to clarify what lands are eligible for automatic land protections, including exemption from property taxes. This would impose a mandate on the state of Alaska and its constituent local governments because it could slightly increase the amount of land exempt from state and local property taxes. (Public Law 104-4 defines the direct costs of mandates to include revenues that state, local, or tribal governments would be prohibited from collecting.) Based on information provided by Alaska state officials, we estimate that the impact would be negligible, because Alaska has no state property tax and most of the land affected would be in areas of the state with no local property taxes.

While H.R. 2505 contains no other mandates, other sections of the bill result in both costs and benefits for state, local, and tribal governments. In general, the bill would benefit specific Alaska native corporations, but some of these provisions could affect the distribution of land and other resources among the corporations or between the corporations and the state. For example, section 6 would allow regional corporations to dispose of sand, gravel, and similar materials without distributing part of the proceeds among the other regional corporations, as required by current law. This would allow village corporations to gain greater access to these resources. In addition, because the state receives most of the royalties from oil and gas leases on federal lands in Alaska, it could lose some income as a result of section 4, which increases CIRI's subsurface entitlement. The state's share of royalties from the Kenai National Wildlife Refuge, where CIRI is likely to make its selections, was almost \$3 million in 1995. We cannot estimate how much, if any, of this income the state would lose, however, without knowing exactly which properties CIRI would select.

Other provisions would benefit Alaska native corporations by expanding their rights to property and resources. These provisions include the section that would specify the value of the properties to be exchanged by the Calista Corporation for other federal properties. This section would effectively increase the amount of property that the corporation could obtain. The Elim Corporation would benefit from the provision specifying additional lands that would be available for selection by that corporation. Further, native corporations generally would benefit from the section allowing them to ob-

tain additional subscriber rights now retained by the federal government.

9. Estimated impact on the private sector: The bill would impose no new private-sector mandates as defined in Public Law 104-4.

10. Previous CBO estimate: None.

11. Estimate prepared by: Federal cost estimate: Kathleen Gramp and Victoria Heid; impact on State, local, and tribal governments: Marjorie Miller; impact on the private sector: Elliot Schwartz.

12. Estimate approved by: Robert A. Sunshine, for Paul N. Van de Water, Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104-4

H.R. 2505 contains an intergovernmental mandate, as defined under Public Law 104-4, but this mandate imposes no significant costs on state, local or tribal governments.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

ALASKA NATIONAL INTEREST LANDS CONSERVATION ACT

* * * * *

TITLE IX—IMPLEMENTATION OF ALASKA NATIVE CLAIMS SETTLEMENT ACT AND ALASKA STATEHOOD ACT

* * * * *

ALASKA NATIVE ALLOTMENTS

SEC. 905. (a)(1) * * *

* * * * *

(7) Paragraph (1) of this subsection and section (d) shall apply, and paragraph (5) of this subsection shall cease to apply, to an application—

(A) that is open and pending on the date of enactment of this paragraph,

(B) if the lands described in the application are in Federal ownership, and

(C) if all protests which were filed by the State of Alaska pursuant to paragraph (5)(B) with respect to the application have been withdrawn and not reasserted or are dismissed.

* * * * *

ALASKA LAND BANK

SEC. 907. (a) * * *

* * * * *

(d) AUTOMATIC PROTECTIONS FOR LANDS CONVEYED PURSUANT TO THE ALASKA NATIVE CLAIMS SETTLEMENT ACT.—(1)(A) Notwithstanding any other provision of law or doctrine of equity, all land and interests in land in Alaska conveyed by the Federal Government pursuant to the Alaska Native Claims Settlement Act to a Native individual or Native Corporation or subsequently reconveyed by a Native Corporation pursuant to section 39 of that Act to a Settlement Trust *or conveyed to a Native Corporation pursuant to an exchange authorized by section 22(f) of Alaska Native Claims Settlement Act or section 1302(h) of this Act or other applicable law* shall be exempt, so long as such land and interests are not developed or leased or sold to third parties from—

(i) adverse possession and similar claims based upon estopped;

(2) DEFINITIONS.—(A) * * *

(B) For purposes of this subsection—

(i) land shall not be considered developed solely as a result of—

(I) the construction, installation, or placement upon such land of any structure, fixture, device, or other improvement intended to enable, assist, or otherwise further subsistence uses or other customary or traditional uses of such land, or

(II) the receipt of fees related to hunting, fishing, and guiding activities conducted on such land;

(ii) land upon which timber resources are being harvested shall be considered developed only during the period of such harvest and only to the extent that such land is integrally related to the timber harvesting operation; **[and]**

(iii) land subdivided by a State or local platting authority on the basis of a subdivision plat submitted by the holder of the land or its agent, shall be considered developed on the date an approved subdivision plat is recorded by such holder or agent unless the subdivided property is a remainder parcel**【.】**; *and*

(iv) *lands or interest in lands shall not be considered developed or leased or sold to a third party as a result of an exchange or conveyance of such land or interest in land between or among Native Corporations and trusts, partnerships, corporations, or joint ventures, whose beneficiaries, partners, shareholders, or joint venturers are Native Corporations.*

(3) ACTION BY A TRUSTEE.—(A) * * *

(B) The prohibitions of subparagraph (A) shall not apply—

(i) when the actions of such trustee, receiver, or custodian are for purposes of exploration or pursuant to a judgment in law or in equity (or arbitration award) arising out of any claim made pursuant to section 7(i) or section 14(c) of the Alaska Native Claims Settlement Act; **[or]**

(ii) to any land, or interest in land, which has been—

(I) developed or leased prior to the vesting of the trustee, receiver, or custodian with the right, title, or interest of the Native Corporation; or

(II) expressly pledged as security for any loan or expressly committed to any commercial transaction in a valid agreement**【.】**; *or*

(iii) to actions by any trustee whose right, title, or interest in land or interests in land arises pursuant to an agreement between or among Native Corporations and trusts, partnerships, or joint ventures whose beneficiaries, partners, shareholders, or joint venturers are Native Corporations.

* * * * *

TITLE XIII—ADMINISTRATIVE PROVISIONS

* * * * *

REVENUE-PRODUCING VISITOR SERVICES

SEC. 1307. (a) * * *

(b) PREFERENCE.—Notwithstanding provisions of law other than those contained in subsection (a), in selecting persons to provide (and in contracting for the provisions of) any type of visitor of visitor service for any conservation system unit, except sport fishing and hunting guiding activities, the Secretary—

(1) shall give preference to Native **[Corporation]** *Corporations* which the Secretary determines **[is]** *are* most directly affected by the establishment or expansion of such unit by or under the provisions of this Act;

* * * * *

ALASKA NATIVE CLAIMS SETTLEMENT ACT

* * * * *

REGIONAL CORPORATIONS

SEC. 7. (a) * * *

* * * * *

(i)(1) **[Seventy per centum]** (A) *Except as provided by subparagraph (B), seventy percent* of all revenues received by each Regional Corporation from the timber resources and subsurface estate patented to it pursuant to this Act shall be divided annually by the Regional Corporation among all twelve Regional Corporations organized pursuant to this section according to the number of Natives enrolled in each region pursuant to section 5. The provisions of this subsection shall not apply to the thirteenth Regional Corporation if organized pursuant to subsection (c) hereof.

(B) *In the case of the sale, disposition, or other use of common varieties of sand, gravel, stone, pumice, peat, clay, or cinder resources made after the date of enactment of this subparagraph, the revenues received by a Regional Corporation shall not be subject to division under subparagraph (A). Nothing in this subparagraph is intended to or shall be construed to alter the ownership of such sand, gravel, stone, pumice, peat, clay, or cinder resources.*

* * * * *

NATIVE LAND SELECTIONS

SEC. 12. (a) * * *

* * * * *

(c) The difference between thirty-eight million acres and the 22 million acres selected by Village Corporations pursuant to subsections (a) and (b) shall be allocated among the eleven Regional Corporations (which exclude the Regional Corporation for southeastern Alaska) as follows:

(1) * * *

* * * * *

(4) Where the public lands consist only of the mineral estate, or portion thereof, which is reserved by the United States upon patent of the balance of the estate under one of the public land laws, other than this Act, the Regional Corporations may select as follows:

(A) * * *

* * * * *

(C) Where such public lands are surrounded by or contiguous to subsurface lands obtained by a Regional Corporation under subsections (a) or (b), the Corporation may, upon request, have such public land conveyed to it.

[(C)] *(D)* Where the Regional Corporation elects to obtain such public lands under subparagraph **[(A) or (B)]** (A), (B), or (C) of this paragraph, it may select, within ninety days of receipt of notice from the Secretary, the surface estate in an equal acreage from other public lands withdrawn by the Secretary for that purpose. Such selections shall be in units no smaller than a whole section, except where the remaining entitlement is less than six hundred and forty acres, or where an entire section is not available. Where possible, selections shall be of lands from which the subsurface estate was selected by that Regional Corporation pursuant to subsection 12(a)(1) or 14(h)(9) of this Act, and, where possible, all selections made under this section shall be contiguous to lands already selected by the Regional Corporation or a Village Corporation. The Secretary is authorized, as necessary, to withdraw up to two times the acreage entitlement of the in lieu surface estate from vacant, unappropriated, and unreserved public lands from which the Regional Corporation may select such in lieu surface estate except that the Secretary may withdraw public lands which had been previously withdrawn pursuant to subsection 17(d)(1).

[(D)] *(E)* No mineral estate or in lieu surface estate shall be available for selection within the National Petroleum Reserve—Alaska or within Wildlife Refuges as the boundaries of those refuges exist on the date of enactment of this Act.

* * * * *

MISCELLANEOUS

SEC. 22. (a) * * *

* * * * *

(c)(1) * * *

* * * * *

(3) This section shall apply to lands conveyed by interim conveyance or patent to a [regional corporation] *Regional Corporation* pursuant to this Act which are made subject to a mining claim or claims located under the general mining laws, including lands conveyed prior to enactment of this paragraph. Effective upon the date of enactment of this paragraph, the Secretary, acting through the Bureau of Land Management and in a manner consistent with section 14(g), shall transfer to the [regional corporation] *Regional Corporation* administration of all mining claims determined to be entirely within lands conveyed to that corporation. Any person holding such mining claim or claims shall meet such requirements of the general mining laws and section 314 of the Federal Land Management and Policy Act of 1976 (43 U.S.C. 1744), except that any filings that would have been made with the Bureau of Land Management if the lands were within Federal ownership shall be timely made with the appropriate [regional corporation] *Regional Corporation*. The validity of any such mining claim or claims may be contested by the [regional corporation] *Regional Corporation*, in place of the United States. All contest proceedings and appeals by the mining claimants of adverse decisions made by the [regional corporation] *Regional Corporation* shall be brought in Federal District Court for the District of Alaska. Neither the United States nor any Federal agency or official shall be named or joined as a party in such proceedings or appeals. All revenues from such mining claims received after passage of this paragraph shall be remitted to the [regional corporation] *Regional Corporation* subject to distribution pursuant to section 7(i) of this Act, except that in the event that the mining claim or claims are not totally within the lands conveyed to the [regional corporation] *Regional Corporation*, the [regional corporation] *Regional Corporation* shall be entitled only to that proportion of revenues, other than administrative fees, reasonably allocated to the portion of the mining claim so conveyed. *The provisions of this section shall apply to Haida Corporation and the Haida Traditional Use Sites, which shall be treated as a Regional Corporation for the purposes of this paragraph, except that any revenues remitted to Haida Corporation under this section shall not be subject to distribution pursuant to section 7(i) of this Act.*

* * * * *

SECTION 20 OF THE ALASKA LAND STATUS TECHNICAL CORRECTIONS ACT OF 1992

SEC. 20. GOLD CREEK SUSITNA ASSOCIATION, INCORPORATED ACCOUNT.

(a) * * *

* * * * *

(f) IMPLEMENTATION.—(1) * * *

* * * * *

(4) *The Region shall be deemed to have 3,520 acres of subsurface entitlement pursuant to this section, which entitlement shall be satisfied in the manner prescribed for the Region in section 14(h)(9) of the Alaska Native Claims Settlement Act (43 U.S.C. 1613(h)(9)).*

* * * * *

SECTION 8126 OF THE DEPARTMENT OF DEFENSE APPROPRIATION ACT, 1992

SEC. 8126. (a)(1) Property as defined in section 8133 of the Department of Defense Appropriations Act of 1991 (104 Stat. 1909) held by Federal agencies or instrumentalities and which is not scheduled for disposition by sale prior to October 1, 1996, as determined by such agencies or instrumentalities shall be, except as provided in subsection (b) of this section, transferred to the Secretary of the Interior, at his request, without compensation or reimbursement, for the purpose of entering into a land exchange or exchanges with the Calista Corporation, a corporation organized under the laws of the State of Alaska. The Secretary is authorized to exchange such property for the lands and interests in lands (which for purposes of this section include lands, partial estates, and land selection rights) of equal value identified in the document entitled "The Calista Conveyance and Relinquishment Document", dated October 28, 1991 (*hereinafter referred to as "CCRD"*) and in the document entitled, "*The Calista Conveyance and Relinquishment Document Addendum*", dated July 16, 1996 (*hereinafter referred to as "CCRD Addendum"*). [The value of the lands and interests in lands included in that document shall be determined by the Secretary of the Interior not later than nine months after the date of enactment of this section. In making such value determination, the Secretary shall consider, in addition to the "Uniform Appraisal Standards for Federal Land Acquisitions", the public interest values of such lands and interests in lands, including, but not limited to, the location of such lands and interests in lands within the boundary of a national wildlife refuge, and statutorily authorized or mandated exchanges with and acquisitions by the Federal Government of lands and interests in lands in Alaska. In the event that the parties cannot agree on the value of such lands and interests in land, the procedures specified in subsection 206(d), of Public Law 94-579, as amended, shall be used to establish the value: *Provided, That the*]

(2) *Unless prior to October 1, 1996, the parties mutually agree on a value of the lands and interests in lands to be exchanged as contained in the CCRD or the CCRD Addendum, the Secretary of the Treasury shall credit the property account to be established by subsection (c) with an amount determined by paragraph (5) of the CCRD Addendum. The average value per acre of such lands and interests in lands shall be no more than \$300. Property exchanged and conveyed by the United States pursuant to this section shall be considered and treated as conveyances of land entitlements under 43 U.S.C. 1601 through 1642 [(except for subsections (a*

through (c) and (f) through (j) of section 1620, section 1627(b), and section 1636(d)].

(3) The amount credited to the property account is not subject to adjustment for minor changes in acreage resulting from preparation or correction of the land descriptions in the CCRD or CCRD Addendum or the exclusion of any small tracts of land as a result of hazardous materials surveys.

* * * * *

(c)(1) The Secretary of the Interior shall maintain an accounting of the value of lands and interests in lands remaining to be conveyed or relinquished by Calista Corporation pursuant to this section. On October 1, 1996, the Secretary of the Treasury shall establish a property account with an initial balance equal to the value of lands and interests in lands which Calista Corporation has not then conveyed or relinquished to the United States pursuant to this section. Subject to reduction upon conveyances pursuant to subsection (a) of this section, upon conveyance or relinquishment of the remaining lands in the CCRD and the CCRD Addendum, said account shall be available on or after October 1, 1996, for the sale of property by all agencies or instrumentalities of the United States, to the same extent as is separately authorized to the accounts described in subsection 9102(a)(2) of the Department of Defense Appropriations Act, 1990 (103 Stat. 1151).

(2) Notwithstanding any other provision of law, Calista Corporation may assign, without restriction, any or all of the account upon written notification to the Secretary of the Treasury and the Secretary of the Interior.

(3) Calista will provide to the Bureau of Land Management, Alaska State Office, appropriate documentation to enable that office to perform the accounting required by paragraph (1) and to forward such information, if requested by Calista, to the Secretary of the Treasury as authorized by such paragraph.

(4) For the purpose of the determination of the applicability of section 7(i) of the Alaska Native Claims Settlement Act (43 U.S.C. 1606(i)) to revenues generated pursuant to this section, such revenues shall be calculated in accordance with paragraph (4) of the CCRD Addendum.

DISSENTING VIEWS OF REPRESENTATIVE GEORGE MILLER

I must oppose this legislation in its current form. Yet I do so reluctantly because Chairman Young and I have often worked cooperatively together on Alaska Native matters. However, despite many months of negotiations between the Alaska Native Corporations and the Department of the Interior, this bill does not have a consensus of support. Simply put, these are not technical, non-controversial amendments.

Among its shortcomings, H.R. 2505 would allow Native Corporations to select potentially valuable Federal oil, gas and coal rights within national wildlife refuges, would give away over 50,000 acres of public lands without legal or equitable justification, and would require that over \$60 million in Federal assets be conveyed to acquire Native Corporation lands (primarily subsurface) that the Department of the Interior considers to be of questionable priority for acquisition.

There are five sections of the bill that are worthy of support. It is my hope that the controversial provisions can be modified or dropped prior to consideration on the House floor.

GEORGE MILLER.

APPENDIX

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, DC, April 21, 1992.

Hon. GEORGE MILLER,
*Chairman, Committee on Interior and Insular Affairs, House of
Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: This responds to your request for the Department of the Interior's (the Department's) views on eight proposed amendments to H.R. 3157, the "Alaska Land Status Technical Corrections Act of 1991," a bill which would amend the Alaska Native Claims Settlement Act (ANCSA).

On February 24, 1991, the Department submitted written testimony on H.R. 3157, as introduced. The issues raised in our testimony still are of concern to the Department. This letter sets forth only the Department's concerns with the eight proposed amendments. The proposed amendments will be discussed in the same order and have been given the same headings as those submitted with your letter requesting our views.

RATIFICATION OF LAND TRANSFERS TO CASWELL AND MONTANA CREEK

This proposed amendment involves the Cook Inlet Region, Inc. (CIRI) and the Caswell and Montana Creek Native Groups, all of whom entered into a settlement agreement in 1982. Pursuant to the settlement, CIRI conveyed approximately 11,000 acres to each group with the understanding that the conveyances satisfied their entitlements under section 12(b) of ANCSA. The Department was not a party to the settlement agreement. The purpose of the proposed amendment is to ratify the transfers and satisfy the Department's ANCSA land transfer obligations to the two groups and CIRI.

The conveyances to Caswell and Montana Creek were made by CIRI from lands received from the State of Alaska under Paragraph II and Appendix C, Part 1.A. (Kashwitna Pool) of the Terms and Conditions for Land Consolidation and Management in the Cook Inlet Area (ratified by Section 12(b) of the Act of January 2, 1976, 43 U.S.C. 1611 n.).

Conveyances from Appendix C are debited from CIRI's entitlement under Section 12(c) of the ANCSA. The Terms and Conditions provided for methods of satisfying entitlements that are somewhat different from the normal procedures, i.e., ordinarily, the United States conveys land directly to groups but, by virtue of special legislation affecting CIRI, land is conveyed to the regional corporation and it then reconveys to village corporations and groups. In order

to avoid a double charge for the Caswell/Montana Creek group entitlements, we recommend the following language by added at the end of the proposed amendment:

The ratification of the conveyances made by CIRI in this section shall not be a basis for or generate a claim by CIRI, or either of the groups named herein, for additional conveyances of land or money or any other thing of value against either the State of Alaska or the United States.

ELIM NATIVE CORPORATION LAND CONVEYANCE

Under this proposed amendment, 50,000 acres of land would be withdrawn, subject to valid existing rights, for selection by the Elim Native Corporation. These lands were excluded in 1929 by Executive Order from the original Elim reserve. Elim was one of five native corporations that elected to take lands set aside in reserve for the benefit of Natives instead of participating in the ANCSA land selection process. Pursuant to its election, Elim received patent to 297,982 acres on September 14, 1979—the lands that were included in the Elim reserve on the date of entitlement under the ANCSA. Elim did not appeal the decision to convey and accepted the patent.

We suggest that proposed amendment tie authority for conveyance of additional acreage to some existing entitlement. Moreover, the proposed amendment presents a problem in that about 11,440 acres of the described lands proposed for conveyance to Elim have been validly selected by the Native village of Koyuk. This would leave only 38,560 acres for Elim instead of the 50,000 they desire. If the proposed amendment is included in H.R. 3157, it should include clear Congressional intent and guidance as to which entity will receive the 11,440 acres, and a proviso that the conveyance is in full satisfaction of Elim's entitlement under Section 19(b) of the ANCSA.

* * * * *

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

RICHARD ROLDAN,
*Deputy Assistant Secretary,
Land and Minerals Management.*

STATEMENT OF DEBORAH L. WILLIAMS, SPECIAL ASSISTANT TO THE
SECRETARY FOR ALASKA, U.S. DEPARTMENT OF THE INTERIOR

BEFORE THE HOUSE COMMITTEE ON NATURAL RESOURCES ON H.R.
2505, MARCH 19, 1996

Mr. Chairman and members of the Committee, thank you for the opportunity to testify on H.R. 2505, to amend the Alaska Native Claims Settlement Act (ANCSA) to make certain clarifications to the land bank protection provisions and other purposes.

Chairman Young, in response to your remarks when you introduced H.R. 2505, the Department of the Interior has been working

cooperatively with the Alaska Federation of Natives (AFN), the State of Alaska, and other to develop and consensus bill. We join this Committee in seeking a bill that will add to an improved conveyance process and equity in the application of law. Through our discussions, we have found many areas of consensus. We urge that these consensus items be retained and nonconsensus items be considered separately to facilitate smooth progress of the consensus items through the legislative process.

In the current version of H.R. 2505 we support four sections as written or with changes, we concur with AFN that one section should be dropped, and we oppose two sections as written.

In addition to the original sections, we are working with the AFN, the State, and others on several matters which may result in consensus recommendations that will enhance the bill. Matters under consideration include possible changes to: section 1307 of the Alaska National Interest Lands Conservation Act (ANILCA), to provide needed flexibility for the Secretary in determining Native Corporation preferences for providing visitor services under ANILCA section 1307(b)(1); section 1308 of ANILCA, to improve the opportunities for local individuals hired under this authority to qualify and compete for career positions; and Section 905(a)(5) of ANCSA, to facilitate certification of Native allotments.

Section 1 of H.R. 2505 provides land bank protection for lands received from certain Federal agencies, lands exchanged among Native Corporations, and actions by a trustee serving pursuant to agreement of Native Corporations. The Department supports this section.

The objective of Section 2 is to permit Regional Corporation to select the retained mineral estate under the surface of lands patented to individuals through public land entries including homesteads, homesites, headquarters sites, trade and manufacturing sites, and the Native Allotment Act of 1906. The Act of March 8, 1922, 48 U.S.C. 376 (1958), directed that, in Alaska, public lands known to contain workable coal, oil, and gas deposits, or that may be valuable for coal, oil, or gas could be entered, claimed, perfected and patented out of federal ownership, but all coal, oil or gas must be reserved to the United States.

This deliberate splitting of surface and mineral interest has resulted in numerous small parcels (up to 160 acres) of federal reserved minerals whose surface has been patented to a private individual. In many instances, subsequent to ANCSA, the surrounding lands, both surface and subsurface have been conveyed to Native Village and Regional Corporations. The objective of this legislative proposal is to consolidate holdings in Native ownership. It provides protection for those Regional Corporations that desire to conduct mineral exploration on their subsurface estate and avoids the issue of possible loss of federal oil and gas resources under the law of capture by giving the subsurface to the regional corporation owning the surrounding subsurface estate.

This consolidation proposal does come at an expense to the United States. The proposal permits the systematic selection of lands determined to have prospective value for coal, oil or gas to be conveyed out of federal ownership without reference to the value of the minerals. For example, within the National Wildlife Refuge

System in Alaska there are currently in excess of 100,000 acres of retained mineral estate surrounded by lands conveyed to Native Village Corporations pursuant to the Alaska Native Claims Settlement Act. Under the new authority provided by this Act the number of selectable acres will increase dramatically with the conveyance of Native allotments where the Bureau of Land Management has determined that the selected Native lands are valuable for coal, oil, or gas.

Although the proposal does not increase Regional Corporation's ANCSA entitlement, consolidating mineral interests in Native ownership under this proposal provides, under some circumstances, for further splitting surface and subsurface estate. Regional corporations desire to take the reserved mineral interests under these small parcels, and receive substitute surface rights in other lands, keeping the subsurface of these new areas in federal ownership.

The Department recommends a different balance, one that parallels past practices and recognizes the higher value of reserved subsurface that would be conveyed under this section. If a corporation uses section 12(c) or 14(h)(8), then there will be no in-lieu subsurface. This is consistent with the provisions of section 6(b) of the Alaska Statehood Act, as amended, and section I.B.(1) of the Terms and Conditions with the Cook Inlet Region Inc. This recommended change recognizes that these reserved mineral estates exist only because they were known to be valuable for oil, gas or coal, or were prospectively valuable at the time of the conveyance of the homestead, homesite, headquarters site, or Alaska Native Allotment. There, these tracts are substantially more valuable than the average subsurface. The Regional Corporation can choose either to select them under these terms or to select the entire estate in some other place.

To facilitate future management by all parties, we recommend that if a Corporation elects to take some available parcels in a given geographic area that they take all. We would prefer to include the entire area encompassing a given selection, such as beneath a Village selection, but at the least all parcels in a Township. Furthermore, these proposed changes are warranted because providing substitute surface substantially increases the cost of conveyance adjudication and of cadastral survey at a time when the appropriated funds for these purposes are being substantially reduced.

Attachment 1 reflects our proposed revised language for this section.

In Section 3 the Elim Native Corporation is requesting fifty thousand (50,000) acres of land entitlement over and above their entitlement granted under Section 19(b) of the Alaska Native Claims Settlement Act (ANCSA) of 1971. This request is based on Elim's position that their original reserve was illegally reduced by Executive Order (EO) No. 5207 in 1929.

The history of this reserve is as follows: In 1917, Executive Order (EO) No. 2508 withdrew approximately 350,000 acres along the northern shore of Norton Bay, Alaska for the use of the United States Bureau of Education and "for the Natives of Indigenous Alaskan race." In 1929, EO 5207 revoked approximately 50,000

acres of the 1917 reserve and opened the lands to homestead entry by exservicemen of the World War.

A 1968 Report to the U.S. Senate Committee on Interior and Insular Affairs, entitled "Alaska Natives and the Land," showed Norton Bay (Elim) as an EO reserve and reflected the reduction in size by EO 5207. A cadastral survey of these lands determined the exact acreage of the reserve to be 298,000 acres which was patented to Elim pursuant to ANSCA.

Our review of the historical records determined that the 1917 withdrawal was not intended to be a permanent reservation and thus was not illegally reduced. There are two kinds of reserves, those created by the Executive and those created by Congress. According to well established law, Native Americans have no compensable interest in those created by the Executive; thus they are tenants at will. The Executive historically had the power to grant other interests in an to change the boundaries of those reserves.

Whether a withdrawal is temporary or permanent in nature is not dependent on the duration of a withdrawal. A withdrawal for a present use necessary to discharge responsibilities of the Executive may be considered permanent; while a withdrawal lands for public purposes, as distinguished from use, is said to be temporary.

The Alaska Native Claims Settlement Act (ANCSA) was intended to provide full and final compensation to Alaska Natives for the extinguishment of any and all aboriginal titles or claims of title. Section 1437(b)(3) of ANILCA confirms that those reserves as they existed on December 18, 1971 were to be conveyed to the village after filing an election under section 19(b) of ANCSA.

We would also note that the additional lands sought by Elim in this section were never a part of the original reserve. Some of the land excised from the original reserve have been conveyed to the neighboring village corporation of Koyuk which was opposed to Elim getting title to them. The Bering Straits Native Corporation and the State of Alaska have valid selections on a portion of the lands Elim is attempting to receive now. Finally, providing the conveyance of land by sought by this section may establish an unacceptable precedent.

There appears to be no basis in law or policy for passage of this proposed legislation, therefore the Department opposes this section.

Section 4 extends the exemption period from estate and gift tax for Native Corporation stock through its period of inalienability. We have recommended to AFN and they have agreed that the last three words be replaced with * * *. "ANCSA, as amended." With this change, the Department has no objection to this section.

Section 5 amends P.L. 102-415 to provide the Cook Inlet Region Inc. with an additional 3,520 acre subsurface entitlement. Section 20 of Public law 102-415, enacted in 1992, settled the land claims of Gold Creek-Susitna Association, Inc. (Gold Creek), by establishing a bid account based on the appraised value of 3,520 acres. No lands were available for conveyance to Gold Creek and no lands were selected or conveyed as a result of this settlement. There was no charge against the 14(h)(2) entitlement of CIRI and no reduction of 14(h)(8) entitlement for other Regional Corporations. The Act did not address the possibility of a subsurface entitlement for Cook Inlet Region, Inc., under Section 14(h)(2) of ANCSA. CIRI now

seeks to obtain a subsurface entitlement of 3,520 acres from a pool previously outlined for them as part of the 1976 agreement for the Terms and Conditions for Land Consolidation and Management in the Cook Inlet Area. The majority of the potential subsurface areas are located within the Kenai National Wildlife Refuge. We believe this provision, as written, is not in the public interest.

We do not believe that CIRC is entitled to 3,520 acre of subsurface in a National Wildlife Refuge as a result of the Gold Creek settlement case. Section 1406 (b) and (e) of ANILCA clearly states Congressional intent to terminate all possibility for increasing subsurface entitlements within Alaska National Wildlife Refuges. Gold Creek is distant from the Kenai Refuge and the original settlement did not involve Refuge lands. Monetary settlement to a Native group, especially 20 years after the passage of ANCSA, should not invoke a right to Regional Corporation subsurface entitlements. However, if such entitlements are legislatively determined to be valid, the original intent of Congress, and the extraordinary values of the Kenai Refuge, should preclude any subsurface conveyances within the Kenai National Wildlife Refuge.

If any subsurface rights are provided to CIRC, then a charge must be made to the 14(h)(2) entitlement of CIRC and the 14(h)(8) entitlements of the other 11 regional corporations must be reduced.

The Department opposes this section as written. However, Attachment 2 reflects our proposed revised language to provide for subsurface selection from public lands in the Talkeetna Mountains area in the event CIRC is deemed entitled to the additional subsurface. The Talkeetna Mountains deficiency selection area is only about 75 air miles from Gold Creek versus more than 150 air miles to the Kenai Refuge.

The 1.9 million acre Kenai Refuge was created in 1941 and encompasses a diverse and complex ecosystem. The refuge provides habitat for moose, brown bear, wolves and caribou as well as 146 species of resident and migratory birds. The vital salmon spawning habitats on the refuge support 40 percent of the Cook Inlet commercial fishery as well as one of the most famous sport fisheries in the world.

The Kenai Refuge is a very popular recreation area due to its proximity to Anchorage, location along the road system and spectacular scenic beauty. The Refuge receives over 500,000 visitors per year. However, despite the heavy seasonal use in certain areas most of the Refuge remains undisturbed by humans. These undisturbed areas include most of the potential CIRC subsurface selection areas. Reasonable surface access must be provided to all subsurface estate owners. Development and access to possible CIRC subsurface selections will have adverse impacts on the recreational and wilderness qualities of the Kenai Refuge.

As this Committee knows, because of the Kenai Wildlife Refuge's high public values, the Service is currently pursuing the acquisition of critical inholdings within the Kenai Refuge. The Service's acquisition and land exchange efforts include negotiations with two Native corporations who own lands within the Kenai River drainage area. Also, there are a few small private patents scattered throughout the Refuge. The Service has recently acquired one of these remote properties and is seeking funding for another. The creation of

new inholdings within the Refuge simply does not make public policy or resource management sense in this extraordinary refuge.

In Section 6, the AFN and DOI concur that the issues involved concerning land valuation of Calista Corporation Land Exchanges should not be part of these technical amendments at this time.

Section 7. The Department is opposed to section 7 unless the “Village Corporation” language is made specific to Hydaburg Village. The Department is hopeful that we will receive shortly from the AFN and the Hydaburg Village draft language that satisfies our concern.

Mr. Chairman, that completes our prepared testimony. We have been working closely with AFN, the State of Alaska, and others to develop a viable consensus bill. Again, it is our recommendation that HR 2505 should represent a consensus bill and that non-consensus items should be considered separately. Thank you for the opportunity to testify. I will be pleased to respond to any questions you may have.

ATTACHMENT 1

SECTION 2—RETAINED MINERAL ESTATE, PROPOSED REVISED LANGUAGE

SEC. 2. RETAINED MINERAL ESTATE.

Section 1403 of the Alaska National Interest Lands Conservation Act (ANILCA) (43 U.S.C. 1610) is hereby amended to read as follows:

RETAINED MINERAL ESTATE

Section 12(c) of the Alaska Native Claims Settlement Act (ANCSA) (43 U.S.C. 1611(c)) is amended by adding a new paragraph (4) to subsection (c) to read as follows:

“Where the public lands consist only of the mineral estate, or portion thereof, which is reserved by the United States upon patent of the balance of the estate under one of the public land laws, other than this Act the Regional Corporations may select as follows:

“(A) Where such public lands were within the exterior boundaries of an area withdrawn pursuant to subsections 11(a)(1) or 11(a)(3) and are surrounded by and contiguous to subsurface estate conveyed to a Regional Corporation under subsections 14 (e), (f) or (h), upon request, have such public land included in its selection and considered by the Secretary to be withdrawn and properly selected.

“(B) Where such public lands withdrawn pursuant to Sec. 11(a)(1) or 11(a)(3) as described in (A) are required to be selected, the Regional Corporation may, at its option, exclude such public lands from its selection.

“(C) A Regional Corporation identifying lands described in (A) for selection, shall select all of the available parcels within a township. The first election to receive such public lands shall be pursuant to the in lieu rights provided by subsection 12(a)(1) or 14(h)(9) of this Act, if there is an entitlement; otherwise, the Regional Corporation may elect to receive the parcels of land pursuant to subsection 12(c)(3) or 14(h)(8). Election to

take acreage subject to reserved mineral rights shall not earn the Regional Corporation in-lieu surface selections, but shall satisfy the acreage entitlement for that number of subsurface acres selected.”

EXPLANATION

This proposed revision will do the following:

1. It allows the Native Corporations to select potentially highly mineralized Federal subsurface.
2. To facilitate future land management by both parties, it requires that if a Corporation elects to take some parcels in a given geographic area that they take all. We would prefer to include the entire area encompassing a certain selection such as beneath a Village Selection, but at the least all parcels in a Township.
3. It provides that where a Region has a 12(a)(1) or 14(h)(9) entitlement, it must be used prior to using 12(c)(3) or 14(h)(8) entitlements.

ATTACHMENT 2

SECTION 5 (GOLD CREEK/CIRI)—PROPOSED REVISED LANGUAGE

Section 20, PL 102–415, is amended by adding a new subsection (h):

(h) Establishment of the account under section (b) and conveyance of land under section (c), if any, will be treated as though 3,520 acres of land had been conveyed to Gold Creek under section 14(h)(2) of ANCSA, as amended, for which rights to in-lieu subsurface estate are hereby provided to CIRI. Within one year from the date of enactment of this provision, CIRI shall select 3,520 acres of land from the area designated for in-lieu selection by paragraph I.B.(2)(b) of the document identified in section 12(b) of the Act of January 2, 1976, 43 U.S.C. 1611n.

EXPLANATION

The proposed wording provides that, for accounting purposes only, Gold Creek’s 3,520 acre entitlement will be treated as though 3,520 acres of surface estate was actually conveyed to Gold Creek, and charged against section 14(h)(2). CIRI is then entitled to 3,520 acres in the Talkeetna Mountains for in-lieu subsurface rights.

EXECUTIVE ORDER

ALASKA

It is hereby ordered that Executive order of March 30, 1901, reserving certain lands in Alaska for reindeer stations, be and is hereby revoked as to the following tract:

Beginning at a point about 6 miles above the mouth of Unalaklik River, and extending along the north bank of the Unalaklik River in a generally northeasterly direction 10 miles, thence in a generally northwesterly direction 10 miles, thence in a generally southwesterly direction 10

miles and thence in a generally southeasterly direction to the place of beginning.

It is further ordered that Executive order of January 3, 1917 (No. 2508), amended February 6, 1917 (Executive Order 2525), which reserved lands on Norton Bay, Alaska, for the use of the United States Bureau of Education and of the natives of the indigenous Alaskan race, be and is hereby revoked as to the tract described as follows:

Beginning at a point where the line of latitude 65° north intersects the line of longitude 161°20' west of Greenwich; thence due west to longitude 161°30' west of Greenwich; thence south to the north shore of Norton Bay; thence northeasterly along said shore to a point on said shore due south of the point of beginning; thence north to the place of beginning.

Pursuant to Public Resolution No. 29 of February 14, 1920 (41 Stat. 434), as amended January 21 and December 28, 1922 (42 Stat. 353, 1067), the public lands described above shall be opened to entry under applicable homestead laws requiring residence by ex-service men of the World War under the terms and conditions of said resolution and the regulations issued thereunder, for a period of 91 days beginning with the 63rd day from and after the date hereof, and thereafter to appropriation under any public land laws applicable thereto by the general public.

Subsequent to the date hereof and prior to the date of restoration to general disposition as herein provided, no rights may be acquired to the restored lands by settlement in advance of entry, or otherwise, except strictly in accordance herewith.

HERBERT HOOVER.

THE WHITE HOUSE, *October 12, 1929.*

[No. 5207.]

EXECUTIVE ORDER

Executive Order No. 2508, dated January 3, 1917, withdrawing a tract of land on the northern shore of Norton Bay, Alaska, and certain adjacent islands, for the use of the United States Bureau of Education and of the natives of indigenous Alaskan race, is hereby amended to read as follows:

“Norton Bay Reservation

It is hereby ordered that a tract on the northern shore of Norton Bay, Alaska, described as follows: Beginning at a point where the line of Latitude 65° N. intersects the line of Longitude 161°20' W. of Greenwich; thence due west to Longitude 161°40' W. of Greenwich; thence in a straight line southwesterly to the line of Longitude 162°40' W. of Greenwich; thence south to the northshore of Norton Bay; thence northeasterly along said shore to a point on said shore due south of the point of beginning; thence north to the place of beginning; also the adjacent islands within three miles of the coast line of said tract, are hereby reserved and set aside for

the use of the United States Bureau of Education and of the natives of indigenous Alaskan race, subject to any valid adverse rights which may exist by prior inception.”

WOODROW WILSON.

THE WHITE HOUSE, 6 *February*, 1917.

[No. 2525.]

EXECUTIVE ORDER

NORTON BAY RESERVATION.

It is hereby ordered that a tract on the northern shore of Norton Bay, Alaska, described as follows: Beginning at a point where the line of Latitude 65° N, intersects the line of Longitude $161^{\circ} 29'$ W. of Greenwich; thence due west to Longitude $161^{\circ} 40'$ W. of Greenwich; thence in a straight line south-westerly to the line of Longitude $162^{\circ} 40'$ W. of Greenwich; thence south to the north shore of Norton Bay; thence northeasterly along said shore to a point on said shore due south of the point of beginning; thence north to the place of beginning; also the adjacent islands within three miles of the coast line of said tract, are hereby reserved and set aside for the use of the United States Bureau of Education and of the natives of indigenous Alaskan race, subject to any valid adverse rights which may exist by prior inception.

WOODROW WILSON.

THE WHITE HOUSE, 3 *January*, 1917.

[No. 2508.]

