

99

THE PLACE OF CONSERVATION
IN THE SETTLEMENT OF ALASKA NATIVE LAND CLAIMS

An Address
To
The Alaska Chapter, The Sierra Club

By
Arlon R. Tussing, Economist
Federal Field Committee for Development Planning in Alaska

April 1, 1969
Anchorage, Alaska

Nineteen sixty-nine has a good chance of being the year in which most of the claims of Alaska Natives against the United States are settled. In the few minutes I have today, I cannot begin to review the history of these claims, of the present claims movement, or of the legislation which will be offered in the United States Congress this year. There is wide agreement that the Native peoples have a very *strong moral claim against* much of the land area of Alaska, and a very *unclear legal claim to these lands themselves*. The legal claims, however, are substantial enough to cast some cloud over further withdrawals of land for federal purposes, such as national parks and national forests, defense withdrawals, and power sites, and particularly over federal transfers of land to the state under the Statehood Act, or to other third parties such as under the homestead and mining laws.

There is further agreement, both on practical grounds and on the basis of the Organic Act of 1884, that a general solution of these issues must be a *legislative* solution. It is unfortunate the aboriginal rights of Alaska Natives have now taken more than a century of United States jurisdiction without their definition. But, since this issue is still with us, it is fortunate that the responsibility for a settlement is with the Congress, which has the ability to fashion a package which both meets the needs of the Natives, today and for the future, and does not undermine other public purposes, including the wise conservation and the wise development of Alaska's resources. I do not believe that any settlement--more realistically, any haphazard combination of individual settlements--hammered out in adversary proceedings before the courts, and bound by the legal precedents of past judgments on Indian claims, would have met *either* of these goals, justice to the Natives and wisdom in resource management, let alone *both* of them.

The Federal Field Committee for Development Planning in Alaska has been deeply involved in planning for the welfare and self-sufficiency of Alaska's Native communities; it has also been concerned that the state's economic development proceed with proper attention to, and planning for, proper protection for the state's renewable resource stocks, for its environmental, aesthetic, and recreational resources. David Hickok, our natural resources officer, addressed you on these concerns two weeks ago. If you have followed the newspapers in Alaska over the past few

months, you will know that we have been directly involved in the attempt to arrive at a just and wise settlement of the Native claims. In response to the request of Senator Jackson, chairman of the Senate Interior and Insular Affairs Committee, the Field Committee staff has prepared a comprehensive study of the historical, legal, resource, and economic aspects of the land claims, and the outline of major elements of a recommended claims settlement.

It is this proposed settlement, which will probably be the framework for legislation offered in Congress at the present session, which I want to introduce here, with a special discussion of its implications to conservationists.

As we see it, any claims settlement must (1) provide to the village people the land they actually use for homes, businesses, hunting and fishing camps, and the like; (2) assure those who pursue the old way of life continued access to the fish and wildlife resources necessary to that way of life; (3) compensate the Natives for land taken from them in the past, either by the establishment of federal withdrawals such as military bases, national forests, and the like, or through transfer to third parties, including homesteaders, miners, and the State of Alaska; and (4) either transfer unambiguously to the Natives, or compensate them for, those *remaining* aboriginal rights they have in the public domain.

These requirements must be met with land, or rights in land, or with money, or with a combination of land and money. What is different in the Federal Field Committee recommendations from most earlier proposals is that they take up *separately* the four aspects of a settlement--land for use, protection of subsistence resources, compensation for rights taken in the past, and compensation for remaining aboriginal rights. We feel that this approach better serves the real needs of the Natives without placing huge blocks of public land under private control and without requiring such large appropriations from the federal treasury as to be politically impossible.

The elements of the proposed settlement are these: (1) Land *used* by individuals in the villages is transferred directly to them with a minimum of red tape; the villages themselves each become eligible to select up to 36 square miles of surrounding land if they incorporate as organized communities under state law. This provision is the one *most immediately important* to the village people, who are now in many cases only

"squatters" on federal land. Between three and six million acres are ultimately to be transferred this way. Unfortunately, this provision, which is generally agreed upon by everyone else, is the one most likely to cause dissatisfaction in the conservation movement, because it would grant some townsites out of national forests and national wildlife reserves. For this reason, I want to return to this subject later.

(2) Control over fish and wildlife themselves largely passed out of the hands of the federal government at statehood, so the protection of subsistence resources or the assurance of continued access cannot be completely taken care of in *federal* legislation. The federal government does, however, have the power to regulate the use of federal lands for purposes which might conflict with the wildlife resources, and to regulate *entry* onto federal lands for hunting, fishing, or trapping. The Federal Field Committee recommendations include a provision for the Secretary of the Interior to *classify* lands surrounding villages so as to make their use for subsistence fish and wildlife production a *priority* one among competing uses. I doubt whether this proposal will encounter much opposition from conservationists, though it will not in itself end certain tough conflicts among wildlife uses, particularly the issue of the traditional Native harvest of migratory birds on their breeding grounds.

Another aspect of the Committee recommendation which conservationists are more likely to applaud than to oppose is the provision for emergency closure of strictly delimited areas of federal lands to fishing, hunting, or trapping by any other than local people where there is apparently not enough wildlife to support both the residents and outsiders.

The provisions of the Field Committee recommendations dealing with compensation for Native lands and rights taken in the past and in the future have been cast in statewide terms, so that a few individuals and villages will not become millionaires, while the rest receive nothing of value for giving up their aboriginal title to the land.

(3) For lands taken in the past for federal purposes, including national parks, wildlife reserves, and forests, and defense reservations, or given to the state or to other third parties, we proposed to grant not blocks of land, which can never be identical in significance or value to those lands lost in the past, but money--\$100 million--to be granted to a new

investment corporation owned by all the Natives of Alaska. Perhaps \$100 million is too much or too little--I am afraid Congress will feel it is too much--but this approach preserves the integrity of these reservations, most of which have been made to protect the interests of all Americans.

(4) Although Congress has at least twice *recognized the existence* of aboriginal rights in the lands of Alaska, it has never *defined* them. Our recommendations propose to *abolish* these vague and generally unenforceable rights, and to grant the Natives in their stead a material and enforceable claim *against the value of these lands in modern society*. The specific provisions are somewhat involved, but their intention is to grant to the Alaska Native Development Corporation I mentioned above approximately 10 percent of the present commercial value of the natural resources on the public domain in Alaska. We suggested three general ways this aim might be met; but in the preferred variant among the three, the revenues are not to come from an appropriation from the Treasury--such an appropriation is politically out of the question--but *from the proceeds of the land itself*, mainly oil and gas leasing, over a ten-year period. Again, we have attempted to provide the most adaptable single resource for those who live in the villages as well as those Natives who are acculturating and moving into urban society--money. At the same time this proposal, at no loss to the Natives in potential income or of land for actual use, preserves the principle of public ownership of resource stocks and of public management of resource development.

We feel very strongly that the traditional approach to Indian claims, the reservation or wardship system, has worked very poorly in the past, and has no place in Alaska. One alternative to the kind of settlement I have described is to give the Natives, as individuals or as small groups, a little bit of federal money and a vast amount of nearly worthless land in reservations or in otherwise restricted title. Politically this would be the easiest course; many of the village people would understand it readily and would accept it. At the same time, I know a number of federal bureaucrats and politicians who would probably prefer this kind of solution because it costs very little, raises few obstacles to rapid commercial development, and preserves the principle of government wardship over the Natives. It would be a tragedy for Alaska if this approach were to prevail, because it would make no contribution to the social advancement of the Native people, and would in the long run complicate the land and resource management problems for the rest of us.

Let me return now to the issue I skipped over quickly, that of Native townsites within national forests and wildlife reserves. I raise this issue here because I believe we are going to need the help of the Alaska Chapter of the Sierra Club on exactly this issue. There is a danger, a slight but real danger, that Native claims legislation may fail in part because of opposition--extremely shortsighted opposition I would say--from conservation groups on this question. The attention the Secretary of the Interior got throughout the United States in his confirmation hearing, the fact that he is an Alaskan, the fact that right or wrong he has not endeared himself to the conservation community, and the fact that any claims settlement needs the support of the Secretary and of the Administration, put us in a ticklish position. I am afraid that groups like the Sierra Club, of which I am a member, will react automatically, *as they usually ought to*, to any proposal to invade any of the conservation reserves of the United States for the benefit of some special interest. Your understanding and your support are necessary here. Native townsites are not Marble Canyon Dam, nor the logging of the last redwoods, nor an open-pit copper mine on the side of Glacier Peak.

All we are proposing is that the peoples who have lived on these townsites, sometimes for hundreds of years, be confirmed in the right to live in their own homes, in their own villages. Each village would be eligible ultimately to receive up to 36 square miles, one township or 23,040 acres, for individual and group use and community expansion. If each village in *or bordering* these reserves actually incorporated and took all the land to which it was entitled, and took all its land from the acreage of the reserves, the total land taken by 32 villages located on these reserves would amount to something over 700,000 acres out of a total of more than 47 million now in national forests, wildlife reserves, parks and monuments, about 1-1/2 percent of the total. (A tentative listing of the number and acreage of possible townsites in or adjacent to each reserve is included with the written summary of my remarks.) This is hardly an unreasonable incursion in order to right an ancient injustice. There is little reason to believe that it will undermine the legitimate public objectives of the reserves in question. Groups like the Sierra Club must continue to work for an expansion of the National Park System and establishment of wilderness areas until they encompass major examples of all the important geomorphic types and ecologic communities in Alaska. Doing so may entail some sacrifice in potentials for commercial resource development in Alaska. This cost is a worthwhile one for the nation or the state to bear--it is important, however, that we do not impose these costs on the poorest section of our population.

NATIVE VILLAGES IN UNITED STATES WITHDRAWALS FOR CONSERVATION PURPOSES
(WILDLIFE RESERVES, NATIONAL FORESTS, NATIONAL PARKS AND MONUMENTS)
IN ALASKA, ELIGIBLE FOR COMMUNITY LAND GRANTS UNDER FEDERAL FIELD COMMITTEE PROPOSAL

	Number of Villages	Total Acres	Maximum Acreage of Native Townsite	Percentage of Total
<u>National Wildlife Reserves</u> (Including 1969 additions)				
Arctic N. W. R.	1 (1)	6,000,000	23,040	0.4
Aleutian Islands N. W. R.	4 (2)	2,720,000	92,160	3.4
Kodiak N. W. R.	4 (0)	1,815,000	92,160	5.1
Pribilof Reserve	2 (2)	50,000	46,080	92.2
Nunivak Island N. W. R.	1 (1)	1,109,500	23,040	2.1
Clarence Rhode N. W. R.	6 (4)	2,887,000	138,240	4.8
Other Reserves	<u>none</u>	<u>5,322,900</u>	<u>none</u>	<u>0.0</u>
<u>Total National Wildlife Reserves</u>	<u>18 (10)</u>	<u>19,904,400</u>	<u>414,720</u>	<u>2.0</u>
<u>National Forests</u>				
Chugach N. F.	2 (0)	4,726,000	46,080	1.0
Tongass N. F.	<u>12 (0)</u>	<u>16,015,900</u>	<u>276,480</u>	<u>1.7</u>
<u>Total National Forests</u>	<u>14 (0)</u>	<u>20,741,900</u>	<u>322,560</u>	<u>1.6</u>
<u>National Parks and Monuments</u> (Including 1969 addition to Katmai N. P.)				
	<u>none</u>	<u>7,004,500</u>	<u>none</u>	<u>0.0</u>
<u>TOTAL CONSERVATION WITHDRAWALS</u>	<u>32 (10)</u>	<u>47,650,800</u>	<u>737,280</u>	<u>1.5</u>

Note: Figures in parentheses are the number of villages actually now located in the reserves.