

**Statement of  
Neil Kornze  
Director  
Bureau of Land Management, U.S. Department of the Interior  
Senate Energy and Natural Resources Committee  
S. 3273, Alaska Native Claims Settlement Improvement Act**

**September 22, 2016**

Thank you for the opportunity to present the views of the Department of the Interior (Department) on S. 3273, the Alaska Native Claims Settlement (ANCSA) Improvement Act. Among its measures, S. 3273 amends ANCSA and other laws concerning Alaska Native issues and Alaska Native communities, including: Ukpeagvik Inupiat Corporation; Shishmaref; CIRI (Cook Inlet Region, Inc.); Canyon Village, Kaktovik, and Nagamut; Alaska Native Corporation Authorizations; a 13<sup>th</sup> Regional Corporation; and Chugach Alaska Corporation (CAC). In addition, S. 3273 includes two provisions concerning “Unrecognized Southeast Alaska Native Communities Recognition and Compensation” and “Alaska Native Veterans Land Allotment Equity”. After the brief introduction, below, a summary analysis of each of these individual sections follows.

**Background**

The Alaska Native Claims Settlement Act (ANCSA) of 1971 extinguished aboriginal land claims; entitled Alaska Native communities to select and receive title to 46 million acres; and established a corporate structure for Native land ownership in Alaska under which Alaska Natives would become shareholders in one of 12 private, for-profit, land-owning Regional Corporations. Each Regional Corporation encompassed a specific geographic area, and was associated with Alaska Natives who had traditionally lived in the area, and each Regional Corporation received an acreage entitlement through which it could select and receive ownership of Federal lands. For landless Alaska Natives living outside the state, ANCSA authorized a 13<sup>th</sup> Regional Corporation. In addition, ANCSA created more than 200 Alaska Native Village Corporations.

As the Secretary of the Interior’s designated survey and land transfer agent, the Bureau of Land Management (BLM) is the Federal agency working to survey and convey to Alaska Native Corporations title to the 46 million acres selected. The BLM’s Alaska Land Transfer program administers transfer of lands to individual Alaska Natives under the Alaska Native Allotment Act (1906 Act); manages the 46 million-acre transfer to Alaska Native communities under ANCSA; and is also responsible for implementing the 104.5 million-acre conveyance to the State of Alaska of lands it selected under the Alaska Statehood Act. When the survey and conveyance work under the Native Allotment Act, the Alaska Statehood Act, and ANCSA is completed, over 150 million acres, approximately 42% of the land area in Alaska, will have been transferred from Federal to state and private ownership.

**S. 3273**

The following sections of S. 3273 concern lands administered by the Secretary of the Interior (Secretary) through the National Park Service (NPS), the U.S. Fish and Wildlife Service (FWS), and the Bureau of Land Management (BLM): Section 3, Ukpeagvik Inupiat Corporation Sand and Gravel Resources (FWS); Section 4, Shishmaref Easement (NPS); Section 7, CIRI (Cook Inlet Region, Inc.) Land Entitlement (BLM); Section 8, Canyon Village, Kaktovik, and Nagamut (BLM); Section 9, Alaska Native Corporation Authorizations (NPS/BLM/BIA); Section 10, Unrecognized Southeast Alaska Native Communities Recognition and Compensation (BLM); Section 11, Alaska Native Veterans Land Allotment Equity (BLM); Section 12, 13<sup>th</sup> Regional Corporation (BLM); and Section 13, Chugach Alaska Corporation Lands Study (NPS/FWS).

Section 5, Shee Atika Incorporated, and Section 6, Admiralty Island National Monument Land Exchange, concern National Forest System lands administered by the U.S. Forest Service. The Department defers to the U.S. Forest Service on these sections.

### **Section 3. Ukpeagvik Inupiat Corporation (UIC) Sand and Gravel Resources**

Section 3 of S. 3273 would transfer all right, title, and interest in sand and gravel deposits underlying the surface estate of land owned by the Ukpeagvik Inupiat Corporation and require mitigating measures by UIC to protect Steller's eider, a species of waterfowl protected under the Endangered Species Act as a threatened species, if development of those resources takes place. As written, the bill states: that (1) UIC shall continue to mitigate negative impacts on the nesting sites of the Steller's eider and (2) UIC shall not blast or use explosives during the active nesting season of the Steller's eider.

The Department, through the FWS, is concerned that mitigation prescribed by the bill is insufficient to minimize the potential impacts to the Steller's eider. Specific approaches and plans for mitigation are not outlined or adequately addressed. No details of mitigation measures referred to in (1), above, are provided, so it is unclear how this would avoid, minimize, or otherwise mitigate impacts. Avoiding blasting in summer would reduce some impacts associated with road construction; but extraction and hauling gravel in or near habitat used for nesting or brood-rearing could result in the destruction of nests or disturbance to nests or broods.

Not all impacts to Steller's eiders can be avoided and, therefore, the Department suggests that impacts can be mitigated, and future conflicts between development and conservation can be reduced, through the development and implementation of a conservation plan that conserves and protects adequate high quality nesting and brood-rearing habitat. The Department suggests the following language in the alternative: UIC shall mitigate the negative impacts on Steller's eider consistent with a conservation plan developed and permitted in accordance with section 10(a)(1)(B) of the Endangered Species Act. With these concerns in mind, FWS welcomes the opportunity to work with the Committee on the mitigation provisions to minimize potential impacts of the transfer on the Steller's eider.

### **Section 4. Shishmaref Easement**

Section 4 directs the Secretary of the Interior to grant the Shishmaref Native Corporation a 300-foot easement crossing the Bering Land Bridge National Monument, a unit of the National Park System, to permit a surface transportation route between the Village of Shishmaref and Ear Mountain, Alaska. The easement is to be jointly proposed by the Shishmaref Native Corporation, the City of Shishmaref, and the Native Village of Shishmaref. The bill deems the easement to meet all applicable requirements of Title 11 of the Alaska National Interest Lands Conservation Act (ANILCA).

The purpose of this action is to help facilitate the relocation of the Village of Shishmaref to a new location that is less subject to erosion than the present village site. The road from Shishmaref Lagoon to Ear Mountain would provide access to rock that would be needed if the Village is relocated to somewhere on the shore of Shishmaref Lagoon.

As co-chair of the Coastal Erosion Working Group of the Arctic Executive Steering Committee, the Department is well aware of challenges created by coastal erosion in the Arctic and the need to improve the federal response to this and other climate-related hazards impacting Alaskan Arctic coastal communities. In addition, the Department in its fiscal year 2017 budget proposal included a \$15 million increase across eight BIA trust natural resource programs to support preparation for and response to the impacts of climate change, including a funding set-aside for Alaska Native villages in the Arctic and other critically vulnerable communities in evaluating options for long-term resilience.

Understanding that the community has voted to move the village, the Department also understands that no village site has yet been selected, the significant funding for relocation has not been identified or secured, and alternative and potentially more economical sources of rock have not been fully investigated. Construction of a road to Ear Mountain would be a significant project, costing \$50 million to \$90 million, according to the Alaska Department of Transportation and Public Facilities, 2016. In addition, such a road would require an Environmental Impact Statement for any wetlands permit as well as for a right-of-way across the Preserve.

At this point, the Department believes it is premature to grant an easement or right-of-way before it is known whether such an easement or right-of-way is needed. Moreover, existing law and regulation provide an orderly process for applying for, processing, and granting access. At such time that it may be determined that surface transportation to Ear Mountain is needed, the Village can apply for a right-of-way across Bering Land Bridge National Preserve. If it is found to be necessary to develop access from Shishmaref Lagoon to obtain rock from Ear Mountain, rather than from other sources, a right-of-way could be granted under the authority of section 1110(b) of ANILCA.

### **Section 7 – CIRC (Cook Inlet Region, Inc.) Land Entitlement**

Section 7 authorizes Cook Inlet Region to fulfill its Section 12(c) land entitlement under ANCSA of 43,000 acres by selecting from among several types of Federal land, including land located: outside the boundaries of Cook Inlet Region; within the boundaries of the National Petroleum Reserve-Alaska; within a unit of the National Wildlife Refuge System in Alaska but not inside the Arctic National Wildlife Refuge; and outside of the boundaries of any national monument or

unit of the National Park System. In addition, Section 7 authorizes CIRI to select land located within Cook Inlet Region that has been identified by the Federal government as excess to its needs, except lands addressed in 1425(b) of ANILCA, concerning the North Anchorage Land Agreement.

Fulfillment of the land entitlement of the Cook Inlet Region, Inc. (CIRI) under Section 12(c) of ANCSA and subsequent legislation raises complex issues which the parties are diligently working to resolve. The CIRI land selections and entitlements have been the subject of specific legislation, a 1986 Memorandum of Understanding, as well as specific selection and conveyance procedures. Over the years, the Department and the BLM have worked with CIRI to interpret and implement ANCSA and to fulfill CIRI's land entitlement. Although there are sometimes differences among the parties, we have maintained a collaborative and productive working relationship. The BLM remains committed to continuing that strong working relationship. In 2013, CIRI made re-conveyances to Cook Inlet Region villages, which provided an important measure of certainty with respect to CIRI's entitlement. This action did not all resolve issues relating to CIRI's entitlement, and BLM and CIRI are continuing to work together to resolve the remaining issues.

The Department does not support Section 7 of the bill as we find it to be unnecessary. We are fully committed to seeking the conveyance of CIRI's full entitlement in the most expeditious manner, and will continue working closely with the sponsor of S. 3273, CIRI, and other members of the delegation.

### **Section 8. Canyon Village, Kaktovik, and Nagamut**

Section 8 amends Section 14(h) of ANCSA to require the Secretary of the Interior to make specific conveyances to Canyon Village, Kaktovik, and Nagamut, and states that these three conveyances fulfill ANCSA entitlements.

- Canyon Village. Directs the Secretary to convey 6,400 acres of surface to the Kian Tr'ee Corporation for the Native Village of Canyon Village, with the subsurface estate conveyed to Doyon Limited.
- Kaktovik. Provides that notwithstanding Sec. 1302(h)(2) of ANILCA, the Secretary is directed to withdraw lands chosen by Kaktovik from within the National Wildlife Refuge System (NWRS) and to convey the lands to Kaktovik. This provision addresses Arctic Slope's right to in-lieu subsurface estate.
- Nagamut. Directs the Secretary to convey to Nagamut lands chosen by Nagamut that are within the NWRS that cover their original township(s) or land that is as close as "practicable" to the original township(s).

The FWS has not had sufficient time to fully review this provision and assess its potential effects to the Department's trust responsibilities. The FWS will complete its review and assessment as soon as practicable and will be happy to provide its views to the committee in person or in response to a question on the record.

### **Section 9. Alaska Native Corporation Authorizations**

Section 9 amends the National Historic Preservation Act, Tribal Forest Protection Act, and Native American Graves Protection and Repatriation Act to make tribal lands and private Alaska Native corporate lands equivalent for purposes of the three laws. The Department has significant concerns with this legislated equivalency. ANCSA corporate lands are privately-owned, and held in fee. Tribal land is held in trust. Expanding the scope of the Secretary's trust responsibility from tribal lands to corporate fee-owned lands is a fundamental shift that the Department has not had the opportunity to fully analyze and may have implications with the historical definition of "tribal land".

The United States has a different relationship with tribes and with native corporations resulting in the development of separate policies. Executive Order 13175 requires consultation with tribes on a government-to-government basis due to the tribes' status as domestic, dependent nations. The resulting DOI Policy on Consultation with Indian Tribes reflects this government-to-government relationship. DOI Policy on Consultation with ANCSA Corporations defines a government-to-corporation relationship limited to consultation concerning federal actions or activities that "may have a substantial direct effect on an ANCSA Corporation."

In addition to the Department's over-arching concern of expanding the scope of the Secretary's trust responsibility, this change is concerning due to the differing and sometimes conflicting purposes or priorities of tribes and corporations. For these reasons, the Department opposes Section 9 of the bill.

#### **Section 10. Unrecognized Southeast Alaska Native Communities Recognition and Compensation**

Section 10 would amend ANCSA to authorize the five Southeast Alaska Native communities of Haines, Ketchikan, Petersburg, Tenakee, and Wrangell to organize as urban corporations, entitling each, upon incorporation, to receive one township of land (23,040 acres) in southeastern Alaska from local areas of historical, cultural, traditional and economic importance.

Congress specifically named the villages in the southeast that were to be recognized in ANCSA; these five communities were not among those named. The five communities applied to receive benefits under ANCSA and were determined to be ineligible. Three of the five appealed their status and were denied.

Members of these five communities are at-large shareholders in Sealaska Regional Corporation. The enrolled members of the five communities comprise more than 20 percent of the enrolled membership of the Sealaska Corporation, and as such, have received benefits from the original ANCSA settlement.

Recognition of these five communities as provided in the bill, despite the history and requirements of ANCSA, risks setting a precedent for other similar communities to seek to overturn administrative finality and re-open their status determinations. Establishing this *de facto* new process could create a continual land transfer cycle in Alaska. Although the Administration does not support Section 10 of S. 3273 as written, we would be glad to work with the Committee to address these issues. The Administration believes that the completion of the remaining

entitlements under ANCSA and the Statehood Act is necessary to equitably resolve the remaining claims and fulfill an existing Congressional mandate.

### **Section 11. Alaska Native Veterans Land Allotment Equity**

Section 11 would amend two distinct sections of ANCSA, in an effort to provide access to lands for individual Alaska Natives who do not meet criteria to receive lands under the Alaska Native Allotment Act, the Alaska Native Vietnam Veterans Allotment Act, or ANCSA.

Only Subsection (b) applies to veterans and their heirs.

The 1906 Alaska Native Allotment Act authorized the Secretary of the Interior to convey up to 160 acres of non-mineral land to individual Alaska Natives who could prove personal use and occupancy of these lands prior to the withdrawals for the national forests. Over 10,000 Alaska Natives filed allotment applications. To date, certificates of allotments have been issued to approximately 98 percent (over 13,100 parcels) of individual Native allotments. There remain pending approximately 280 applications under the 1906 Act, most of which will require the State of Alaska to voluntarily reconvey title to the United States government before a conveyance can be made to the individual allotment claimant.

The 1906 Act was repealed with ANCSA's enactment on Dec. 18, 1971, but ANCSA contained a savings provision for individual allotment claims then pending before the Department. The vast majority of the still-pending applications were legislatively approved by Section 905 of ANILCA following its enactment in 1980.

Section 11(a), "Clarification Regarding Occupancy of Native Allotments in National Forests", does not concern veterans. It amends ANCSA Sec. 18(a) and addresses claims to Federal lands that were withdrawn pre-Alaska Statehood for the creation of the Tongass and Chugach National Forests (1907). Sec. 11(a) does not protect valid existing rights and conveyances.

Section 11(a) of S. 3273 affects a group of Alaska Natives whose applications: 1) were pending at the Department on the date of repeal for the 1906 Act; 2) were for allotments in the Tongass or Chugach National Forests; and 3) which claimed ancestral rather than personal use and occupancy prior to the 1907 and 1910 withdrawals establishing the National Forests. Section 11(a) would override the 1983 Ninth Circuit decision in *Shields v. United States*. The bill would reopen and legislatively approve any application for a Native allotment in lands withdrawn for the Tongass and Chugach National Forests that was pending at the Department on December 18, 1971, the date on which ANCSA repealed the 1906 Act.

The BLM expects that enactment of Section 11(a) would require reopening and approval of over 1,000 scattered inholdings within the two National Forests. Implications of Section 11(a) for lands already conveyed to Native Corporations under ANCSA are uncertain.

Section 11(b), "Open Season for Certain Alaska Native Veterans for Allotments", amends ANCSA Section 41 to allow any Alaska Native Vietnam-era veteran who has not yet received a Native allotment to select up to 2 parcels of Federal land, totaling no more than 160 acres, and an heir to apply for an allotment on behalf of the estate of the deceased veteran. Sec. 11(b) does not protect valid existing rights and conveyances.

Certain Alaska Native veterans of the Vietnam War may have missed an opportunity to apply for an allotment because they were serving in the U.S. armed forces immediately prior to the 1971 repeal of the Allotment Act. The 1998 Alaska Native Vietnam Veterans Allotment Act (P.L. 105-276) was enacted to redress any unfairness that may have resulted because of such military service. The 1998 Act authorized the Department to reopen Native allotment applications for an 18-month period ending in January 2002, for certain Alaska Native Vietnam War-era veterans who may have been prevented from filing timely applications in 1971 because they were on active military duty at the time.

Congress tightly restricted the time period for which applications were reopened in order to minimize effects on other pending applications, private property interests, and other government programs. During this time period, the BLM received applications from 740 individuals claiming a total of 1,070 parcels. Of these, about 70 percent did not meet the terms of the Act and were rejected. Certificates for 245 allotments have been issued, and just seven applications remain pending. The Vietnam-era Veterans transfer program is nearly completed.

S. 3273 would allow Alaska Native veterans to select any vacant Federal land in the state of Alaska that is located outside of the TransAlaska Pipeline right-of-way, a unit of the National Park System, a National Preserve, or a National Monument. Thus, under S. 3273, available lands would include wildlife refuges, national forests, wilderness areas, acquired lands, national defense withdrawn lands, and lands selected by, or conveyed to, the State of Alaska or an Alaska Native Corporation. The bill would authorize compensatory replacement selections from appropriate Federal land, as determined by the Secretary, as a replacement for land Native Corporations may voluntarily reconvey for Native veteran allotments.

S. 3273 would disrupt precedent under existing law and complicate settled land use arrangements under ANCSA and ANILCA, undermining the goals of the Alaska Land Transfer Acceleration Act to finalize land entitlements under ANCSA, the Statehood Act, and existing applications for individual Alaska Natives and Native veterans. In this particular case, the bill would also create inequities between Alaska Native Vietnam veterans and Alaska Natives and award land to those who did not serve in the military prior to the repeal of the Allotment Act.

While the Department opposes Section 11 as written, we would be glad to work with the Committee on this issue to address our shared priority of equitable treatment of Alaska Natives through the Alaska Land Conveyance program.

### **Section 12. 13<sup>th</sup> Regional Corporation**

Section 12(b) authorizes the establishment of a new 13<sup>th</sup> Regional Corporation under ANCSA for non-resident Alaska Natives. Previously, a 13th Regional Corporation was created under Alaska law as a private, for-profit corporation on December 31, 1975. That corporation no longer exists. The State of Alaska issued a Certificate of Dissolution on January 1, 2014. The Department does not object to this section.

### **Section 13. Chugach Alaska Corporation (CAC) Land Exchange Pool Study**

Section 13 would require a study of the impacts on the value of Chugach Alaska Corporation (CAC) lands caused by changes in Federal law or Federal or State land acquisitions since December 1, 1980, or just prior to the passage of the ANILCA. This section would also require examination of alternative forms of compensation that could be offered to CAC for conveying its existing property rights.

As currently written, the study of the impacts on the value of CAC lands would need to address any number of Federal laws that may have positive or negative effects on land values, including laws pertaining to wetlands or endangered species. In addition, there is likely little, if any, market data that would be relevant to demonstrating the impacts of Federal laws or of State or Federal government land acquisitions. Therefore, the study's results would be inconclusive and provide no reliable estimate of the impacts on land values. Such a study would have little, if any, value.

A study of alternative methods of compensation for the conveyance of CAC subsurface lands to the United State or the State of Alaska could be completed. If CAC is willing to convey its subsurface estate lands that lie beneath surface estate lands previously acquired by the U.S. Forest Service (USFS), NPS, or FWS under the Exxon Valdez Oil Spill restoration program, the conveyance would provide permanent protection of those lands and be of mutual benefit to CAC and the United States. A study of alternative methods of compensation may assist in furthering that end. It should be noted that identification of alternative methods of compensation will not eliminate the need of appraising and estimating the market value of subsurface lands.

The NPS has acquired approximately 30,000 acres of surface estate lands within Kenai Fjords National Park from the English Bay Corporation (an ANCSA Native corporation), and the FWS has acquired from the English Bay Corporation approximately 2,000 acres that are within the Alaska Maritime National Wildlife Refuge and adjacent to Kenai Fjords National Park. These lands overlay subsurface estate owned by CAC. At the time of purchase the NPS and FWS approached CAC about selling their subsurface estate, but CAC was not interested in selling.

The USFS has acquired significantly more surface estate lands from ANCSA village corporations than has the NPS or FWS. Such surface estate lands, located within Chugach National Forest, also overlay CAC subsurface estate lands. For this reason, if a study is to be conducted, it would be more appropriate for the Secretary of Agriculture to take the lead in conducting the study.

The Department would like to work with the sponsor and the Committee on clarifying Sec. 13.

## **Conclusion**

Thank you for the opportunity to testify on this bill. The Department appreciates the efforts of the sponsors in undertaking a comprehensive bill to amend the Alaska Native Claims Settlement Act. We look forward to working with the sponsors to address the concerns outlined above.