THE ALASKA NATIVE CLAIMS SETTLEMENT ACT AND ITS EFFECTS

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INTRODUCTION:

I am pleased to have this opportunity to share with you Alaska's recent experiences with Native land claims and its various effects. The Alaska Native Claims Settlement Act, signed into law on December 18, 1971 by the President of the United States, is in many regards a large scale social experiment. Although insufficient time has lapsed to asses its outcome or even to predict it, there have been some notable effects which may be of interest to you. Unfortunately I am not adequately informed of the Canadian Native Claims to draw parallels and I am looking forward to Mr. Luecks' talk which will immediately follow to lessen my ignorance.

What I'd like to do this afternoon is first to briefly review some of the historical events and forces which led up to the settlement; second, to outline the major provisions of the Settlement Act; third, to discuss the socio-economic setting in which the Act is being implemented; and fourth, to report on the progress of the Act's implementation and some of its more significant effects.

HISTORICAL EVENTS AND FORCES

When the United States acquired the territory of Alaska in 1867 via the Treaty of Cessions, it agreed "not to disturb

the use and occupancy of its Native inhabitants." The commitment was reaffirmed in various pieces of subsequent legislation over the 100 years that followed including language in the Alaska Statehood Act which in effect reaffirmed the Congress' intention of excercising the responsibility it reserved for itself to resolve the long standing issue Native Land Claims.

My lawyer friends tell me it is important to note that the entire question of Native Land Claims was not a matter of aboriginal title, recognized in and protected by the Constitution of the United States and to be resolved by the courts, but rather a matter of aboriginal rights which the U.S. Government had recognized and which the Congress had reserved for itself to resolve.

Hence, the Settlement Act in a very real way signifies the United States recognition of its moral obligation to settle, in a fair and equitable manner, Alaska Native peoples' land claims. To my knowledge it is the only legislation of its kind.

With exception of gold and copper mining occurring at the turn of this century, Alaska's exposure to the western ways and impacts were largely limited to itinerant fishermen and prospectors. It was not until World War II that Alaska was considered by the U.S. as anything more than a territorial

outpost. Indeed, it became a major military staging area for the war effort and was subsequently incorporated as a strategic location in our national security system. Thus even today the military plays a very significant role in the Alaskan economy.

As part of the military buildup, highways, harbors, airports and pipelines were constructed and the State became equipped with a statewide communication network. But the most significant import of the buildup was not physical but human. The military brought tens of thousands of men to Alaska, many of which found it an attractive place to live and who took up permanent residence there, thus constituting a major element of the substantial non-Native migration to the State. Individuals, who within less than twenty years would lay claim and be granted 103 million acres as citizens of the new State of Alaska.

It was during this period of the non-Native immigration and particularly following statehood that major conflicts and disputes arose over Native and State claims to land. It is fundamental to understand Native sentiment to recall that as late as 1939, Natives constituted a majority of the inhabitants of the State, today they constitute something less than 16 percent.

In addition to this effect of the general population growth of the State one can identify at least four (and I'm sure there are others) significant developments concurring in the 1960's. These were: one, the increasing conflicts between the State and the Natives over State selected lands (before the end of the decade the entire State was blanketed with Native Claims), two, the amphoras impetus of the civil rights movement in the U.S. buttressed by the War on Proverty and the Office of Economic Opportunity, which in the mid 1960's financed Natives organizational efforts and contributed to the consolidation of Native claims and organizations into a strong statewide Native organization, the Alaska Federation of Natives; three, the imposition of a "land freeze" authorized by the Secretary of Interior in 1967, which effectively "froze" any further disposition of public lands for any purpose, i.e. state selections, pipeline corridor, etc., ...and four, the discovery of North Slope oil.

Recognizing these primary forces, which in my judgement constituted the major impetus for an early and fair and just settlement, also provided insight into several seemingly unrelated provisions of the Settlement Act, namely the authorized withdrawal of one specific pipeline corridor and others unspecified, a reclassification of lands in remaining public

domain, and protection of various valid existing rights. These "riders" in the Settlement Act have had and in my opinion, will in the near term bear more heavily on Alaska's future than the Native claims portions of the Act.

MAJOR PROVISION OF THE SETTLEMENT ACT

So much for the historical prospective. Now let me with the aid of this multi-colored kaleidescope, referred to as a land status map, focus for a few minutes on the major provisions of the Settlement Act. I'll discuss the provisions in two parts, one pertaining to the structure of the Act and the other to the benefits it bestows.

The Act creates several organizations through which the benefits flow and its provisions are administered. It subdivides the State into twelve geographic regions referred to as Native regions, each of which generally represents a homogenity of Native culture. All Alaska Natives who were of one-fourth blood Indian, Aleuk or Eskimo or a combination thereof and were born on or before and living on the date of exactment were eligible to benefits under the Act. Each eligible Native was enrolled to the Native region and place resided or considered home.

Native associations representing the regions were to form for profit corporations under the laws of Alaska.

Native villages, defined as places having 25 or more permanent Native residents and a majority of the population being Native, also formed similar corporations. Every Native declaring a active region and/or village as home automatically became a shareholder of the corporation. Natives enrolling to Native villages became shareholders of both a village and a regional corporation. Whereas Natives enrolled to non-Native places became shareholders of a regional corporation only. Although the corporations are autonomous, the Act requires the Regional Corporation to assist and oversee the affairs of village corporations and vests with village corporations certain rights to approve the actions of regional corporations which might affect them. The major portion of the land and cash benefits received pursuant to the Act accrue to the Native corporations not to individual Natives. It is through the shareholders' relationship that individual Natives benefit, except for direct grants of occupied lands, a benefit received by both Native and non-Native villages residents. The Native Corporation stock is for a twenty-year period, virtually inalienable; however this restriction does not apply to lands received.

Established to oversee the disposition of public lands is a Federal-State Land Use Planning Commission, which is

basically advisory to the Secretary of Interior and to the U.S. Congress. It is a ten-member Commission, five appointed by the Secretary and five by the Governor of Alaska. In addition to its oversight responsibilities, the Commission is to recommend uses and management of the lands remaining in public domain. The ultimate value of the Commission is yet to be proven since its major responsibility is yet to be fulfilled. Rather than prejudge the Commission, suffice it to say that it is affiliated or endowed, depending upon one's point of view, with all the responsibilities and restrictions common to most public advisory commissions.

The major benefits received from the Act are either cash or land. Let me first explain the cash provision. A special account for the Alaska Native Fund was set up in the Department of the Treasury. Into this account the Act authorizes the payment of $462.5 million over a period of eleven years (with annual appropriation measures required each year). An additional $500 million is to be paid into the account based upon a 2 percent override on all mineral royalties, leases, sales on all lands in Alaska not otherwise patented. Hence, the bulk of this payment will come from royalties off the oil production of Prudhoe Bay. I presently estimate the full $500 million to be paid into the fund by 1981. (This provision

effectively converts the Native Corporation into true believers of the oil industry.)

Money in the Native Fund is dispersed directly to the Native region corporations on a quarterly basis. The regional corporations for the first five years are required to pay 10 percent of what they receive plus what they earn to their shareholders and 15 percent to the village corporations located within the region, on a basis proportionate to number of regional shareholders enrolled to a village. (A similar formulae applies to the regional shareholders who are not shareholders of village corporations, thereby providing them with a proportionate share of the cash distribution.) After five years, the 10 percent distribution to individual shareholders is no longer required but the mandatory distribution to village corporations increases to 50 percent.

A particularly controversial provision of the Act requires that all regional corporations share with one another, on a proportionate basis similiar to the above, but among regions, 70 percent of the revenues they receive from the mineral or timber development of the land they receive pursuant to the Act. This was a compromise between the Native groups who argued that because the settlement was based on

land claims that the benefits received should be on lands given up, i.e. land within the Native regions not granted to Natives versus those Native groups who claimed the settlement was with Natives, and the benefits should be distributed on a population basis. Poor draftmanship and diverse economic interests among the Native corporations are likely to result in prolonged litigation over the interpretation of this particular provision.

In addition to the cash benefits the Act conveys to the Native corporations the right to select and receive unrestricted title to 40 million acres of land. The land entitlements divide the surface from the sub-surface estate with the regional corporations holding the 40 million acre subsurface estate in addition to 16 million acres of surface estate (however under a complicated land-loss formula part of the above mentioned compromise between Native groups, only six of the Native corporations receive part of the 16 million acres with two Native regions, the North Slope and the Interior, entitled to most of the acreage.

Native village corporations select and receive title to 22 million acres of surface estate from lands withdrawn for their selection, generally immediately surrounding the villages. In instances where not enough land is available

for a village's selection, additional lands of similar character were made available for village corporation selection.

Village corporations were given first selection rights and regional corporations made their selections from the lands remaining. In practice village and regional land selections were carefully coordinated. Villages were to complete their selections within three years of enactment and regions within four years. (December 18, 1975)

Two million acres of surface estates were set aside for special cases, such as Native groups not qualifying as Native villages, isolated historic sites and cemetery places, four non-Native places with high concentrations of Native people and Native homesites established outside the Native villages.

A "sleeper" provision inserted into the Settlement, at the eleventh hour, to gain the support of various environmental groups called for the withdrawal from all forms of appropriation 80 million acres of land within five years from enactment, the Secretary of Interior, receiving advise from the above mentioned Land Use Planning Commission, is to recommend to Congress which of the 80 million acres should be classified as and added to the National Parks, Forests,

Wildlife Refuges, or Wild and Scenic Rivers. This unexpected withdrawal pre-empted in some instances, selection by the State and the Native corporations.

There are other important provisions in the Settlement Act but before my time runs out let me turn to the setting in which the Act is being implemented and what the effects of the implementation have been.

THE ALASKA NATIVE SOCIO-ECONOMIC SETTING

It is important to appreciate the circumstances in which the Alaska Native lives for indeed if the benefits received from the Act are to contribute to Native well-being, their present circumstances reveals the challenging development agenda they face.

The following are excerpts taken from a study of Native well-being, prepared for the Secretary of Interior and in which I participated last year.

Natives live in places and enjoy a lifestyle which are both distinct and separate from non-Natives; they prefer to do so.

Two-thirds of all Natives live in villages where they constitute the overwhilming majority of the population. Despite all conventional measures of well-being which shows the Natives to be seriously disadvantaged, they not only in-

dicate their preferences to live in a village but also expect that their children will as well. Use of language, employment patterns, average family size, etc. all reflect lifestyle distinct from non-Native Alaskans.

By most conventional measures of well-being, Natives are greatly disadvantaged compared to non-Natives.

The differences are systematic and are much greater than regional differences or even urban-torural differences among Natives. Non-Natives are richer, better educated, healthier, longer-lived, better housed, more mobile and higher in occupational status.

Natives are poor.

Three out of eight Native families are below the official poverty line. (If we took account of the high prices in Alaska, probably about half of the Natives would be found to be living in poverty.) Poverty among Alaska Natives is four times as prevalent as in the U.S. population, and more than eight times as prevalent as among Alaska non-Natives.

Natives are predominantly village people.

About three-fourths of the Native population is dispersed in rural settlements, most of which are without roads to connect them. They are hard to reach and expensive to

serve. The vast majority of Natives surveyed for this study have indicated they were presently living in the communities they would like to live in. Of Natives living in small and medium-sized villages, 75 percent indicated a preference for their current residence which further documents the likelihood that village life will persist for the forseeable future.

The Native population is attached to its traditional values, and at the same time wishes to participate in responsibilities and benefits of modern ways.

Natives are relatively immobile and they are attached to their lands. A majority still rely on hunting, fishing and gathering for half or more of their food. They do not see these preferences as inconsistent with the advantages of education, improved housing and facilities, modern health care, transportation, communication and other amenities. Urban Natives have loosened their ties to the traditional ways, but in their attitudes and values they resemble rural Natives more than urban non-Natives.

THE EFFECTS OF THE SETTLEMENT

As I have indicated earlier the most dramatic effects of enactment of the Settlement Act have little to do with Alaska Natives or the benefits they have received. The first and foremost effect is that the Act essentially cleared the way

with the exception of a minor technical amendment, for construction of the trans-Alaska pipeline. All other effects of the Act are drafted by comparison. The effects of a $6 million construction which generates a monthly payroll in excess of $100 million are pervasive to say the least. Under minority here and contract quotas, many Natives and Native corporations have been able to cash in on the high wages and quick profits, but I suspect the average Native families, like most rural low income folks, are experiencing an erosion in the disposable income as double digit inflation claims a substantial part of their relatively fixed incomes.

The second major effect of the Act has been to essentially extend the land freeze imposed back in 1967 which the Act was supposedly designed to thaw.

The Section 17(d)1 and 17(d)2 withdrawals authorized in the Act have virtually closed all public domain to our form of entry. Technicalities, bureaucratic red tape and limited administrative funding and expertise have delayed even the interim conveyances of land to Native corporations. A concept designed to give Native corporations immediate title to their selected lands, short of actual survey. Long standing legal questions related to navigability, public access, and valid existing rights are being raised as various

groups feel themselves to be adversely effected by Native land selections.

The debate between pro and anti growth forces in Alaska are likely to keep most of the land in Alaska in an uncertain status for the foreseeable future.

As far as assessing the effects the Settlement Act and its corporation have had on Native people themselves and on the State as a whole is concerned, the experience is mixed. The average Native person probably doesn't know much about the Act and has mixed feelings about what he does know. His most direct experience is that he received a check for $180 a year ago, $90 last year and $45 this year. Next year he may not receive a check at all. He doesn't know why but he probably doesn't like it. Fish and game are more scarce every year and he doesn't know what he or the corporation can do about it. He'd like to have a job and see development occur in his village but not if it means a lot of outsiders moving in.

At the corporate level, the Act introduces novel, capital rich, resource rich corporation into the State's economy. Corporations who want to create jobs for Natives and to develop a revenue base which will protect their land from further taxation. They want to provide an option for

Natives who want to pursue a more traditional lifestyle while also attracting Native youth into professional schools and positions. The dilemma they face is that the traditional corporate goal of maximizing profits may not, at least in the short run, enhance Native well-being.

If money, management, and markets are the three "M's" of successful business the corporations clearly have the money, their management is new and varied in experience and their local markets are thin, while their resource markets broad. While it is uncertain whether or not the Native corporations will all become successful, thriving businesses, one thing is for certain----they face a challenge and an opportunity equal to that of most of our modern large corporations.

Thank you for this opportunity and I wish you well in your efforts to achieve a fair and equitable settlement of the Canadian Native Claims.