CONVEYANCE OF CERTAIN ALASKAN LANDS

ARING

FORE THE

COMMITTEE ON RESOURCES
HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTH CONGRESS

FIRST SESSION

ON

H.R. 2560

A BILL TO PROVIDE FOR THE CONVEYANCES OF CERTAIN LANDS IN ALASKA TO CHICKALOON-MOOSE CREEK NATIVE ASSOCIATION, INC., NINILCHIK NATIVE ASSOCIATION, INC., SELDOVIA NATIVE ASSOCIATION, INC., TYONEK NATIVE CORPORATION AND KNITATNU, INC. UNDER THE ALASKA NATIVE CLAIMS SETTLEMENT ACT

NOVEMBER 7, 1995—WASHINGTON, DC

Serial No. 104–46

Printed for the use of the Committee on Resources

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CONVEYANCES OF CERTAIN ALASKAN LANDS

TUESDAY, NOVEMBER 7, 1995

HOUSE OF REPRESENTATIVES,
COMMITTEE ON RESOURCES,
Washington, DC.

The committee met, pursuant to call, at 11:01 a.m. in room 1324, Longworth House Office Building, Hon. Don Young (Chairman of the Committee) presiding.

STATEMENT OF THE HON. DON YOUNG, A U.S. REPRESENTATIVE FROM ALASKA, AND CHAIRMAN, COMMITTEE ON RESOURCES

The CHAIRMAN. Today, the committee will hear testimony on a bill that I have introduced dealing with the lands in Alaska: H.R. 2560.

[The bill may be found at end of hearing.]

The CHAIRMAN. I want to welcome all the witnesses, especially those who traveled all the way from Alaska.

1We will hear testimony concerning H.R. 2560, a bill to convey certain lands to Native village associations.

I would like to have Agnes Brown, Bruce Oskolkoff, and John D. Leshy from the Department of the Interior come to the table.

This bill is intended to settle a complex legal dispute between five Native villages and the BLM over 29,900 acres of land on the west side of Cook Inlet. The dispute has lasted over 20 years and has brought the village land conveyance process in the Cook Inlet Region to a grinding halt.

If I can digress from my written statement, one of the biggest problems we have is the Department of the Interior has the responsibility to implement and to speak for all American Natives, including Alaskan Natives. And every time I turn around I find either the BLM, the BIA, the Park Service and Fish and Wildlife, which is under the Secretary of Interior, not fulfilling their first trust obligations. That is just a little digress from my written statement. It does not make me extremely pleased when I see this happening continually.

These villages for years have asked the Interior Department to convey these lands. Last December, an opinion on this matter was issued which said that the Department did not have authority to convey these lands. This has only allowed the controversy to continue. CIRI and the villages negotiated an agreement in good faith with BLM in 1976 after earlier selections had been ruled invalid. It appears they were told by the BLM that the high priority Appendix C selections should be conveyed or would be conveyed to them.

Throughout the late 1970's and 1980's, the Department told the villages, and others, that the villages would receive the lands contained in H.R. 2560.

However, because these lands are adjacent to what became the Lake Clark National Park, it appears the Department—under pressure from certain environmental groups—have put these villages through what some have termed a Chinese water torture, and I apologize to the Chinese people.

I find this ironic since these villages voluntarily gave up their land selections along the shore of Lake Clark some time ago. In other words, without these actions the creation of Lake Clark National Park in its present form never would have happened.

I am well-aware of the complex legal and management issues. However, the Department's inability to find a solution to this problem has stopped the conveyance of nearly one-third of the village ANCSA entitlements.

H.R. 2560 would end this controversy by requiring the Department to convey the 29,900 acres to the Native villages. It does not increase any ANCSA entitlements or permit any new selections. It would also require CIRI to reconvey the surface estate of Appendix A lands to its villages. The Department has long thought that these Appendix A lands should be reconveyed to the villages.

I am also aware that there are approximately 200 acres of private inholdings within the Appendix C lands. My staff and I have met with these private owners to assure that access is protected and their lands. In fact, it will be available to them as it is today.

Now if everybody will please stand, after you got all nice and comfortable. Raise your right hand.

[Witnesses sworn.]

The CHAIRMAN. You may be seated.

Agnes Brown will be the first individual to testify today. And, Agnes, welcome to the committee room.

STATEMENT OF AGNES B. BROWN, TYONEK NATIVE CORPORATION; ACCOMPANIED BY LISA M. PARKER, PLANNING DIRECTOR, KENAI PENINSULA BOROUGH

Ms. BROWN. Thank you, Mr. Chairman.

Chairman Young and members of the committee, I appreciate being given the opportunity to appear here today in support of H.R. 2560, legislation which will fulfill land conveyance commitment made in ANCSA to my people.

My name is Agnes Brown. I was born and raised in Tyonek. My mother's mother was the matriarch of our village. My father was adopted by Chief Simeon Chickalusian. Our late chief was my brother, Albert Kaloa, Jr.

For 15 years, I was President and Chairman of Tyonek Native Corporation, and I am now the Chair of the Tyonek Native Corporation which was created under the Alaskan Native Claim Settlement Act, or ANCSA. I also appear here today as Chair of the Cook Inlet United Deficiency Land Management Association, a group of villages seeking to have the Department of the Interior perform its contractual duties to convey the full entitlement of lands under ANCSA to six Native village corporations in the Cook Inlet Region of Alaska.

I thank you for the opportunity to testify before the committee. We appreciate your effort to take up this issue, and we thank you, Congressman Young, for your legislation to require the Department of the Interior to convey our lands to us.

We strongly support H.R. 2560. The legislation is simple. The priority lands of each of the affected villages are to be conveyed within 90 days of enactment. CIRI must then reconvey the remaining entitlement in priority order within six months. Consistent with ANCSA, CIRI is required to take the subsurface estate. The legislation confirms this requirement of existing law. If the government fails or refuses to convey, title to the land is vested in the village, villages by operation of law. We will receive, finally, our entitlement, nothing more. We will own and manage these lands.

Mr. Chairman, there have been misunderstandings about the purposes of this legislation. For example, press reports have said these are new selections and that these lands will come to CIRI. Both of these press statements are false. Under this legislation, land selected over 20 years ago will be conveyed to the villages, not CIRI. This legislation does not increase our entitlement.

We used the lands which are the subject of this dispute long before there was an Interior Department and long before ANCSA was passed. In 1971, ANCSA was enacted into law, extinguishing Alaskan Native land claims and terminating our historic rights to the use of certain lands in Alaska. In exchange, ANCSA established a land entitlement and required the formation of village corporations to administer that entitlement.

Although this idea was new to us, we did our best. Village corporations were established to receive traditionally used lands from the Federal Government. In 1974, we began selecting lands we wanted to acquire. Unfortunately, in the Cook Inlet Region, much of our lands had already been given away. As a result, the Secretary of the Interior established areas for the village corporations to make land selections under established procedures. The areas that were withdrawn by the Secretary of the Interior included lands on the west side of Cook Inlet. By making this land withdrawal, it was the Secretary of the Interior who told us we should select lands on the west side and in the heart of what is now Lake Clark National Park.

Our six village corporations had to select in the same area. We established a rational method to make our selections fairly. Each village selected by turns, so that one village would not receive all the best land. This selection process was called "The Rounds." We knew that any single village's selections were not compact and contiguous. However, all the villages' selections taken together were compact and contiguous.

We asked BLM if this method would comply with BLM regulations and we were told that it would. We were told this by BLM officials who were in the room at the time the selections were made.

We also received a letter from BLM that approved this selection process. We filed the selections with BLM over 20 years ago in 1974. Much to our dismay, BLM disapproved our selections. The disapproval caused a great deal of controversy. We had based our

selections in part on BLM advice and felt we had met the criteria in ANCSA for selection.

The BLM decision was strongly criticized by Members of Congress, the State of Alaska, the entire Native community and even officials in the Department of the Interior who were embarrassed by the decision. BLM agreed to withdraw its denial and worked with us to solve this serious problem. High-ranking officials in the Department of Interior came to Alaska to meet with us. They asked us and our regional corporations to enter into agreements which would allow us to acquire the same lands we selected in 1974. There were two agreements.

In the first agreement among the villages in CIRI, CIRI agreed to receive lands from the Federal Government and to reconvey the lands to the villages guided by our 1974 priorities. In the second agreement, which is sometimes called the Deficiency Conveyance Agreement, the Federal Government agreed to convey the land to CIRI and agreed that CIRI should reconvey the land to the villages in accordance with our priorities.

On October 4, 1976, the United States Congress, acting through this authorizing committee, enacted Public Law 94–456, which provided additional legislative authority to convey the lands in dispute to the Village Corporations. The land was described in two appendices to the Deficiency Conveyance Agreement known as Appendix A and Appendix C.

I wish to stress that our selections were made before the designation of these appendices and none of the villages saw any significance in the division of these lands between Appendix A and Appendix C. We were told we would acquire the lands according to our 1974 selection priorities. We were told that these agreements were meant to fix the problem that BLM created. We were never asked to give up the lands that are important to us. We were never told that our selection priorities would not be honored. To the contrary, we were told that these agreements would mean that we would receive the land we had selected.

At about the same time, the United States, CIRI, and the State of Alaska entered into an agreement for the exchange of land. This agreement was entitled Terms and Conditions for Land Consolidation and Management in the Cook Inlet Area and is commonly referred to as the Terms and Conditions Agreement. I helped negotiate this agreement. The agreement was ratified by Congress in 1976 when Congress, acting through this authorizing committee, enacted Public Law 94–204.

Paragraph VII.B.(1) of the Terms and Conditions Agreement allowed the Secretary to make available to the Village Corporation lands outside the regional boundaries in exchange for the lands listed in this legislation. The agreement thus clearly contemplated that the Village Corporations would receive the high priority lands in Appendix C, and the Department of the Interior would then have an opportunity to exchange these lands for others to be provided by the Department of the Interior.

Up until recently, we always believed we would receive our high priority lands in Appendix C. There were many actions the government took in which our rights were recognized. We have extensive documentation of what we were told by the Department of the Inte-

rior. There are thousands of pages of documents, but we have reduced them to the key documents which I ask be made a part of the record.

Lake Clark National Park was created in 1980, with the enactment of the ANILCA. The creation of Lake Clark National Park is an intervening event that should not have an effect on the obligations of the Department of the Interior under ANCSA. Our village selections were made in 1974, six years prior to the creation of Lake Clark National Park.

In 1978, the villages relinquished our valid selections on the shore of Lake Clark. Our villages have given up selections in what has become Lake Clark National Park. These selections were in the center of Lake Clark, along the shores of the lake, in the heart of the park. To accommodate the creation of the park, we gave up over 35,000 acres of valid selections in the Lake Clark trades. We also gave up other 12(b) selections in Lake Clark. We kept our part of the agreement to allow Lake Clark National Park to be created. It is unbelievable to us that the government comes back now and uses the national park issue, especially with the unknowing public in Alaska to deny us our lands.

The fact that we have helped create a national park should be to our benefit, and not be used against us. The Department of the Interior has acknowledged that the Village Corporations have valid ANCSA land selections on the shore of Cook Inlet. These are not Park lands. These lands are our entitlement under ANCSA.

I participated in selecting the lands that will be conveyed to the Village Corporations under the terms of the bill introduced by Congressman Young. I also helped negotiate the Deficiency Conveyance Agreement. At the time the Department of the Interior entered into the Deficiency Agreement, the promise was made to the CIRI Village Corporation that the high priority lands listed in Appendix C of the Deficiency Conveyance Agreement would be conveyed to us. That was almost 20 years ago.

There are some people who claim that if H.R. 2560 is enacted, we will receive more lands than we are entitled to. This is not true. If H.R. 2560 is enacted, we will receive only our priority land selections up to the level of our entitlement. We will not receive more than we are entitled to. We do not ask Congress to give us more lands. We ask rather that we be conveyed those lands that are most important to us, as should have occurred long ago.

I myself have told our story to high ranking officials at the Department of the Interior. Mr. Leshy, who is a lawyer for the Department of the Interior, says the Department does not have the authority to convey to us our selections in Appendix C. I have seen the notes from BLM files, written in 1982 by BLM lawyers, who say exactly the opposite. Mr. Leshy was not there in 1976, I was. I know what was promised 20 years ago. Mr. Leshy does not. We ask Congress to honor the bargain made 20 years ago.

The Department of the Interior's arguments for refusing to convey the Appendix C lands are all technical legal arguments. I am not a lawyer, and I am not approaching this problem from a lawyer's perspective. I think that the key to analyzing this issue is not in technical arguments of contract law. The key to the analysis, and the perspective I have on the problem is to look at the whole

picture. Look at the settlement of land claims. Look at who now has the benefit of the various agreements and the terms of ANCSA. The Federal Government has its lands, its park, the Prudhoe Bay tax revenues, so does the State of Alaska. We still do not have our lands which were what we were promised in ANCSA. Is this fair?

Now the Department of the Interior is saying that regardless of what its representatives said back in 1974 and regardless of what its employees have said and done since then, that the rather vague wording of Paragraph C of the Deficiency Conveyance Agreement is what controls the analysis today.

I say in response that we listened to the Department of the Interior in 1976. We relied on what they said they would do. We have performed our side of the bargain believing that they would do what they said they would do and the U.S. Congress should now make sure that the Department of the Interior does what it said it would do.

The Department's representatives in the 1970's promised these lands. In notes I am submitting today, the Department's two solicitors closest to this matter said 10 years ago that this agreement should be interpreted to give us these lands in Appendix C before exhausting Appendix A.

Villages are entitled to the benefit of our bargain. We have performed our obligations under ANCSA, under the Terms and Conditions Agreement, under the Deficiency Conveyance Agreement and under Public Law 94–204. No one is saying we haven't kept our word or done what we said we'd do. It is now time for the Department of the Interior to perform its side of the bargain we made. H.R. 2560 would simply require the government to keep its side of the bargain.

I would like also to take this opportunity to thank the Honorable Don Gilman, Mayor of the Kenai Peninsula Borough, for his testimony in support of this bill. His testimony makes clear that the municipal government most directly affected by this dispute supports the Villagers. I would ask the Committee to give weight to the testimony of a disinterested observer.

Finally, section 2 of ANCSA states that the settlement of Alaska Native lands claims should be accomplished without litigation, with the maximum participation by Alaska Natives. This Committee passed section 2, and the rest of ANCSA. Here we are, 20 years later, following the law this Committee created. What we are saying is the Federal Government should live up to its commitment, not hold our Villagers hostage while it hides behind legal interpretations which are used to deny our land entitlement.

We have waited almost twenty years while the Federal Government and the State of Alaska resolved other issues. Now it is our turn. This issue should be resolved now, without a lawsuit.

We urge this Committee and this Congress to see to it that another injustice is not inflicted on our people. Please enact H.R. 2560. Thank you. I would be pleased to answer any questions the Committee may have.

[The statement of Don Gilman may be found at end of hearing.]

The CHAIRMAN. We are about out of time so thank you. I think you are being stopped right there. It was great. I appreciate it. My gentleman from Hawaii was giving me the look because it went

over 10 minutes and I know you have flown about 6,000 miles to tell this story.

Mr. ABERCROMBIE. Mr. Chairman.

The CHAIRMAN. Yes.

Mr. ABERCROMBIE. It isn't that, Mr. Chairman. I just want to make sure I understand, the object of the bill is to effectuate what appears to be this argument that's going on about whether or not there is authority for the Department to make this conveyance; is that right?

The CHAIRMAN. That is correct and also the fact is the history of this is very evident if you would review it.

Mr. ABERCROMBIE. Yes.

The CHAIRMAN. And if you take time on a personal level to discuss this with them, I will assure you——

Mr. ABERCROMBIE. I have. I have been reading all through this. It reminds me of what we just went through with the Hawaiian homelands.

The CHAIRMAN. That is exactly right.

Mr. ABERCROMBIE. If we have all this argument going on for 10 years, why don't we pass this bill and not worry about it?

The CHAIRMAN. About 20 years to be exact. Not 10 years, and—excuse me, '76. I am sorry.

If I can, I would like to have the rest of the witnesses.

Mr. ABERCROMBIE. OK, sure, then we'll pass it.

The CHAIRMAN. Lisa, do you have anything to offer? I know you are not giving the testimony at this time. I do appreciate you being there and I take it for granted that Kenai Borough is heavily supportive of this also; is that correct?

Ms. PARKER. Yes, Mr. Chairman. The Borough has supported this and I will be happy to answer any questions that the committee may have.

The CHAIRMAN. Thank you, Lisa.

Bruce, you're up; you are the next one on the panel. I'd appreciate if you could try to keep it to 5 minutes, if possible. Please go ahead.

STATEMENT OF BRUCE OSKOLKOFF, NINILCHIK NATIVE ASSOCIATION, INC.

Mr. OSKOLKOFF. I appreciate that. Thank you, Mr. Chairman. I appreciate being given the opportunity, as well, to testify before the committee today. My name is Bruce Oskolkoff. I am a member of the Ninilchik Native Association, which was created under the Alaskan Native Claims Settlement Act. I am also a member of the Cook Inlet United Deficiency Land Management Association and as well in the past served as land manager and other positions with the corporation of Ninilchik.

Before I describe the history here and I'll try and be brief about that, I feel I must first answer a charge that we are somehow changing an agreement by seeking approval of this legislation. I understand that the Department of the Interior is arguing the intent of the agreement and agreements was that Appendix A must be conveyed before any lands can be conveyed from the Appendix C. This was never our intent.

In fact, all of Ninilchik's remaining selections and our selection priorities are located entirely within Appendix C. We have no other selection priorities. We would have never signed the agreement if we thought the Appendix C would not be conveyed until Appendix A was finalized and conveyed. Further, we would never have signed an agreement that did not recognize our rights to the Appendix C priorities.

In 1974, six Alaskan Native Village Corporations in the Cook Inlet region made selections authorized under the terms of the ANCSA. Some of these selections were on the west side of Cook Inlet in what later became the Lake Clark National Park long after the selections were made. A majority of the lands selected were surrounding Lake Clark, while some of the other selections were on the shore of Cook Inlet. The selections our villages made in '74 were based on the advice of BLM.

In 1976, after advising the villages on selections, BLM rejected those selections and we were brought into a process to go back and have those ruled as valid under the compact and contiguous rules.

In total, the Deficiency Conveyance Agreement said we were to receive our land entitlement out of Appendix A and Appendix C. It was never intended that all lands that were to be conveyed come only from Appendix A. Instead we were to acquire lands from Appendix A and Appendix C in accordance with our priorities established in 1974. If any land was left over in Appendix A after the villages received our priority selections, CIRI agreed to keep that land as part of its entitlement. If any land was left over in Appendix C, the Federal Government would keep that.

From 1976 until 1990, fully 15 years, various agencies of the Federal Government took actions which supported our view that these higher priority land selections of Appendix C would be approved. As one example, BLM identified, negotiated and reserved easements on the lands now being disputed. I and other village presidents participated for months in numerous 17(b) easement conformance meetings, which resulted in final easements being granted over these lands now in question. I doubt BLM would have done this if it did not intend to convey the lands in question to the Village Corporations. In fact, it was not until 1991 that Federal agencies gave any indication that the lands in dispute might not be conveyed under our written agreement with the Secretary of the Interior.

Department of the Interior is claiming that paragraph C of the Deficiency Agreement requires that the CIRI villages take lands listed in Appendix A before they can receive any of the lands in Appendix C. Looking at Paragraph C out of context does not help you to understand the Deficiency Conveyance Agreement as a whole.

If you want to understand the intent of the agreement, read the relevant paragraphs together. Paragraph A requires that the Secretary of Interior convey to CIRI as soon as possible the lands in Appendix A. Paragraph B requires CIRI to reconvey lands to the villages. Although the interpretation of paragraph C is in dispute, paragraph C requires that the lands listed in Appendix C be conveyed to CIRI for reconveyance of the surface estate to the villages to the extent that lands conveyed pursuant to paragraph A and other lands are insufficient to fulfill our entitlement.

Paragraph D provides a method of accounting for the appendices and paragraph E provides that if any excess land remains in Appendix A, it will be retained by CIRI and counted against CIRI's ANCSA entitlement.

It seems to me that when you read all five of these paragraphs together, not just one, as the Interior is attempting to do now, you realize the intent of the parties of the Deficiency Conveyance Agreement. The villages are to receive our highest priority land selections in both Appendix A lands and Appendix C lands up to the level of our entitlement. In no event would the total lands conveyed to CIRI and the villages be greater than what the law allows.

I suggest to this committee that the issue is simple to resolve. We have not received our promised entitlement. Enactment of H.R. 2650 will break the logjam, allow us to receive our priority lands and allow CIRI to finish reconveyance. To fill this entitlement we are asking to receive Appendix C lands, which we selected in 1974 and which everyone has expected us to receive since the Deficiency Agreement was signed in 1976. And that includes numerous Federal agencies that we have worked with and the National Park Service, BLM and others.

I have attached to the back of my testimony a list prepared by the villages showing how much of the Section 12(a) and 12(b) entitlement remains for each village. As the list makes clear, each village has now been left with a substantial amount of our land entitlement that remains unfulfilled. Without conveyance of the high priority Appendix C lands listed in this legislation, we will not receive the lands that are most important to us.

Mr. Chairman, the bill that you introduced is intending to complete a land conveyance process that members of the Ninilchik Association were led to believe had been approved in 1976. I have a personal interest in this land transaction for two reasons. First, as a member of the Ninilchik Native Association, I desire that my village be able to attain the high priorities of selections we made.

The lands in question are acknowledged to be rich in fish and game, the harvesting of which is part of the traditional lifestyle of the Ninilchik. I want the people of my Village Corporation to be able to preserve their traditional lifestyle and make use of the lands promised under ANCSA.

My other interest is in the proposed lands transaction based on the fact that I am the second generation of my family to be involved in obtaining approval for this land conveyance. My father was involved in selecting these lands when the Ninilchik Native Association made its land selections nearly 20 years ago. My father also worked to obtain passage of Public Law 94–456, which provides additional legislative authority for this land conveyance.

I believe that it should not have taken nearly 20 years, two acts of Congress and two generations of my family to get this land conveyance approved. My father participated in making the land selections and now I am trying to finish the work he started and get the land conveyed to our corporation nearly 20 years later.

If you can indulge me for just one minute, I would like to point out that I have—with our testimony, we have submitted a lot of maps and photographs and other information. I brought with me two other photographs which are very important, I believe, to my

testimony and the reason that I am here. These are photos of my children.

Much of the importance of my testimony here today is centered on them and all of the descendants within the Cook Inlet region. To preserve the benefits and opportunities my father and other elders of the villages worked so hard to obtain even at great cost, my one and only—this is my one and only motivation. To now deny us the promised conveyances because of what I feel are conjured and ill-interpreted, 11th hour opinions, would be a great injustice to all of us, including my children. I can only hope that they will not become a third generation of my family still faced with this unresolved and unfulfilled promise. Thank you.

[The statement of Mr. Oskolkoff may be found at end of hearing.]

The CHAIRMAN. Thank you, Bruce, for the good testimony.

Mr. Leshy you are up.

STATEMENT OF JOHN D. LESHY, SOLICITOR, U.S. DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY BRENDA F. ZENAN, DEPUTY STATE DIRECTOR, ALASKA STATE OFFICE, BUREAU OF LAND MANAGEMENT

Mr. LESHY. Thank you very much, Mr. Chairman, members of the committee. I appreciate the opportunity to testify here today on H.R. 2560. We have some very serious problems with this bill and with all due respect for the testimony you have just heard. The way we approach this issue is to look at the history of the agreements that have been entered into between the Cook Inlet Regional Corporation and the Department. The agreement that we are talking about has been looked at over the last three Republican and two Democratic administrations and has basically been interpreted consistently.

Not to review the history too much, but what happened here, was as the earlier witnesses have said, the Native villages made some land selections that were rejected in the Ford administration. The villages appealed up through the administrative appeal process and while those appeals were pending, as often happens, the parties got together and settled the dispute in this August 1976 agreement. The agreement was a good faith, fairly negotiated, and I think, carefully crafted agreement. Frankly, I don't think there is any ambiguity about what it means.

It contains two appendices of land, Appendix A and Appendix C, and it says in the relevant part that the Secretary shall convey lands off of Appendix A to CIRI, the regional corporation, and CIRI shall promptly convey those lands to the villages. And then it says, and this is the key part, to the extent that the Appendix A lands are insufficient to satisfy the villages' entitlement, the Secretary shall convey such additional lands from Appendix C as are necessary to fulfill such entitlement in the order in which they are listed in Appendix C.

In other words, the plain meaning of this is unmistakable: Lands from Appendix C are conveyed only if the lands from Appendix A prove insufficient. The Department has carried out this agreement over the last 20 years. We have conveyed all of the Appendix A lands to CIRI.

CIRI has not conveyed those lands to the Village Corporations or not conveyed all of those lands to the Village Corporations. The lands are in our judgment in an amount sufficient to satisfy the villages' entitlements, so that we have performed this agreement. We have taken the position that Appendix A lands are conveyed first and Appendix C lands are conveyed only if Appendix A lands are insufficient. We have taken this position for at least 15 years, spanning Republican and Democratic administrations.

Deputy Under Secretary Horn in early 1981 wrote CIRI a letter in which he spelled out, with unmistakable clarity, the same position we are taking now, the same position the Department has taken in public statements over the years.

The agreement says convey lands in Appendix A, which we have done, and convey lands in Appendix C only if Appendix A lands are insufficient. Therefore, we have a problem with the legislation which would really overturn this agreement and replace it with something different. It would order a new disposition of lands which we think—the way we read the proposed legislation—would result in an over conveyance of lands, because this is an additional 29,000 acres of lands conveyed by this legislation off of Appendix C.

The legislation also, as we read it, instructs CIRI to convey the Appendix A lands to the villages that we have already conveyed to CIRI. We think that the combination of the Appendix A conveyances, which we think are already sufficient, and the Appendix C conveyances directed by this legislation, would result in an overconveyance of lands to the villages and an overconveyance, of course, of mineral rights to CIRI under the terms of the Native Claims Settlement Act.

The legislation rewrites essentially the agreement that was entered into in good faith, and it rewrites the principles of the Native Claim Settlement Act. We think this is a dangerous precedent because, once you start reordering these standards, where do you stop? The ANCSA principles and standards and the arrangements to implement them have guided the selection process for nearly a quarter of a century. They should not be overridden without very good reason, and, unfortunately, we do not find such a reason in this case.

Let me say a couple of other specific things about the legislation. It is important to note that the legislation does not carry out the 1976 agreement as the Cook Inlet region has construed the 1976 agreement because the 1976 agreement, even if you take seriously the interpretation that we could go into Appendix C before exhausting Appendix A, unmistakably says convey lands in Appendix C in the order in which they are listed. The proposed legislation does not convey them in the order in which they are listed. It jumps over the higher priority land listed in Appendix C for what was then regarded as lower priority lands.

It is a little ambiguous, at best, as to how the legislation works with respect to the agreement. That is, does the legislation replace the 1976 agreement? Is it on top of it to the extent there is an overconveyance?

Is CIRI supposed to not convey the lands to the villages that it got under the agreement in Appendix A? Is it supposed to convey

any other over selections back to the United States? We have some real uncertainties about how the legislation would actually work in that regard.

Finally, although this played no part in our decision as to whether we had the authority to convey lands off of Appendix C, it is worth noting in the legislative context that the bill would seriously limit access to Lake Clark National Park. If we had thought honestly that we—more specifically, our predecessors in the Department, in the Ford administration—had made the commitment to convey these lands to the Natives, even though they are in Lake Clark National Park, we would have honored that commitment without question.

We quite honestly believe that commitment was not made. Now this bill is proposing to convey those lands inconsistent, in our view, with that agreement, we must point out that there is a serious effect on Lake Clark National Park, and what could happen as a result of this legislation is that the United States, in order to guarantee public access to Lake Clark National Park, might have to buy back some of these lands. It really makes no sense, in our view, to give away these lands that we think are already lawfully in Federal ownership only to have to buy them back.

I appreciate the opportunity to testify; and, of course, am happy to answer any questions. Thank you.

[The statement of Mr. Leshy may be found at end of hearing.]

The CHAIRMAN. Thank you for your testimony.

I want you to make sure that you understand that if you had done your job to begin with regardless of the administration, if the Department had done what they were charged to do, this would not have been introduced.

You can talk about access to the park. These people were here long before we created a park. We can read these agreements as well as anybody else, and it is another example of forked tongue, an example of—our saying—in fact, what I ought to do is reintroduce the bill and just put all the lands they gave up in Lake Clark National Park and give them back to the people they belong to. In fact, I may do that as an amendment.

You know, if you really want some problems, I will do that just to get your attention. One thing I am a little irritated about, Mr. Leshy, is I asked the Department four months ago to respond to a two-page letter. I never got a response until the day of the hearing. Does that sound familiar, guys?

That's not even common courtesy, and yet they had enough time to send employees over to the Senate side and brief the Senate side on what was wrong if I introduced the bill. Yet, it didn't have time to answer the letter.

And you know, Mr. Frampton, you are in the office and in the room here. I am going to ask you personally later today to give an explanation for why that occurred. That's not the way to run the shop.

Mr. Leshy, your testimony repeats the Department's position in CIRI that these villages are overconveyed. To document the statement you just made, and remember you are under oath, please supply the committee within two weeks the statement showing where you are conveying these entitlements, and your documentation

should assume this legislation is enacted and lands are taken out of Appendix C in the priority order of the villages. I want to know where you are getting the idea that this is over conveyed. I want that within two weeks.

Mr. LESHY. Happy to supply it.

The CHAIRMAN. OK. And your testimony states the villages just should accept receiving land from Appendix A.

Are you aware how following such a policy will affect the village of Ninilchik?

Mr. LESHY. No, I am not.

The CHAIRMAN. Well, all of Ninilchik's priorities lands are in Appendix C, and what you are telling us is to take what you don't want and really take the crumbs that are left when we had an agreement in 1976, and I read all those agreement statements signed by the Secretary of Interior, and it is very clear if you read the whole context of it instead of just one paragraph. So when you now say to select them all from A, you take the whole village of Ninilchik and exclude them.

Mr. LESHY. Mr. Chairman, paragraph A of the agreement says that the Secretary shall convey all of the lands on Appendix A to CIRI.

The CHAIRMAN. But Ninilchik has selected no A lands; they are all C lands.

Mr. LESHY. The next paragraph says that CIRI shall convey the surface estate of such lands to the Village Corporation within the region pursuant to the agreement between CIRI and the affected village corporations, which agreement is attached as Appendix B and which agreement may be modified by the parties here. This is all part of a package as we see it. This is an agreement between CIRI and the Department——

The CHAIRMAN. Don't you believe the Secretary, and to go back to what you stated, has a responsibility to Alaska Natives to allow them to select the priority lands?

Mr. LESHY. Absolutely.

The CHAIRMAN. You do believe that.

Now, they have chosen the C lands. They do not want the A lands, and yet you are telling them you have to take the A lands.

Mr. LESHY. Mr. Chairman, this administration on a wide variety of issues has had an excellent working relationship with Alaskan Natives——

The CHAIRMAN. Have you personally been to these villages and talked to these village leaders?

Mr. LESHY. No, I have not.

The CHAIRMAN. You have not, yet you have a good working relationship.

Mr. LESHY. We have done a number of things that we are quite proud of vis a vis Alaska Natives, and particularly in rectifying some of the shortcomings——

The CHAIRMAN. Did the BIA sign off on this?

Mr. LESHY. I'm sorry?

The CHAIRMAN. Did the BIA sign off on this?

Mr. LESHY. The testimony in the report that the Department put together was circulated through the Department.

The CHAIRMAN. Did the BIA sign off on this?

Mr. LESHY. I don't believe we have any——

The CHAIRMAN. They did not sign off on it.

Mr. LESHY. As far as I know they——

The CHAIRMAN. Yet, they have the trust responsibility under your department; is that true?

Mr. LESHY. As far as I know, I heard no dissent in the Department on this.

The CHAIRMAN. They did not sign off on it; did they?

Mr. LESHY. I certainly talked to the lawyers in my shop——

The CHAIRMAN. Did they sign off on it; yes or no?

Mr. LESHY. As far as I know they did. I do not personally get the report that shows copies of who signed what. It was, as far as I know, circulated through the process the same way every other report is, which means that every agency with any interest in it is consulted.

The CHAIRMAN. The gentleman from Hawaii, you know nothing ever changes. I don't care what administration we have. Nothing really changes. A responsibility they have is evidenced in law. It is there, and they neglect their responsibilities.

We know and I know the history of this. The villages gave up their land selections in Lake Clark, and we are told that they would have a right to select these lands, Appendix C and Appendix A, by the Department. And they still haven't got their land. But I just don't understand now—you know, why is it taking the Department 20 years?

Mr. LESHY. The Department, in the public record that I've examined, has consistently taken the position we are taking now, for 20 years. There would have simply been no reason to have two lists attached to the 1976 agreement unless they were in some sort of priority order. If there was to be a selection of any lands off of either list, there would have only needed to be one list. I've looked——

The CHAIRMAN. Well, I've read that, and you are a lawyer, and I'm not a lawyer, but I write the laws. And I still say it gets right down to the basic fact, these villages have not got their lands, and these are the villages' lands, they are not CIRI lands. These will be the villages' lands. It is the right under the act of this Congress in 1971, and they selected these lands.

After that act, they gave up those lands within the park which they originally selected. I, again, think that's a great deal. I think this ought to go right back in the middle of the park and really get to the nuts and bolts of this thing. It is a matter of right, it is a matter of what I call justice.

You know, I thought this battle was "Sheattica" the Admiralty Island. I never could get the Department to agree to what Congress said for two times, and for some reason the Departments have a tendency to say we know what is best. Forget the lawmakers, we will do what we damn well please.

Now, again, you have told people you don't have the authority to transfer these lands. We will transfer them to these people, as we said we would in 1971, and then you don't have it here before this committee anymore. It is that simple.

Mr. MILLER. Thank you, Mr. Chairman.

As I understand the agreement, because of the earlier controversy, the agreement was reached in '76. The lands would be conveyed to CIRI, and CIRI would reconvey those lands to the villages.

Mr. LESHY. That's correct.

Mr. MILLER. And to date CIRI has reconveyed about 150,000 out of 460,000 acres. Why haven't the other lands been reconveyed to the villages?

Mr. LESHY. I think you have to ask CIRI. And I'm frankly surprised they are not here.

Mr. MILLER. Why have we, as the Federal Government—CIRI, if you strictly read the agreement, CIRI is wrongfully holding these lands.

Mr. LESHY. That's the way I read the agreement.

Mr. MILLER. Why have we, not the government, in '80, '81, '90, whatever, sued CIRI to reconvey the lands, as the agreement called for?

Mr. LESHY. I'm not sure, frankly, why the Native villages have not.

I should also point out that nobody has taken this dispute to court. The Department has been on record, clear public record, since at least 1981 with Under Secretary Horn's letter as to what our interpretation was and nobody has ever challenged that in court.

The CHAIRMAN. Will the gentleman yield?

If you read my bill, under my bill that will actually happen.

Mr. MILLER. But——

The CHAIRMAN. And under my bill—I'm going to say under my bill we take care of that conveyance problem.

Mr. MILLER. Well, I, you know, just question whether we got some shenanigans going on here. I mean, CIRI is up at the land base. They're supposed to reconvey it. They don't reconvey it. They end up paying the legal fees and transportation for the villages to come down here and say we owe them 30,000 acres. We only, as I understand the agreement, may owe them some acreage if, in fact, those 460,000 acres fail to satisfy the needs of the villages.

Then there would be a determination. But because those lands have not been reconveyed, you can't make that determination. So this is a fight between CIRI and its principles because CIRI, in fact, was a trustee or an agent for the villages in this situation; is that not correct?

Mr. LESHY. That's basically correct.

Mr. MILLER. This isn't our problem because this is a fight between CIRI, who wants to hold on to these lands for some reason, I guess, or has not conveyed them. The villages haven't thought enough of the lands to go get them. Either they are intimidated by CIRI or there is something else going on and now we are sitting here being told that we have to pay into an account for lands when we haven't even completed—well, we have completed, but the villages and CIRI haven't completed the reconveyance of those lands.

Mr. LESHY. That's basically the way we read it and that's why, frankly, we think there may be an overconveyance involved here, because if we are now to convey lands pursuant to——

Mr. MILLER. So when you say that we have no authority, it is because we have an agreement signed by the parties for this 460,000 acres. The fact that the two parties have not yet reconveyed the land isn't our doing.

Now, maybe they have their eye on some other lands, but you got to go through the initial part first to determine whether or not there is a deficiency so that you can go to the schedule C lands for that purpose. Is that——

Mr. LESHY. Yes, that's exactly right. The way we read the legislation, and one of the problems we have with it is that it says, OK, ignore the agreement and go to Appendix C and convey Appendix C land, and those become surplus or additional lands. Now, what happens to the lands we have already conveyed? Do some of those come back to the United States?

Mr. MILLER. Well, some points your word is your bond.

Mr. LESHY. That——

Mr. MILLER. Just a second, just a second, just a second. I didn't interrupt your testimony. Your word, the word is your word is your bond. You signed an agreement. CIRI agreed to do some things. CIRI hasn't done those things, and now CIRI has got these people down here telling us that we owe them land because CIRI hasn't reconveyed the land.

Mr. LESHY. That's right.

Mr. MILLER. Well, that's not what we say around here. That's not on the level then. Something is going to tilt here because that game is not on the level. If there is, in fact, a deficiency, there is a process within the existing agreement to go to schedule C in the priorities listed and the parties, again, at the time of signing the agreement agreed to that; is that not correct?

Mr. LESHY. Yes.

Mr. MILLER. So what we have here is a bunch of people who want to renegotiate an agreement with us and yet the agreement is partially satisfied and partially not satisfied. So do we go back—do we take back the 150,000 that has been reconveyed? I mean the deal in the agreement was reconveyed within 10 days, or as soon as possible, these lands. CIRI was pass through. CIRI was a legal faction to get the lands from the government to the villages. So CIRI is sitting on this land in Cook Inlet that they haven't reconveyed.

Again, I will go back. I don't think this is quite mature to our problem other than maybe we have an obligation to the villages to sue CIRI to reconvey the land that they signed and said they would reconvey back in 1976. And, again, I do not quite get—my time has run out.

The CHAIRMAN. Time ran out; it has now.

Agnes, you want to respond to that comment?

Mr. MILLER. Mr. Chairman, you talk before they ever put the red light on.

The CHAIRMAN. Well, you will be recognized if you want to go for a second round. But before I go on about this I hope you take the time to study what has not happened and what will happen under this legislation. Now, if you want to be the puppet for the administration, you be that puppet——

Mr. MILLER. It is not about a puppet. It is about reading the context of the agreement that is signed. I mean if parties didn't mean to carry out the agreement, they shouldn't sign the damn agreement.

The CHAIRMAN. OK, they have. See the Department——

Mr. MILLER [continuing]. Is out of it. They gave the land. Where is CIRI?

The CHAIRMAN. We will settle that under my legislation—because the legislation deals with this. It does not deal with CIRI.

Mr. MILLER. CIRI is sitting on 300,000 acres of land.

The CHAIRMAN. You could have invited CIRI if you wanted. I invited the villages. These are the people that have not received their lands, and this is what it gets right downto. This government and this Congress have gone back on their word. It has been wrong since 1971 to see how this Department, regardless of what administration, has messed with the Alaska Natives in allotment programs, in a conveyance of lands——.

Mr. MILLER. Mr. Chairman, with all due respect.

The CHAIRMAN. Go ahead.

Mr. MILLER. In 1971 you might have had a valid claim. In 1976 the parties came to an agreement and they have not fulfilled that agreement and now they are trying to negotiate this legislation.

The CHAIRMAN. That is what this bill does. It makes both sides fulfill the agreement. If we don't settle these problems concerning the Alaskan Natives, then we have done a disservice to them.

It is just not the case. I've got village after village after village not receiving the conveyance of the land because the Park Service objects to it when the BLM says it is OK. Or in another case, they'll have the U.S. Fish and Wildlife Service object to it when BLM says it is OK.

And wait a minute. I'm just saying it is time we settle this, and if I have my way, and I will have my way, we will go back and reconvey the original land center of the park which you created. Then you will have something to argue about.

Mr. MILLER. There are 350 votes——

The CHAIRMAN. Well, we'll see about that when we get there.

Agnes, would you manage to respond to that comment?

Ms. BROWN. Yes, the Department of Interior conveyed only Appendix A lands, not Appendix C lands, to CIRI. Those are not our priority lands.

Mr. MILLER. Well, if you read the language of the agreement, it was for the conveyance and reconveyance of Appendix A lands, C later to be used in the event of a deficiency.

Ms. BROWN. We are not asking for more than we are entitled to.

Mr. MILLER. Well, you are asking for more than you are entitled to because what you are entitled to is the reconveyance by CIRI. We are not a party to this agreement at this moment, a reconveyance by CIRI of lands that you and other villages are entitled to.

After that, you may have a right to come back and request a deficiency makeup, so you are requesting more than you are entitled to and it leaves CIRI with a land base that they are not entitled to.

Ms. BROWN. May I finish?

The Chairman. Yes, go ahead, Agnes.

Ms. BROWN. If H.R. 2650 would create a double count of Appendix A where we would get more than our current entitlement, we would agree to corrections in the legislation to make it crystal clear we would not get more than we are entitled to.

The CHAIRMAN. And then I've asked Mr. Leshy and this Department, that says it is defending the Alaskan Natives if it would comment within two weeks to show where this can occur. The villages have said they can adjust it, but they want their entitlement.

Now, if there is anything wrong with that, I want to know what it is. I'm asking that the gentleman from California will concede that. Let's find out what they have to say. You cannot tell me today.

Mr. LESHY. Mr. Chairman, we don't see anything in the proposed legislation that requires land to come back to the United States that is overconveyed.

The CHAIRMAN. Wait a minute, let me finish . I've asked you to tell me how you can sit there and say that there is a normal conveyance here. I want to see it in documentation, how you arrive at that formula where there is an overconveyance.

Mr. LESHY. The BLM have told me that they think the lands that have already been conveyed——

The CHAIRMAN. They think, they think, they think. I want to see it in writing.

Bruce, go ahead.

Mr. OSKOLKOFF. Just a point, that is the most important point actually in this whole discussion, is that the selection priorities are different from the list of selections which Mr. Leshy is talking about. That is the problem and a very reason why CIRI has not reconveyed to the villages out of Appendix A lands. The list of priorities in the entire selection process which was initially established sets out those priorities by rounds among villages. To do anything else but convey those lands, throws that entire process completely out the window.

The list that he is talking about of lands is just a list. It is just numbered from one through the bottom of sections of land within Appendix A and Appendix C. But when you read the entire agreement together, you see that the selections that are to be made are to follow that list of prioritizations that the villages—that's how the lands that have already been reconveyed have been conveyed to the villages, by that list of rounds of priorities. And to just use the list that he's referring to, just a listing of land selections, and townships and ranges, has no meaning whatsoever. That list, the process—would establish a process that we agreed to.

Another point is that Lake Clark didn't even exist at that time. There was no such thing. There was no such thing as Appendix A or a Appendix C. We established those priorities and made those selections in an order in which this list was set out, so I think there is some confusion in the fact that there is a listing of property and the fact that there are prioritizations of property.

The CHAIRMAN. The gentleman from Minnesota.

Mr. VENTO. Mr. Chairman, you know the issue, Mr. Leshy is—what about this, the priority list—in other words? The suggestion you said is this doesn't follow the Appendix C priorities. Are there

also priorities in the A list in terms of conveyances? I mean, obviously, if all of the A lands has been selected——

Mr. LESHY. All of the A lands everybody conveyed——

Mr. VENTO. In a sense, there is a list of lands and all of them have been exhausted, so then you would go to the C list in the event. Now, the issue here, I guess, is one, and I don't know.

I mean, obviously, Don, you have read all this. Is there more than just a quantifiable, is it also a qualitative question, is it more than just a numbers question?

Is it also a qualitative question with regard to these lands in terms of initial selections?

Mr. LESHY. No, the agreement that was negotiated said that all of the lands in Appendix A would be conveyed, they are not in priority, they are in a bulk, lump. And then the agreement said, if that's not enough, then you go to C, and in C you take the priority order, one through the end, and so, in other words, the Appendix C lists parcels of land by specific priority. Appendix A doesn't. Appendix A is a bulk.

Mr. VENTO. So the recommendations made by the bill suggests that you jump to specific—you jump ahead of priorities. You don't follow the priorities.

Mr. LESHY. Exactly. The legislation would convey specific tracks of land off of C, but they are not in the order in which they are listed in.

Mr. VENTO. What is the rhyme or reason to this order? Is there any rhyme or reason?

Mr. LESHY. This was an order that I understand was negotiated by CIRI with the villages. It is a list that essentially CIRI came up with. Now, how they came up with it, whether that was in consultation with the villages, I'm not sure.

Mr. VENTO. One of the problems, Mr. Chairman, Mr. Leshy and others, appears to me to be that the villages under agreement B have made an agreement with CIRI to act as their agent. In other words, the government has been dealing with CIRI, and then you—you know, the fact that they are not here today I think really makes this very confusing, I understand.

But the question I have, Bruce, Mr. Oskolkoff, the issue I have is what is your relationship with CIRI? Have, in fact, they offered you lands or offered lands to the native corporations which you have said are not satisfactory or that you do not want conveyed to you?

Mr. OSKOLKOFF. Again, that gets back to the very same point and the issue that you have raised.

Mr. VENTO. Let me just try this: Have they offered lands to you? Have they offered additional lands to you, yes or no?

Mr. OSKOLKOFF. Not—no other initial lands other than our priorities, which are selected and set out in the agreements with CIRI.

Mr. VENTO. Well, those are the priorities, but they have offered no additional lands whether they are satisfactory or unsatisfactory. I imagine all lands are not satisfactory to you that are in that basket of 300,000 acres; is that correct?

Mr. OSKOLKOFF. That's correct.

Mr. VENTO. So, Agnes, have they offered—are you representing different groups?

Do you all represent the same village?

Ms. BROWN. I represent my own villages and I also represent all of the CIRI villages.

Mr. VENTO. I'm just catching up a little bit. But had they offered land? Would you agree with Bruce's response?

Ms. BROWN. Yes, his response is correct—only in Appendix C, and no Appendix C lands have been conveyed to CIRI.

Mr. VENTO. None have been selected, but they were acting as your agent and they didn't select those lands. They couldn't select those lands because they were bound by this agreement to select from A, if the A lands are available. So how can they get to C land?

Ms. BROWN. Excuse me; CIRI did not make selections. The villages made their own selections.

Mr. VENTO. Well, how did CIRI then come to a total of 460,000, which apparently under audit—BLM is going to do an audit of this—meets all of the 460,000 acres. How did they then come to the conclusion to select these lands that the villages did not select in their priority basis? You mean there is a miscommunication here between CIRI and the villages?

Ms. BROWN. There is a misunderstanding here over the various agreements.

Mr. VENTO. Well, how did the land get conveyed? How did CIRI make the selections?

They apparently are selected on—right up to what is apparently what the solicitors are saying and other listeners have said is adequate. Does CIRI—they only convey the surface estate. They do not convey the mineral estate; is that correct?

Is that maybe part of the problem here, that CIRI had some differences in terms of what they wanted in terms of mineral estate?

Ms. BROWN. The answer to your last question is no, CIRI will receive the settlement——

Mr. VENTO. Mr. Leshy, when did this conclude? When did this selection process conclude?

Mr. LESHY. I believe that the BLM completed the conveyances off of Appendix A to CIRI in '88, '89, '90, something like that. It took about 10–12 years because of all of the difficulties with surveying and that sort of thing.

Mr. VENTO. Why haven't the—the question is the villages. Why haven't you brought suit to get CIRI to release lands? I mean, they are supposed to convey these within 10 days. That sounds a little difficult, but that's apparently what the agreement stated.

Are you all signators to the agreement in 1976? Are the villages—did those just sign this agreement? They all signed the agreement. Is there any village that didn't sign the agreement?

The CHAIRMAN. Will the gentleman yield?

Mr. VENTO. Yeah, I'd be happy to.

The CHAIRMAN. One of the things I have to keep stressing is the villages are signators to the agreement but CIRI has not even selected the lands, only in Appendix A, and what they want is Appendix C and there is nothing to convey it. If they offer them land they don't want, that's not CIRI's fault, and it is not their fault.

Mr. VENTO. But the agreement is apparently a misunderstanding, Mr. Chairman. The agreement requires the selection of lands

under A first, and if that exhausts the deficiencies then there is no recourse to get to C. That's the impression that we——

The CHAIRMAN. And that's what my legislation will do. I want the agreement fulfilled for the selection of the lands for these villages.

Mr. VENTO [continuing]. agreement of whether or not Appendix A exhausts—that they exhaust it there. So what the basic issue, of course, is—one of, obviously, I think you have got two problems here. One is you claim it's a qualitative question not a quantitative question. You understand? You are saying lands—I mean, I understand that, you know, but the thing is it basically changes what has apparently been the impression that the Department of Interior has been espousing for 15 years.

The CHAIRMAN. You know his name has been brought up many, many times today, and the President of CIRI is in the audience, and Mr. Marrs would like to come forward. He is welcome to come forth and participate in this very enlightening conversation.

Mr. VENTO. One of the things that occurs to me, Mr. Chairman, is that if CIRI had not exhausted its selections by going to the quantitative number and had said we have selected 430,000 acres or 420,000, and we need 40,000 more, but we are not going to select those because those are unsuitable for the villages that we are representing, but here you've got your A and CIRI, and—

The CHAIRMAN. If the gentleman will yield, you have time?

Mr. Marrs, if you don't mind, I would like to swear you in.

You asked me a question I cannot answer.

Mr. Marrs, you solemnly swear under the penalty of perjury, that the responses given and the statements made will be the whole truth, nothing but the truth?

[Witness sworn.]

STATEMENT OF CARL MARRS, CIRI CORPORATION, COOK INLET REGIONAL, INCORPORATED

Mr. MARRS. Yes, sir.

The CHAIRMAN. The gentleman from Hawaii, do you have any questions?

Mr. VENTO. What is Hawaii getting out of this?

Mr. ABERCROMBIE. I just see so many parallels here, it is discouraging to what happened and is happening with the Native Hawaiians.

Mr. Chairman, that is what I was about to ask. Who, then, in the Cook Inlet Regional Incorporated, and perhaps maybe that is—I might just as well ask right now because—and the reason I'm asking the question is, is that I'm presuming that the Cook Inlet Regional Incorporated, is not distant and separate from—other than by accident of legal separation from the people—you live up there? I do not know you.

Is it Mr. Martin; is that correct?

Mr. MARRS. It is Carl Marrs.

Mr. ABERCROMBIE. Are you a native of Alaska?

Mr. MARRS. Yes, I am.

Mr. ABERCROMBIE. OK, and how did you get to your position with the Cook Inlet Regional Incorporated?

Mr. MARRS. I started off with the Cook Inlet Region in 1972 as a land trainee and worked my way up in the corporation.

Mr. ABERCROMBIE. So you lived in Cook Inlet?

Mr. MARRS. Yes, I lived—I was born and raised in Seldovia, one of the villages at the tip of the——

Mr. ABERCROMBIE. Are you a member of any of the villages——

Mr. MARRS. I'm a member of Seldovia Native Corporation and a member of Cook Inlet Region.

Mr. ABERCROMBIE. OK, and were you chosen by lot, or by election, or by appointment?

Mr. MARRS. I was appointed to this position by Roy Hundorph, the present chairman of the——

Mr. ABERCROMBIE. OK.

Now, let me just take this for a minute, my understanding of it. You have a bulk list—my choice of terminology here may be a little off, but there is bulk lands in A, and there is rounds of what I picked up, rounds of priorities; that is to say priorities that the villages choose by rounds in C; is that right?

Mr. MARRS. Not exactly, Congressman. It's shaped a little differently than that. Back in '74, when the villages made their selections north side of the Cook Inlet, the Talkeetna Mountains and Lake Clark——

Mr. ABERCROMBIE. I have maps here, so I know what you are talking about.

Mr. MARRS. If you just take Lake Clark and the west side of what we call the west side of Cook Inlet where the bay area, the villages, corporations at that time were—we were in the process of negotiating the terms and conditions for Cook Inlet, and the Lake Clark Trade Agreement was an essential part of the terms and conditions.

The villages went through a selection process that was a number of rounds of selections, and the purpose for that was, is we didn't know at the time how many villages would be in Cook Inlet. There is two other—at that time, there were two other villages involved in these rounds of selections, which was Alexander Creek, which ultimately became a group, and Salamatof, a Native corporation, which ultimately became a village. Appendix A and Appendix C are prioritized by rounds that the villages did in 1974 in their selection process. That is the agreement that we have—villages.

Mr. ABERCROMBIE. OK, I understand.

Now, some of the lands that are wanted are in A and some of the lands are in C; right?

Mr. MARRS. Yes, sir.

Mr. ABERCROMBIE. OK.

Now, if this is anything like what happened in Hawaii years ago, and you had the Hawaiian homelands, at the time they were chosen, the people doing the choosing were not the Hawaiians. They picked the lands they thought were the worst and most remote, whatever nobody could use, which is to say what somebody could make money out of, which wasn't Hawaiian, and they gave those to the Hawaiians.

Now, it turns out that a lot of those lands may be very valuable, so naturally everybody is trying to keep the Hawaiians from getting them.

Here you seem to have a situation where you have lands in A, that the villages want, you got lands in C, that they want. What is the difference? Why not give them what—they say that doesn't meet all the criteria for conveyance—I think it was—you talk about over conveyance, Mr. Leshy. I have a lot of sympathy for your situation, really I do. But I mean, some sympathy for you in terms—bureaucratic terms. I understand what your difficulties are, but I don't see this as a question of overconveyance.

It is a question of what the Natives want to have. What's the difference, if it's in A or C, and if it is a legal difference, that is to say the way the legislation was written and/or the agreement was made, then change it. You know, things like that happen all the time; I presume that's what the Chairman's intent is.

If for some reason the lands in A don't satisfy what everybody agreed they would like to have, and some of those were in C, and it is legally impossible for that to happen, and I don't care to get into an argument as to whether it is actually legally impossible, then why not write legislation now that would make it possible to have it? Then everybody is happy.

That would not offend you in that sense; right? If your argument is that it's not now legal to do this even if it was desirable, if we made it legal to do it, then you would go ahead and do it, would you not?

Mr. LESHY. Mr. Chairman, Congressman Abercrombie, that's——

Mr. ABERCROMBIE. I'm talking about authority. I'm not talking about CIRI now.

Mr. LESHY. We have two concerns about that. One is that it is by no means clear to us, nor do I think to a lot of other people, how the proposed legislation effects the agreement, and it's really——

Mr. ABERCROMBIE. Well, I'm talking about the Chairman's intent. I don't know about that either. That's up to him and his counsel and staff to do it.

Mr. LESHY. But it gets to the overconveyance issue, in part, because if we are to overconvey lands in addition to the ANCSA entitlements to these villages, then why not to all the others. There is a problem here of a precedent. If we are to stick with the standards that Congress laid down in ANCSA, we shouldn't depart from them without a good reason. So there is that concern.

There is also the concern that when these selections were made, and disputed, and then this agreement was reached, our understanding of the agreement, and we think it's reflected in the plain words of the agreement, is that this is what the region and the village corporations agreed to. If they now want to change those agreements and want to have a different course of land selections, then certainly we want to look at that, keeping in mind the overconveyance issue. But also we have to look at other issues at stake. They agreed that they would take lands in a certain configuration and now want to take lands in a different configuration that, in this case, happens to raise some questions about the rest of the park values. Congress created the Lake Clark National Park, and that's a consideration that would be involved as well.

Mr. ABERCROMBIE. Thank you.

Chairman, could you indulge me just a moment or two more to finish up on this?

Mr. Marrs, then that takes me back to the—one of the questions which was asked previously which was not clear to me. Why haven't you conveyed such lands as might be wanted by the villages because, apparently, they do want most of that A land?

The argument here is about other lands—I won't say additional lands, we'll say other lands in C. Why hasn't this been conveyed and then you deal with the issue of the C lands to the degree that there's other lands that are still in dispute?

Mr. MARRS. Congressman, as I tried to explain earlier, there is a predetermined method of rounds which were priorities set by these villages when they selected in 1974. Part of those priorities are in those lands in Appendix A which includes the west side of Cook Inlet and Talkeetna Mountains. Then where we go through priorities one's and two's on the round one, two, three, we are talking two separate lists here. Interior talks about a list of land. I'm talking about part of an agreement that we have with the villages as incorporated into this agreement that talks about their priorities—is the Paragraph B section—is that as we go down those rounds, the lands within the Appendix C area are two and three priorities of the villages. The villages want those lands next before we go back into Appendix A and start reconveying lands out of Appendix A. If we conveyed everything on Appendix A, Interior is right, they wouldn't have to select out of Appendix C, however—selected that.

Mr. ABERCROMBIE. OK, so what you are saying is that CIRI has not conveyed any of the other lands in A for fear that you might not then be able to deal with the second or third rounds, lands that were in C, and convey them?

Mr. MARRS. That is correct, and the villages still have selections to make out of their 12——

Mr. ABERCROMBIE. So you have been holding off on this conveyance, not because you——

Mr. MARRS.——at their request.

Mr. ABERCROMBIE.——that you don't desire because you want this issue settled as to whether the A and C could be combined in terms of what the Natives—that is to say the village would like to have conveyed to them; is that right?

Mr. MARRS. Congressman, that is exactly right. We are holding off on the conveyances of this at their request because their fear is they will not get it.

Mr. ABERCROMBIE. I got you. I'm short but I'm fast.

Just one last point, please, because——

The CHAIRMAN. OK, go ahead.

Mr. ABERCROMBIE [continuing]. we listened to a lot of conversation.

Now, just to take care of everyone's concern here so we don't get off, I haven't heard anything in your testimony that says that you're going to try and cut off access to Lake Clark or the national park or anything else if these lands are conveyed; is that a fair statement, Mr. Oskolkoff, and Ms. Brown?

Mr. OSKOLKOFF. If I could respond to that?

Mr. ABERCROMBIE. You folks are not going to cut off any exit to any——

Mr. OSKOLKOFF. In fact, just the opposite, and that's evidence, in fact, by the 17-B process that we went through, where we identified easements and access routes over those lands.

Mr. ABERCROMBIE. Because those lines, for example, you cannot cut off access to the beach. Anybody, you can't own it. It is a matter of obligation and honor that you do that.

Mr. OSKOLKOFF. And as well——

Mr. ABERCROMBIE. OK, last point then.

The intent of this legislation, as I understand it, is that to the degree the Department lacks authority or believes that it lacks authority, and to the degree that there is a question about overconveyance, this legislation is intended to deal with both of those issues and to settle this A and C question; is that your understanding, Mr. Oskolkoff?

Is that your understanding, Ms. Brown?

Is that your understanding, Mr. Marrs?

Mr. OSKOLKOFF. Yes.

Ms. BROWN. Yes.

Mr. MARRS. Yes.

Mr. ABERCROMBIE. OK. Is that a correct interpretation?

The CHAIRMAN. That is a correct interpretation.

Mr. ABERCROMBIE. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Miller, before I yield to Mr. Pombo, do you have a question?

Mr. MILLER. Well, I just wondered if we might for—since we are on this subject of—Mr. Leshy might respond to Mr. Abercrombie's inquiry made of Mr. Marrs about this round of selections and whether that is consistent or not with his understanding of the agreement, whether you can move back and forth between A and C lands during the selections under the agreement or whether you had to exhaust the A lands?

Mr. LESHY. Mr. Chairman, we can't read the agreement that way. The agreement is in black and white. There are two key sentences in the agreement. It says: Convey all of Appendix A. And then you look further down the page, it says: To the extent the lands conveyed in A are insufficient, the Secretary shall convey lands off of Appendix C.

Mr. MILLER. And I ask you this, if I was a village and I took—in the first round I took land out of A, and then in rounds—I don't know rounds to go, but maybe rounds two and three, four, whatever, I refuse to take additional lands because they're really not of much interest to me, can I make up my deficiency by then going to C?

Mr. LESHY. That's not the way we read the agreement. In between those two sentences is Paragraph B of the agreement, which basically says once the Department conveys lands off Appendix A, CIRI conveys those to the villages pursuant to the agreements they work out with the villages. So A is—from the Department's standpoint, we convey A—if A fulfills their entitlement, we are out of it. Then what happens to the lands in A is between CIRI and the villages. CIRI has an obligation to convey to the villages on the terms

that they can work out. You only get to C if the A conveyances are insufficient.

The CHAIRMAN. Carl, would you like to a comment on that?

Mr. MARRS. Yes, Mr. Chairman, thank you.

The operation of the agreement ends up, is what we're talking about here, is valid 12-A selections, original selections which are in Appendix A and Appendix C.

The villages still have not made their 12-B selection. If you take the priorities, which is talked about in Paragraph B, the priorities of the villages, it says those priorities are those rounds that they selected under. Those—they jump back and forth, whether this was the "Talkedeedins," whether it was to west side or Appendix C land. The intent was to allow those villages to take their 12-A, valid 12-A, selections out of Appendix C and Appendix A at the same time. If, in fact, Salamantof and Alexander Creek became villages, there is an overflow area which is Appendix C. There is another—if you see the additional—on Appendix C, the villages would then go back into Appendix C after they fulfilled their entitlement out of Appendix A. Once they take their valid 12-A's, the total amount of valid 12-A's, and you add to that their 12-B's, there will be approximately a little over two townships, I believe—there is two times seven available, and once they take their 12-B selections out of Appendix A, there will be an additional anchorage which is opened, which CIRI has greed to take as part of its 12-C entitlement, which we still have left on the books.

The CHAIRMAN. Well, again, I want to solve a problem, Mr. Pombo.

Mr. POMBO. Thank you, Mr. Chairman.

This is—I guess a different realm in property rights than I've dealt with in the past. It gets more confusing the more I learn about it.

Mr. Oskolkoff, they asked you a question earlier about access to Lake Clark. What is the current access to that right now? How do people—how would the public get there right now?

Mr. OSKOLKOFF. The public gets there through numerous different corridors that have been set up and to provide access, and a lot of the activity in Lake Clark is also fly-in, a lot of landing there.

There are easements and stuff reserved into those lands and historical use of areas that provide access up along rivers and those types of things.

Mr. POMBO. Is the access to that right now through village lands or through Federal lands or both?

Mr. OSKOLKOFF. At this point, since the lands have not been conveyed within Appendix C, they are not village lands at this point.

Mr. POMBO. So it is Federal lands currently.

Mr. OSKOLKOFF. They are village selections.

Mr. POMBO. And if they were conveyed to the villages, you are saying that the access to that would not change.

Mr. OSKOLKOFF. That is correct. In fact, it would probably be enhanced.

We have developed agreements with other people on other surrounding lands, lands just adjacent to these numerous agreements where people—existing bed and breakfasts, camps, all sorts of dif-

ferent things that we provided access for. We don't have anybody that I know of that is without access or unhappy about access.

The CHAIRMAN. Would the gentleman yield for a moment? I would like to bring up a point.

Access now is at the will and whim of the Federal Government. They, in fact, can require permit—I believe they have in many cases—they have a hammer if they wish to deny access——

Mr. POMBO. Require a permit to——

The CHAIRMAN. They could; I'm not sure they haven't in some cases. It is, again, a Federal edict that they can deny access at any time they wish. There is no guarantee.

Across the park we know Mr.—my good friend in Alaska that tried to go across the park according to the Alaska National Lands Act, and they put him in jail for it. This is our Government in action—it is really a fine bunch.

Mr. MILLER. Would the gentleman yield on that question?

I mean there is no guarantee of access if these lands are conveyed—right?—because it is within the private lands. You would have to go out— Government or Park Service would have to go out and get an easement.

Mr. LESHY. That is right. There is nothing in H.R. 2560 that addresses that so presumably the land is conveyed to the native villages and becomes native village land, and they would have no obligation to provide access.

The CHAIRMAN. Would the gentleman yield?

Mr. POMBO. Mr. Oskolkoff, do you want to respond to that?

Mr. OSKOLKOFF. I think it is evident from the sheer fact I presented in my testimony that our corporation as well as other corporations have already negotiated on access for these lands, heard about the needs for access, and we developed a plan with the Federal Government to identify and put in place those 17(b) easements.

Mr. POMBO. So let me ask you a question. What is to your villages' benefit, to allow access or to keep people out?

Mr. OSKOLKOFF. They can both be of benefit, and we do both. In some areas we keep people out if we have restricted areas, but by and large—and that is clearly evident for our corporation—it is very beneficial in many cases to have that access to bring in those people and allow those people to continue to have access, in particular inholders that already have holdings within even Appendix C area.

Mr. POMBO. And the historic inholders, it is—I have here a note that says that there are about 200 acres of private inholdings within these lands. What guarantee can you give me that those people are going to have access to those inholdings?

I mean in my State and a number of western States we have problems with access to inholdings and through Federal lands. What guarantee can you give me that those private property owners are still going to have access?

Mr. OSKOLKOFF. I am not sure I can be specific about a guarantee, but most of these inholders are located along the coast in which these Appendix C lands are, and they have access, a guaranteed access by means of State public access from beach front, and

that is how most of those properties are in fact accessed, either by boat or by float plane.

Mr. POMBO. Because there are no roads.

Mr. OSKOLKOFF. There are no roads.

The CHAIRMAN. Would the gentleman yield for a moment of time?

I think the point here is, the State of Alaska has jurisdiction over tidal lands. They have jurisdiction over all waters, contrary to what the Department says, and in the legislation as finalized there will be a statement about access across these lands. There is no request for them to allow that red herring to be dragged across here. There are no roads——

Mr. POMBO. That is one thing. You know, I was in Alaska during the August break, and I mean it is a beautiful State, don't get me wrong, but we flew for hours and there was nothing. I mean , you know, there is not much up there. So if you get some people with a piece of property in the middle of all this, there is not a heck of a lot of private property in Alaska to begin with, and when you take away access, what there is isn't worth anything.

The CHAIRMAN. Well, again, right now we are having the Department not allowing access to inholders.

Mr. POMBO. Well, we have a problem in all the western States.

The CHAIRMAN. And I am just saying there is an example, but in this legislation these lands will be transferred to these native groups that have an entitlement. There will be a provision for access in the legislation.

Mr. POMBO. Mr. Chairman, I know that my time is up, but I have been yielding to everybody, and I wanted to ask Ms. Parker a couple of questions.

Now it is my understanding that this is Kenai Peninsula Bureau?

Ms. PARKER. Yes.

Mr. POMBO. What is your position with them? Now my understanding, that is like what I would call accounting.

Ms. PARKER. Correct.

Mr. POMBO OK. What is your position with them?

Ms. PARKER. I am the planning director for——

Mr. POMBO. You are the planning director?

Ms. PARKER. Yes, sir.

Mr. POMBO. How big is this bureau?

Ms. PARKER. The bureau encompasses approximately 10 million acres and includes—approximately 75 percent of what is owned by the Federal Government. We have three National Parks, a wildlife refuge, a forest, part of the U.S. Forest Service as well as 2 million acres of State land.

Mr. POMBO. What percentage of that bureau is private property?

Ms. PARKER. There is private property, approximately 300,000 acres, and the——

Mr. POMBO. 300,000.

Ms. PARKER. 300,000.

Mr. POMBO. Out of 10 million?

Ms. PARKER. Yes, sir.

Mr. POMBO. And that is it.

Ms. PARKER. Yes, sir.

Mr. POMBO. All right, Mr. Chairman, thank you.

The CHAIRMAN. Yes. I recognize the gentleman from American Samoa.

Mr. FALEOMAVAEGA. Thank you, Mr. Chairman.

I am sorry I missed the dialog previously with our friends from the Interior as well as our friends from Alaska. I do have a couple of questions to Mr. Leshy.

My understanding with reference to the issue at hand—which agency of the Department of Interior is the lead agency that gives the final call on issues affecting native Alaskan lands and the issues affecting the tribes that we are talking about here?

Mr. LESHY. On a land conveyance issue like this, the Bureau of Land Management has the lead in the conveyancing process. An issue like this actually involves everybody in the Department. The BIA is consulted, the Park Service is consulted because of the presence of Lake Clark here, but it comes from the Secretary's office, Assistant Secretary Armstrong in the land and minerals area. Actually, his office was sort of the focal point of——

Mr. FALEOMAVAEGA. Can you ask why the BLM is deciding to conduct a comprehensive audit of CIRI activities, as you mentioned in your statement?

You know, I have some very serious concerns about this. We have paid $20 million, and after four years of auditing the Indian Trust Fund or about a billion dollars, we still couldn't come out with a proper auditing of the bucks. But I am curious, are we going through the same process with the tribes here? I mean there are some serious problems.

Mr. LESHY. No. As I understand the audit process, BLM does this. Each village and regional corporation is entitled to a certain amount of lands through the selection process, these processes can be pretty complex and involve of course millions and millions of acres of land. So the audits are simply to see where we are in the selection process in relation to the entitlement, and I think they do them for——

Mr. FALEOMAVAEGA. Is it your understanding for the past 20 years, based on this agreement, the 1976 agreement, that we are discussing here between the Department of Interior and CIRI, that after 20 years we are still at an impasse, that we still haven't resolved the 450,000 acres that we are talking about. Is this the problem that we're faced with?

Mr. LESHY. Our view is that this agreement reflected the intention of the parties in 1976, and the Department has performed its obligations under the agreement by conveying lands off of Appendix A, and completed that process several years ago.

The ongoing issue is really between CIRI and the villages, in our view, under this agreement. We have performed the agreement the way we have interpreted the agreement since we entered into the agreement.

As I said, this is an interpretation of this agreement that has stood through several different administrations of both political parties. We have taken the same position on this since the beginning, and BLM has performed it, and we have completed our obligations under it several years ago.

Mr. FALEOMAVAEGA. So what you are saying is that all CIRI needs to do is just convey the lands back to the Indian tribes, to the villages.

Mr. LESHY. That's right.

Mr. FALEOMAVAEGA. I just wanted to ask, as a point of information to the Chairman, if CIRI in its activities in this relationship with this agreement in '76, have they had any problems in this committee?

The CHAIRMAN. I wish you would have been here for the full testimony, because I think Mr. Leshy is absolutely wrong.

Number two——

Mr. FALEOMAVAEGA. Mr. Chairman.

The CHAIRMAN. Let me finish. They cannot participate in the conveyance of these lands at the request of the villages because, if they do so, they will accede the fact they don't get the lands they chose. Remember, they gave up Lake Clark.

I again go back—maybe we ought to get Mr. Frampton—maybe we ought to do this. It goes back to the trust responsibility of the Interior Department, this many-faceted headed monster. It always comes down to the Park Service, Fish and Wildlife Service, BLM, where it should be—the top person should be an Alaskan and an American Native, the obligation to them in the trust authority, and they never do it.

I look around here. There are five or six lawyers out here that they have to employ. Mr. Leshy's paid by the taxpayers. Mr. Frampton and I are paid by the taxpayer. They have got to employ lawyers to try to solve a case against the Department when the Department should be fighting for them, and they don't do it. I asked the question, the BIA did not sign off on this.

Mr. FALEOMAVAEGA. I want to say to the gentleman that I appreciate his enlightenment, at least allowing this Member to understand the implications of what we are trying to do here. And I want to say to the gentleman and for the record I fully intend to support this legislation. I think 20 years of passing the buck and not really coming to some firm answer to the problems that the Indian villages have been requesting is too long.

This is a classic example—this is not the first time that I have had dealings personally with our friends downtown; and, unfortunately, we can come up with the most legal interpretations on how we can do this. It's going to take another 50 years, and I don't think it will resolve it. I think this legislation will definitely resolve this impasse, and I fully intend to support the legislation.

The CHAIRMAN. Thank the gentleman.

I want to ask the question, before I go to Mr. Miller, page five, Mr. Leshy, of your testimony points out that CIRI has never sought to challenge the Department's interpretation of ANSCA in the 1976 agreement in the courts. Why do you believe this is the case?

Mr. LESHY. I don't know.

The CHAIRMAN. Would CIRI like to comment?

Mr. MARRS. Well, Mr. Chairman, so far, this issue is, from our standpoint, the intent side. We have tried to work it out with the Department of the Interior, and up until July of this year we did not receive an official position from the Department of the Interior. When we finally received a letter from Interior stating their posi-

tion, we are more than willing to go to court. We have two years before the statute runs on this.

We don't think we should have to go to court. We believe—and, believe me, I was there when this was negotiated. The intent was that the villages got those lands, and if Interior would read the full agreement in its context and pay attention, they say they are not part of the agreement with the villages, that part of it, because it was incorporated into a total agreement that those rounds, those priorities that those villages selected at the time when they traded out of Lake Clark, those are valid 12(a) selections, and I think if we went to court we'd ultimately beat it.

But the act says very clearly in section 2 that it should be interpreted in favor of the Natives. And we believe that was the intent of Congress, and we'd like to see that intent carried out.

Mr. LESHY. Mr. Chairman, could I make a brief comment?

The CHAIRMAN. Sure.

Mr. LESHY. My testimony points out that the Department Under Secretary Horn wrote a letter to CIRI addressed to the CIRI chairman, I believe, in 1981 which said, we interpret this agreement to mean that no lands are conveyed off of Appendix C unless Appendix A lands are insufficient. At that moment in time, there was no question, I believe, that CIRI could have gone to court and challenged that interpretation, but chose not to.

Mr. MARRS. That was not an opinion on this—on this agreement. So we did not receive an official opinion out of Interior until July of this year, and that is why we are here today, Mr. Chairman.

The CHAIRMAN. I am just curious. This is a letter from the Department of the Interior. It says, in order to drill a hole you must await—this is from Arco 1981—await the conveyance of the land by interim conveyance, IC, or by the patent to the Native corporations. Our understanding is that a draft conveyance regarding these lands has been prepared by the Bureau of Land Management and will soon be made available for comment. It is—conveyance is not likely to take place until later this year. However, given the future priority ownership of land, the shallow depths and—et cetera, et cetera, it appears we did not have the leeway to authorize the project. And these were Appendix C lands.

Mr. MARRS. Yes, sir.

The CHAIRMAN. The same year Bill Horn wrote the letter. That tells me something. Again, the obligation is not being fulfilled.

Any other questions, Mr. Miller?

Mr. MILLER. This is why they invented law schools and lawyers.

I just think, you know, that if you are going to pass this legislation then we ought to understand what we are doing, and that is you are going to completely void and rewrite this agreement. And that's fine. If that's what you want to do and if you have the votes to do this, that's all fine. I am not commenting on that. But I think—I think to make the Department of the Interior the scapegoat here to an agreement that the villages signed, that CIRI signed, and that was, you know, was as a result of giving up those lands and those disagreements——

They entered into this agreement. Now, they don't like that agreement. So, fine, you don't like that agreement. Then pass the legislation. But that is the agreement that people signed. Once

those lands were conveyed—were conveyed to CIRI, the Department's out. The Department's out of this arrangement, and those 460,000 acres are supposed to be reconveyed, and then a determination can or cannot be made as to a deficiency. Then maybe you can drag the Department back in here about the Schedule C lands. But that process they seek to avoid for the last 16 years and now we are here for this legislation.

And the—you know, the letter from Horn effectively draws this into controversy, that they have chosen not to exercise, and here we are. That doesn't make people bad necessarily. Just understand that that's kind of where we are.

You can use this as a tool to beat up on the Department, but the fact of the matter is they discharged their obligations. It's the reconveyance of those lands and then a determination after the reconveyance of those lands as to the use of Schedule C lands that would be at issue if in fact the reconveyance had taken place. Either by mutual agreement or adversarial agreements or what have you, the reconveyance of those lands has not taken place. That is not a function of the Department of the Interior to carry out.

Now, if—you can get rid of all that, but it is rather interesting people have chosen not to go to court on that. You can get rid of that with this legislation. If you do that I think you have an obligation to think about the impact on the Park. You have an obligation to think about the easements because I appreciate what the gentleman says, that, you know, they have negotiated these out. But we ought not to turn over the access and then be in a position to have to buy it back for access to the Park. I think those are minor—those are minor areas in terms of the amount of land you are talking about here to have reasonable access and easements to the Park Service.

But I think that, you know, as I read the agreement, the target is somewhat misplaced here in terms of what's taking place; and I think it's really, you know, maybe CIRI and the villages entered into a bad agreement and hindsight tells them they did that. Well, then say that and come back here and say you want to renegotiate it.

Because somebody looked at these lands. Somebody sat down and went through it. Somebody went through these and said, OK, this, this, this will work; and we have a catchall in case it doesn't work, which is the Appendix C lands. But that agreement apparently hasn't worked out, and now we are here.

Mr. VENTO. If the gentleman will yield.

Mr. MILLER. I will yield.

Mr. VENTO. One of the things I find is 460,000 acres have been conveyed.

Mr. Marrs represents CIRI. Did you willingly or voluntarily accept the conveyance of those acres or did you do it under protest or did you try and convey it back to the Department of the Interior? You accepted—this is what I can't understand. You have accepted this land. That would fulfill the deficiency requirement. Whether or not the villages, in terms of priority, find that acceptable—I mean, I don't understand. Have you accepted that under protest? Or what is there, some paper record here besides just somebody's memory?

Mr. MARRS. No, sir, Congressman. We did accept Appendix A. We also expected to receive those 12(a)—if I could explain, Congressman.

Mr. VENTO. Well——

Mr. MARRS [continuing]. in Appendix C and be able to reconvey those lands to the villages in the priorities that they selected them in. And that is part of the agreement and that is part of the smoke screen that the Department of the Interior is putting in front of you.

Mr. MILLER. It is on my time, if I just might, because I have got to leave. The fact is, you have accepted. You held those lands for 20 years.

Mr. MARRS. Not 20 years, sir.

Mr. MILLER. Nineteen, excuse me. But pursuant to the agreement of '76, those lands—you have administered those lands—I guess the Park Service doesn't administer them. The government doesn't administer them. I mean, there is something to what point you have executed the agreement. I would feel a lot better I guess if you came in here and said, hey, we want a second bite at the apple, guys.

Mr. MARRS. Congressman, in all due respect, that is not what we are doing here.

Mr. MILLER. You are creating a fix here.

Mr. MARRS. We are not. The Department was part of the process of negotiations with the Village Corporations and Cook Inlet at the time they traded out of 50 some thousand acres out of the core of the Park Service with the understanding that they would get their priorities on the west coast of Cook Inlet.

Mr. MILLER. They signed an agreement in 1976 to carry out that purpose.

Mr. MARRS. They signed an agreement to do that and so did Interior. Interior knew those were high priorities, and they are throwing a smoke screen in front of this thing to make that a park. It was not a park at the time. It still is not a park.

Mr. MILLER. I understand that. That is why the agreement exists. If that wasn't the situation, there would be any agreement signed by all the parties.

The CHAIRMAN. If the gentleman would yield. If you guys had not created the Lake Clark Park we wouldn't have this problem today. And this was all prior——

Mr. MILLER. This was satisfactory to them, Mr. Chairman.

The CHAIRMAN. Because then you came in after the fact and changed the rules. You did change the rules.

Mr. MILLER. We enforced the rules that the parties agreed to. If the parties don't like that, that's a different situation.

The CHAIRMAN. Well, I know, as Mr. Abercrombie and others said, the Natives in this case are getting the short end of the stick, because we got a lot of Department people that do not believe it.

Mr. VENTO. I think that the fact is that if they accepted conveyance of the lands, that was a voluntary agreement that you entered into, no one forced you to accept the Appendix A lands. There is no demonstration other than that. Obviously, you have a view in terms of selection that it didn't fulfill.

But why would you have accepted those lands? In fact, as far as I know, Mr. Leshy, the Department has no direct role in terms of conveying lands under this agreement.

Now you may disagree with the framework of this agreement. That is what it sounds like we are talking about. But you have no direct role in terms of conveying lands to the villages in the context of that 1976 agreement, is that correct?

Mr. LESHY. That's right, although the agreement itself says that regional corporation shall convey the lands we conveyed to the region.

Mr. VENTO. You would convey it. But the Department of—the BLM has a technical role in terms of that, is that correct?

Mr. LESHY. Yeah.

Mr. VENTO. They have no policy role at that particular point. BLM is simply looking at a technical agent between the corporation and the Native villages, is that correct?

Mr. LESHY. That's right.

Mr. VENTO. Now, initially, Mr. Chairman, how did we get to lists A and B? My assumption is that BLM——

The CHAIRMAN. A and C.

Mr. VENTO. A and C. How did we get to those lists? We got to them because I assume BLM took under consideration the requests and the views of the villages and of the corporations in terms of assembling those lists, and then everyone signed on the dotted line as to A and B, is that correct? So these weren't just randomly accepted. There was a representation here that these were simply randomly assembled lands. Were they, in fact, Mr. Leshy?

Mr. LESHY. What I have been told, Mr. Chairman and Congressman Vento, is that the lists were actually drawn up by the regional corporation, by CIRI; and I'm not sure that BLM had any role in it except to pass on and agreed to the list, but the preparation of the lists were done by CIRI, I assume, without knowing in consultation with——

Mr. VENTO. I assume the reason C was put as a secondary or subordinated—and there is an argument over that here today, I understand that—is that they were considered to be lands that would not provide for—they were not contiguous. They provided other administrative problems and other issues related to the Park or whatever the landscape policy was going to be. I assume that that's the case, that they were put into a secondary position. I don't think anyone would disagree with that.

Mr. MARRS. I do.

Mr. VENTO. But I mean my point, Mr. Marrs—I want to get back to that—is that somehow it does say in this agreement that there is a preference for you to select from A. Whether you have a right to go to C is another matter. But there is a preference to go to A. Wouldn't you agree with that view?

Mr. MARRS. No, sir.

Mr. VENTO. You don't agree with any——

Mr. MARRS. No.

Mr. VENTO. Why did you accept lands off of A that completely fulfilled the requirements and deficiency?

Mr. MARRS. Mr. Chairman, if I may——

Mr. VENTO. If you disagreed, why did you do that?

Mr. MARRS. Mr. Chairman, if I may, I will explain to Congressman Vento one more time, is that at the time of the selections that were made, there were valid 12(a) selections. That was the first round of their entitlement, the village entitlement was made, and they were made in the middle of Lake Clark. They were made on the west side of Cook Inlet. They were made up in Talkeetna. The villages traded out those lands in Lake Clark that was a proposed park at the time so it would become a park——

Mr. VENTO. Mr. Chairman, can I interrupt?

The CHAIRMAN. Let him finish. Go ahead.

Mr. MARRS [continuing]. for a guarantee for the valid 12(a) selections.

Now appendix C is there for only one reason. If, in fact, Salamatif and Alexander Creek had been both certified as villages they would have overflowed back into Appendix C. But you have got to read the whole agreement in context. What Interior is doing, the Department of Interior's doing, is taking one section of that thing—and, believe me, those people from Interior were there at the time these were negotiated. They understood it. They understood the intent. And now, 20 or 18 years later, they are sitting here arguing that it wasn't the intent, that——

I mean, I was there, Mrs. Brown was there, Mr. Oskolkoff was there during those negotiations; and it was our understanding very clearly that the Village Corporations would receive their valid 12(a) selections.

Mr. VENTO. My only point, Mr. Chairman, was going to be—I mean, we, obviously, are trying to—that's why this 1976 agreement occurred. We know there was a controversy, that I know; and we know that, based on that controversy, that was the purpose here. And so I mean we can talk about whatever the—whatever hearsay there was, whatever unwritten intentions there were. But we are dealing with the black and white aspects of what's before us in terms of this agreement.

I am afraid I agree. I read it, Mr. Leshy is the counsel, the solicitor; others have read it, they have come to different conclusions.

The CHAIRMAN. Again, if I may, we are going to change it. The intent was very clear in 1971 that these villages did make their selections. They chose and they voluntarily gave up the core selections.

I go back—maybe we ought to go back to that, with the understanding they would be allowed to check those Appendix Cs.

Now there is a difference of opinion. I just don't understand why the Department is so adamantly opposed to this. I mean, they are definitely opposed to it.

Now, if you said there was a legal problem why you couldn't do it, I'd understand that. But this is an example of this Department and who they respond to. This is an example of the head of the agencies belonging to certain environmental groups who do not care about the American Natives. This administration is saying, we're against this, in fact, conveyance of land.

Mr. VENTO. Let me——

The CHAIRMAN. Now it's not Mr. Leshy's fault. It is coming from the top. I know where it's coming from.

Mr. VENTO. I just see that the numbers, the quantitative numbers indicate that the conveyance has been made.

The CHAIRMAN. It has not been made. It has not been made. And if there is an overconveyance that can be rectified. There is no documentation. In fact, in two weeks from now I expect that documentation before us——

Mr. VENTO. Is that the——

The CHAIRMAN [continuing]. documented.

Mr. VENTO. Mr. Chairman, is that the BLM audit of this? Is that what this is going to be, Mr. Leshy? Or is that going to be something different?

Mr. LESHY. No, the audit, as I understand it, will not be complete until January, something like that. The point of the overconveyance issue is that there is nothing in this legislation which says that any of the lands that we have already conveyed come back if there is an overselection.

The CHAIRMAN. So, again, if you have a suggestion for that—I am suggesting again the Department quit fighting me on this. If there's some problems with the legislation, then bring those problems to me because there won't be an overselection. But there is going to be a solution to these villages being deprived by the policy of this administration. The Department of the Interior has been very bad from the very beginning concerning the 1971 act.

Mr. Marrs, you wanted to respond.

Mr. MARRS. Mr. Chairman, just for the record, if I may, this is not a CIRI issue. Yes, CIRI does get subsurface under the village lands. This is purely a village issue. It was something that was promised to them back in 1974, '75, '76; and even up as late as a few years ago BLM agreed with the interpretation that Appendix C lands would go to the villages. And CIRI is not in this for getting more than they're entitled to any of the villages. We want our entitlement that was promised to us in 1971, and that's all we want.

Mr. VENTO. Mr. Chairman.

The CHAIRMAN. Yes.

Mr. VENTO. One other point. I think that's very important. As I said, I think BLM's role in this at this point, as far as I know, is not a policy one. But, in any case, I can stand corrected if there is different information.

But one of the points here also, of course, is the fact that there has only been 100—or 150,000 out of the 450,000. We are talking about 300,000 acres here that are in dispute. So the question is why has—why hasn't the bulk of this land been transferred to the service. We haven't resolved that issue——

The CHAIRMAN. It has been answered time and time again. And, Mr. Marrs, would you look to address the question?

Mr. VENTO. Mr. Chairman, I think legislatively, if we are going to get involved in passing this off to the region again, it seems to me that since they haven't been—there has been this controversy that there ought to be a direct role of the Department of the Interior in transferring this, and we ought to eliminate some of the problems that currently have occurred in the past in the region. I don't know this is just an A, B and C issue here.

The CHAIRMAN. I agree. I am going to suggest one thing. When Mr. Leshy brings in access to the Park, I know where that's coming

from. That has nothing to do with this legislation. That has nothing to do with it, because these selections were made prior to that area being created as a park.

Mr. VENTO. I don't know that that is a problem. I know that there are traditional uses.

The CHAIRMAN. The administration brought it up in its testimony. The administration said this is a problem. And I am saying this is not a problem. We can write it in.

But this is a policy and philosophy of this administration concerning the Alaskan and the American Native people. And I am saying it again. They have the priority, not BLM, not the Park Service, not the Fish and Wildlife. They have the priority right. Why they don't say that and solve the problem and quit opposing the bill?

And I would thank all you people for testifying.

Mr. VENTO. Then change it.

The CHAIRMAN. We'll change it all right. I do want that testimony two weeks from now. That's the deadline. If not, we are moving the bill anyway.

This committee is adjourned.

[Whereupon, at 1:17 p.m., the committee was adjourned; and the following was submitted for the rercord:]

I

104TH CONGRESS
1ST SESSION

H. R. 2560

To provide for conveyances of certain lands in Alaska to Chickaloon-Moose Creek Native Association, Inc., Ninilchik Native Association, Inc., Seldovia Native Association, Inc., Tyonek Native Corporation, and Knikatnu, Inc. under the Alaska Native Claims Settlement Act.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 30, 1995

Mr. YOUNG of Alaska introduced the following bill; which was referred to the Committee on Resources

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A BILL

To provide for conveyances of certain lands in Alaska to Chickaloon-Moose Creek Native Association, Inc., Ninilchik Native Association, Inc., Seldovia Native Association, Inc., Tyonek Native Corporation, and Knikatnu, Inc. under the Alaska Native Claims Settlement Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 4 of Public Law 94–456 (43 U.S.C. 1611 note) is amended—

(1) by striking out "subsection (a)" in subsection (c) and inserting in lieu thereof "subsections (a) and (d)"; and

(2) by adding at the end the following:

"(d)(1) Within 90 days after the date of enactment of this subsection, the Secretary shall convey all right, title, and interest of the United States in and to the surface estate of the lands described in paragraph (2) to the Village Corporations within Cook Inlet Region named in paragraph (2) in partial satisfaction of each Village Corporation's statutory entitlement under section 12(a) of the Settlement Act. Conveyances shall be made pursuant to sections 12(a) and 14(f) of the Settlement Act.

"(2) The lands described in this paragraph are to be conveyed to Village Corporations as follows:

To Chickaloon-Moose Creek Native Association, Inc.:

SEWARD MERIDIAN, ALASKA

Township 1 North, Range 20 West (Unsurveyed)

Sections 24, 25, and 36 (fractional).

To Knikatnu, Inc.:

SEWARD MERIDIAN, ALASKA

Township 1 South, Range 20 West (Unsurveyed)

Section 1 (fractional).

Township 3 South, Range 20 West (Unsurveyed)

Section 3 (fractional);

Sections 4 and 9.

Township 1 North, Range 20 West (Unsurveyed)

Section 9 (fractional).

To Nunilchik Native Association, Inc.:

SEWARD MERIDIAN, ALASKA

Township 1 South, Range 19 West (Unsurveyed)

Sections 29 and 32 (fractional).

Township 2 South, Range 19 West (Unsurveyed)

Sections 6 and 18 (fractional).

Township 2 South, Range 20 West (Unsurveyed)

Section 1 (fractional);

Sections 6 and 14;

Sections 23, 24, and 26 (fractional);

Sections 32 and 33;

Sections 34 and 35 (fractional).

Township 3 South, Range 20 West (Unsurveyed)

Section 10 (fractional).

Township 3 South, Range 21 West (Unsurveyed)

Sections 13 and 19 through 24, inclusive;

Section 25 (fractional);

Sections 32 and 34 (fractional).

Township 1 North, Range 20 West (Unsurveyed)

Sections 6 through 8 (fractional), inclusive;

Section 16;

Sections 22 and 23 (fractional);

Section 26.

Township 4 North, Range 19 West (Unsurveyed)

Sections 20 and 36.

To Seldovia Native Association, Inc.:

SEWARD MERIDIAN, ALASKA

Township 2 South, Range 20 West (Unsurveyed)

Section 13 (fractional).

Township 3 South, Range 20 West (Unsurveyed)

Sections 7 and 8;

Section 16 (fractional);

Sections 17 and 18;

Sections 19 and 20 (fractional).

To Tyonek Native Corporation:

SEWARD MERIDIAN, ALASKA

Township 1 South, Range 20 West (Unsurveyed)

Section 2 (fractional);

Section 3.

Township 2 South, Range 21 West
(Unsurveyed)
Section 36.
Township 2 South, Range 20 West
(Unsurveyed)
Section 12 (fractional);
Section 31.
Township 3 South, Range 20 West
(Unsurveyed)
Sections 15, 21, and 30 (fractional).
Township 3 South, Range 21 West
(Unsurveyed)
Section 26;
Sections 27 and 28 (fractional);
Sections 29 through 31 (fractional), inclusive;
Sections 33, 35, and 36 (fractional).
Township 1 North, Range 20 West
(Unsurveyed)
Section 15 (fractional);
Section 35.

Aggregating approximately 29,900 acres, more or less.

"(3) No later than 180 days following the completion of the conveyance required by paragraph (1), Cook Inlet Region, Inc., shall convey to each of the Village Corpora-

tions referred to in paragraph (2) the surface estate in such lands described in Appendix A of that certain Agreement dated August 31, 1976, known as the Deficiency Conveyance Agreement, as the Village Corporations have identified, and in the order they identified in their priority selection rounds.

"(4) If the Secretary does not convey the lands in paragraph (2) within 90 days of the date of the enactment of this subsection, then all right, title, and interest of the United States in and to the surface estate of such lands shall nevertheless pass immediately to the Village Corporations named in paragraph (2).".

KENAI PENINSULA BOROUGH
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DON GILMAN
MAYOR

Testimony submitted to the

U. S. House of Representatives

Committee on Resources

H.R. 1342: To provide for conveyances of certain lands within Cook Inlet Region, Alaska

by

Don Gilman, Mayor

Kenai Peninsula Borough

November 7, 1995

Mr. Chairman and members of the Committee on Resources, I appreciate the opportunity to provide testimony to you on a matter that I consider important, not only to the ANCSA corporations involved, but to the residents of the Kenai Peninsula Borough.

My name is Don Gilman. I am currently and have been for eight years the Mayor of the Kenai Peninsula Borough.

As Mayor, I represent an area that exceeds 25,000 square miles (16,000 square miles of land and 9,600 square miles of coastal waters) or about 10,000,000 acres in what is commonly referred to as south central Alaska. The Kenai Peninsula Borough is approximately equal in size to the State of West Virginia.

As some of you may be aware, the State of Alaska is divided into political and geographic sub-regions based primarily on economic and physical criteria. Boroughs, rather than counties, comprise the regional governmental units established by the Alaska State constitution.

The Kenai Peninsula Borough is one of the larger boroughs in Alaska. Its land base is split by Cook Inlet with the east side representing approximately 53 percent of the land base and 99 percent of the population.

The "West Side" includes the area under your consideration in H.R.1342. Forty-seven percent of the Borough's land base is located on the West Side. The area is sparsely populated. One percent of the borough population resides on the west side.

Not unlike other regional governments in Alaska, we find the region's opportunities subject to no small degree, to

government land ownership and management. Sixty percent of the land located in the Borough lies in federal ownership. Another 25 percent belongs to the State of Alaska. That leaves approximately 14 percent private ownership and 1 percent owned by the Kenai Peninsula Borough.

This absence of privately owned land, only 300,000 acres out of more than 10,000,000 acres, restricts land management options. The regional economic base for five cities and the borough is dependant on the six way split of limited resources. This is not much for building a long term economic base. Obviously, it is in the economic best interest of the Borough for land to be in village hands and out of public ownership. Lands in private corporate management contribute to the regional economic base.

Since being admitted to the union in 1959, Alaskan land issues have been at the center of debate and controversy, both locally and nationally.

The Statehood Act entitled Alaska to approximately 104.5 million acres. The 1971 Alaska Native Claims Settlement Act will, in its finality, convey approximately 45 million acres to private Native corporation ownership. And finally, the Alaska National Interest Land Conservation Act of 1980, which was born out of ANCSA, Section 17(d)(2), established in excess of 150 million acres in units of the National Park, monument, wildlife refuge, and National Forest systems.

The conveyance task generated by these three landmark Acts has been complex to say the least. The process has demanded cooperation and a genuine desire to resolve the matter by all parties directly involved as well as those interests that may be impacted by federal, State and

ANCSA corporation actions.

Because of the complexity of land conveyances in Alaska, innovation has been a requirement. Where no prescribed formula exists for resolving issues, the parties have been called on to devise creative solutions to implementing ANCSA. Thus, methods of resolution, while within the requirements of law and regulation, have varied.

The agreements (Terms and Conditions/Deficiency Agreement) that are referenced in the matter before you are examples of innovation designed to implement ANCSA in the face of conveyance challenges. They were intended to serve as a mechanism that resolved complex conveyance issues for the Bureau of Land Management, the State of Alaska, and the Cook Inlet villages. The agreements also directly impacted the Kenai Peninsula Borough's ability to create a public land base on the west side.

Long before ANILCA created the Lake Clark National Park and Preserve, I was led to believe that the west side, what is now referred to as Appendix C lands, was off limits to Borough entitlement. Typically, the State selects land and reconveys a certain percentage to local and regional governments through a municipal entitlement program. BLM advised me that the Appendix C lands were intended for conveyance to ANCSA corporations.

The 1976 agreement contained a contingency, the Borough would assist the villages in securing the land now listed as Appendix C. This process was underway before the 1980 passage of ANILCA. The Lake Clark National Park and Preserve was created by the passage of ANILCA and further supported by President Carter's use of the Antiquities Act. This is not a new issue.

Had conveyance of Appendix C lands to village corporations not been the case, the Kenai Peninsula Borough would surely have considered actions that would have made the land available through the municipal entitlement program.

I am fortunate in my public service career to have the longevity that allowed me to participate in the early Cook Inlet Agreements that bring us here today. It has always been my understanding that the Cook Inlet villages would be conveyed lands based on priorities established in conjunction with BLM. To my knowledge, the village priorities have always included the Appendix C lands.

> "Congressional passage of the Alaska Native Claims Settlement Act in late 1971 could, perhaps be considered an ending of more than a century of endeavor by the Native people of the State to secure to ourselves our lands."

This statement was made in 1975 by Emil Notti, current President of the Alaska Native Foundation. Twenty years later, villages in the Cook Inlet Region find that commitments made by Congress remain unfulfilled. The villages of Knik, Ninilchik, Salamatof, Tyonek, Chickaloon and Seldovia relinquished selections around Lake Clark that allowed Lake Clark National Park to be created. These villages selected traditional Lands in Appendix C and were led to believe they would receive them in conveyance. The bill before you directs BLM to follow through with Congressional intent and resolve the issue at hand.

The Kenai Peninsula Borough strongly urges the House Resources Committee and Congress to enact H.R. 1342, or similar legislation, which will ensure land conveyances that fully satisfy ANCSA entitlement for Cook Inlet

villages.

The Borough's position on this matter is further supported by Kenai Peninsula Borough Resolution 95-048, "A Resolution Supporting the Conveyance of Certain Lands within Cook Inlet Region, Alaska to Village Corporations under the Alaska Native Claims Settlement Act." Resolution 95-048 was passed by unanimous vote of both the Borough Assembly and Borough Planning Commission. A copy of Resolution 95-048 is included with this testimony.

In closing, I am Mayor of a regional government that recognizes the positive contributions ANCSA corporations have made to the economic well being of all Borough residents. For the villages of Ninilchik, Salamatof, Seldovia and Tyonek, all located within the Borough, resolution of this issue is essential. For the Borough and State of Alaska, resolution of the 29,000 acre selection in Appendix C will reduce future potential selection overlaps in other areas.

If the 29,000 acre selection is not fulfilled as detailed in Appendix C, the result of that action would have significant bearing on unfulfilled municipal entitlements. We have all played the entitlement game under the premise that Appendix C lands would go to Cook Inlet villages as earlier indicated by BLM.

Again, I thank Congressman Young and members of the Committee for providing me this opportunity to address you concerning this important matter.

Introduced by:	Mayor
Date	08/01/95
Action	Adopted as Amended
Vote:	Unanimous

KENAI PENINSULA BOROUGH
RESOLUTION 95-048

A RESOLUTION SUPPORTING THE CONVEYANCES OF CERTAIN LANDS WITHIN COOK INLET REGION, ALASKA TO VILLAGE CORPORATIONS UNDER THE ALASKA NATIVE CLAIMS SETTLEMENT ACT

WHEREAS, under the Alaska Native Claims Settlement Act (ANCSA), Alaska Native Corporations were to select for conveyance the customary and traditional use lands in their regions or localities; and

WHEREAS, this principle did not work in the Cook Inlet area as lands in the Cook Inlet Region were already committed to other ownership or federal withdrawals, thereby severely limiting the lands available for village corporation selection; and

WHEREAS, in 1974 and 1975 Cook Inlet Region villages selected lands along the shore of Lake Clark and surrounding lakes; and

WHEREAS, under an agreement between the federal government, State of Alaska and Cook Inlet Region, Inc. village selections at Lake Clark were relinquished for lands now referred to as Appendix A and Appendix C lands on the west coast of Cook Inlet, and

WHEREAS, under the authority of Public Law 94-456 village corporations were assured that deficiency selections on the west side of Cook Inlet would be conveyed under two appendices: Appendix A and Appendix C, and

WHEREAS, a portion of Appendix A selections have been conveyed; however, high priority Appendix C selections have not yet been conveyed; and

WHEREAS, throughout the late 1970s and 1980s the village corporations had reason to believe the Appendix C selections would be conveyed; however, the Department of the Interior reversed its position in 1994, thereby depriving the villages of some of their highest priority land; and

WHEREAS, federal legislation is necessary to correct this longstanding issue; and

WHEREAS, the Cook Inlet village corporations are important and vital entities within the Kenai Peninsula Borough.

NOW, THEREFORE, BE IT RESOLVED BY THE KENAI PENINSULA BOROUGH ASSEMBLY:

SECTION 1. The federal government fulfill its overdue obligation to the Cook Inlet Region village corporations under the Alaska Native Claims Settlement Act without further delay.

SECTION 2. The 104th Congress is urged to enact H.R. 1342 or similar legislation that provides the authority and direction to the Department of the Interior to convey Appendix C lands to Cook Inlet villages.

SECTION 3. Copies of this resolution shall be sent to Congressman Don Young, Senator Frank Murkowski, Senator Ted Stevens, and Secretary of the Interior Bruce Babbitt.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 1st DAY OF AUGUST, 1995.

Andrew P. Scalzi, Assembly President

ATTEST:

Gaye J. Vaughan, Borough Clerk

TESTIMONY
OF
BRUCE OSKOLKOFF
MEMBER, NINILCHIK NATIVE ASSOCIATION

BEFORE THE

COMMITTEE ON RESOURCES
U.S. HOUSE OF REPRESENTATIVES

November 7, 1995

TESTIMONY
OF
BRUCE OSKOLKOFF

BEFORE THE

COMMITTEE ON RESOURCES
U.S. HOUSE OF REPRESENTATIVES

November 7, 1995

Thank you, Mr. Chairman. I appreciate being given the opportunity to testify before this Committee today.

My name is Bruce Oskolkoff. I am a member of the Ninilchik Native Association, which was created under the Alaska Native Claims Settlement Act (ANCSA). I am also a member of the Cook Inlet United Deficiency Land Management Association.

Before I describe the history here, I feel I must answer a charge that we are somehow changing an agreement by seeking approval of this legislation. I understand that the Department of the Interior is arguing that the intent of the agreements was that Appendix A must be conveyed before any lands can be conveyed from Appendix C. This was never our intent. In fact, all of Ninilchik's remaining selection priorities are located entirely within Appendix C. We would have never signed the agreement if we thought that Appendix C would not be conveyed until Appendix A was conveyed. We would never have signed an agreement that did not recognize our rights to Appendix C.

To give you a better understanding of the basis of my testimony it is necessary that I provide you with a brief history of the dispute.

In 1974, six Alaska Native Village Corporations in the Cook Inlet region made land selections authorized under the terms of the ANCSA. Some of these selections were on the west side of Cook Inlet, in what became Lake Clark National Park after the selections were made. A majority of the lands selected were surrounding the shore of Lake Clark, while some of the other lands were on the shore of Cook Inlet. The selections our Villages made in 1974 were based in part on the advice of BLM.

In 1976, after advising the Villages on selections, the Bureau of Land Management rejected the selections because they did not meet ANCSA regulations requiring selections to be "compact and contiguous." All parties, including the State of Alaska, believed the BLM decision to be unjust and unfair. BLM's decision to reject Village selections was not based on the issue of validity of Appendix C conveyances, but solely on the issue of selection regulations. Rather than go to court, we agreed to a procedure, conceived by DOI, that

would convey the land to CIRI, thus meeting the compact and contiguous issue, with CIRI reconveying to the Villages. The Villages agreed to DOI's resolution of the problem conditioned on the Village selection priorities remaining intact.

On August 28, 1976, at the request of the Bureau of Land Management, the Village Corporations and CIRI, the Cook Inlet Regional Native Corporation, entered into the agreement that is found in Appendix B of the Deficiency Conveyance Agreement. Under the terms of this agreement, CIRI agreed to obtain the conveyance of the lands in Appendix C and immediately reconvey these lands to the Village Corporations. Three days later, on August 31, 1976, CIRI signed the Deficiency Conveyance Agreement with the Secretary of the Interior, under the terms of which the Secretary agreed to convey the lands in dispute to CIRI for reconveyance to the Village Corporations. Our motivation has always been to receive our priority lands. We have never changed our priorities. No one should read these agreements or appendices without understanding this important point.

In total, the Deficiency Conveyance Agreement said we were to receive our land entitlement out of Appendix A and Appendix C. It was never intended that all the lands we were to be conveyed come only from Appendix A. Instead, we were to acquire lands from Appendix A and Appendix C in accordance with our priorities established in 1974. If any land was left over in Appendix A after the Villages received our priority selections, CIRI agreed to keep that land as part of its entitlement. If any land was left over in Appendix C, the federal government would keep it.

From 1976 until 1990 various agencies of the federal government took actions which support our view that these high priority land selections out of Appendix C would be approved. As one example, BLM identified, negotiated and reserved easements on the lands now being disputed. I, and other Village presidents participated for months in numerous 17(b) easement conformance meeting which resulted in final easements being granted over these lands. I doubt BLM would have done this if it did not intend to convey the lands in question to the Village Corporations. It was not until 1991 that federal agencies gave any indication that the lands in dispute might not be conveyed under our written agreement with the Secretary of the Interior.

The Department of the Interior is claiming that paragraph C of the Deficiency Conveyance Agreement requires that the CIRI Villages take the lands listed in Appendix A before they can receive any of the lands listed in Appendix C. I will leave the technical arguments concerning contract interpretation to the lawyers. I think the best way to interpret the Deficiency Conveyance Agreement and understand the intent of the parties to the Agreement is to look at the Agreement as a whole. Looking at Paragraph C out of context does not help you to understand the Deficiency Conveyance Agreement as a whole.

If you want to understand the intent of the parties to the Agreement, read the relevant paragraphs together. Paragraph A requires that the Secretary of the Interior convey to CIRI

as soon as possible the lands in Appendix A. Paragraph B requires CIRI to reconvey the lands to the Villages, in accordance with the terms of a separate agreement among CIRI and the Villages. Although the interpretation of Paragraph C is in dispute, Paragraph C requires that the lands listed in Appendix C be conveyed to CIRI for reconveyance of the surface estate to the Villages to the extent that lands conveyed pursuant to Paragraph A and other lands are insufficient to fulfill our entitlement. Paragraph D provides a method of counting acreage conveyed under Appendices A and C for exchange purposes. And Paragraph E provides that if any excess land remains in Appendix A, it will be retained by CIRI and counted against CIRI's ANCSA entitlement. Under Paragraph E, if the Villages total conveyances under Appendices A and C were greater than our ANCSA entitlement, then the excess lands will be held by CIRI and charged against CIRI's ANCSA entitlement.

It seems to me that when you read all five of these paragraphs together you realize the intent of the parties to the Deficiency Conveyance Agreement. The Villages are to receive our highest priority land selections in both the Appendix A lands and the Appendix C lands up to the level of our entitlement. In no event would the total lands conveyed to CIRI and the Villages be greater than what ANCSA allows.

I suggest to this Committee that the issue is simple to resolve. We have not received our promised entitlement. Enactment of H.R. 2650 will break the logjam and allow us to receive our priority lands and allow CIRI to finish reconveyance. To fill this entitlement we are asking to receive the Appendix C lands which we selected in 1974 and which everyone has expected us to receive since the Deficiency Agreement was signed in 1976.

Another question raised by the Department of the Interior's argument is why were the lands listed in the Deficiency Conveyance Agreement divided into two lists, Appendix A and Appendix C. The answer to this question has nothing to do with whether or not the lands were of greater or lesser priority under ANCSA. A lot of the land listed in Appendix C was selected in the early rounds of the selection process described above. This fact alone indicates that Appendix C lands are more valued by the six Villages than some of the lands in Appendix A.

The reason that the lands subject to the Deficiency Conveyance Agreement are listed in two appendices was to coordinate the land conveyances with the creation of Lake Clark National Park. At the time we made our land selections we were aware that a national park was being discussed and planned, but it had not yet been created. In order to coordinate village land selections in an area that <u>might</u> become a national park, the Villages' land selections were divided into two lists. Appendix A described land, all of which would be conveyed to the Native Corporations. Appendix C described lands that would be conveyed <u>only</u> if they were valid 12(a) selections and high priorities in the 1974 selections. As you can see, there is no relationship between the priority selection criteria of ANCSA and the listings of land in the Deficiency Conveyance Agreement. The sequence of the listing of lands in the Deficiency Conveyance Agreement was not intended as an expression of ANCSA

selection priorities. It is nothing more than an expression of our willingness to help create a national park. It was done as a courtesy to the Department of the Interior.

The conclusion that follows from the preceding facts is that the Department of the Interior's argument regarding the wording of Paragraph C misses the point. The Deficiency Conveyance Agreement was intended to solve the BLM rejection problem and to get our land entitlement in a manner that did not preclude the creation of Lake Clark National Park. We were working with the Department of the Interior to accomplish the goals of both parties. Lake Clark National Park was created. We relinquished our valid selections near Lake Clark, thinking we would receive Appendix C lands on the shore of Cook Inlet. For the government to now deny conveyance due the phrasing of one paragraph of the Deficiency Conveyance Agreement is to ignore the unwritten but universally understood intent of the Department of the Interior and the Villages. This Committee enacted ANILCA. ANILCA very clearly states that this land is not national park land, unless and until our selections are withdrawn.

I have attached to my testimony a list prepared by the Villages showing how much of the section 12(a) and 12(b) entitlement remain for each village. As the list makes clear, each Village has now been left with a substantial amount of our land entitlement that remains unfulfilled. Without conveyance of the high priority Appendix C lands listed in this legislation, we will not receive the lands most important to us.

I understand that the Department of the Interior thinks that these lands are important lands because of their natural beauty and wildlife resources. I agree. In fact, this is one of the reasons why we selected these lands in 1974, long before Lake Clark National Park was created. If the federal government thinks these lands should be included in Lake Clark National Park, the National Park Service should recognize our claims and discuss ways in which to fairly acquire these lands. In fact, in 1976, when the Terms and Conditions Agreement was negotiated, the federal government specifically identified these lands as land that would be conveyed to the Villages and which might be part of a land exchange. It is wrong, however, for the federal government to renege on our agreement and try to steal these lands.

Mr. Chairman, the bill that you introduced is intended to complete a land conveyance process that members of the Ninilchik Native Association were led to believe had been approved in 1976. I have a personal interest in this land transaction for two reasons. First, as a member of the Ninilchik Native Association I desire that my village be able to obtain title to its high priority land selections. The lands in question are acknowledged to be rich in fish and game, the harvesting of which is part of the traditional lifestyle of the Native people of Alaska. The people of Ninilchik have carried out traditional hunting and fishing activities on these lands for many generations. I want the people of my Village Corporation to be able to preserve their traditional lifestyle and to make use of lands promised under ANCSA. Preservation of the traditional Native Alaskan lifestyle was one of the purposes underlying

the Alaska Native Claims Settlement Act, and enacting the legislation introduced by Congressman Young will further that purpose.

My other interest in the proposed land transaction is based upon the fact that I am the second generation of my family to be involved in obtaining approval for this land conveyance. My father was involved in selecting these lands when the Ninilchik Native Association made its land selections nearly twenty years ago. My father also worked to obtain passage of Public Law 94-456, which provides additional legislative authority for this land conveyance. I believe that it should not have taken nearly twenty years, two Acts of Congress, and two generations of my family to get this land conveyance approved. My father participated in making the land selections, and now, I am trying to finish the work he started and get the land conveyed to the Ninilchik Native Association nearly twenty years later.

We ask Congress to live up to the commitment in ANCSA to convey our lands to us. We are following the law, ANCSA, which recognized our entitlement. The federal government has received the benefit of that bargain. So did the State of Alaska. Why shouldn't we?

ALASKA NATIVE CLAIMS SETTLEMENT ACT
VILLAGE ENTITLEMENTS

	12(a) Entitlement	12(b) Entitlement	Acreage Totals
Chickaloon	64,120.00	1,280.00	65,400.00
Conveyed	23,666.68	0.00	
Remaining Entitlements	40,453.32	1,280.00	41,733.32
Knikatnu	55,217.00	1,280.00	56,497.00
Conveyed	51,407.32	0.00	
Remaining Entitlements	3,809.68	1,280.00	5,089.68
Ninilchik	115,200.00	53,502.29	168,702.29
Conveyed	99,720.37	0.00	
Remaining Entitlements	15,479.63	53,502.29	68,981.92
Salamatof *	76,229.00	33,342.00	109,571.00
Conveyed	76,165.98	0.00	
Remaining Entitlements	63.02	33,342.00	33,405.02
Seldovia	115,200.00	65,908.60	181,108.60
Conveyed	109,035.03	0.00	
Remaining Entitlements	6,164.97	65,908.60	72,073.57
Tyonek	115,200.00	78,314.93	193,514.93
Conveyed	97,825.84	0.00	
Remaining Entitlements	17,374.16	78,314.93	95,689.09

*Salamatof has no high priority Appendix C selections.
12(b) entitlements are fulfilled with Appendix A lands only.

as of 10/23/95

TESTIMONY OF JOHN LESHY
SOLICITOR, DEPARTMENT OF THE INTERIOR
BEFORE THE COMMITTEE ON RESOURCES
UNITED STATES HOUSE OF REPRESENTATIVES
ON H.R. 2560, A BILL TO PROVIDE FOR
CONVEYANCES OF CERTAIN LANDS IN ALASKA
TO CERTAIN ALASKA NATIVE ASSOCIATIONS
UNDER THE ALASKA NATIVE CLAIMS SETTLEMENT ACT

November 7, 1995

Mr. Chairman, thank you for the opportunity to appear today to testify on H.R. 2560, a bill to convey lands within the Cook Inlet Region of Alaska to five village corporations under the Alaska Native Claims Settlement Act.

The Department has very serious concerns about H.R. 2560. We believe that the ANCSA entitlements of the village corporations (and CIRI) are met through existing mechanisms, and that H.R. 2560 is unnecessary and not in the best interests of land managers in Alaska, nor of the United States. We are therefore strongly opposed to enactment of H.R. 2560.

H.R. 2560 raises substantial issues of public policy and fairness. It would strike down the carefully crafted, mutually bargained-for 1976 Agreement (Agreement) between the Department and the Cook Inlet Region, Inc. (CIRI) to resolve ANCSA land issues. It would replace the Agreement with a new disposition of lands. It would result in an overconveyance of lands to both the villages and CIRI and is contrary to the terms of the Agreement and ANCSA. By re-ordering ANCSA settlements, it establishes a dangerous precedent that threatens to undermine nearly a quarter century of ANCSA implementation, including many conveyances and agreements, in order to effectively increase ANCSA entitlements and to relocate holdings to increase value. As a result, it could bring serious consequences for Native, public, and private land managers across Alaska who have made decisions based on ANCSA and upon agreed-upon settlements to disputes that have occasionally arisen over its implementation.

ANCSA's principles and standards and implementing arrangements have guided the selection process for nearly a quarter of a century. They should not be overridden without very good reason. To us, no such reason appears.

The bill could also seriously impair public access of Alaska citizens and visitors to prime recreational lands in the Lake Clark National Park, for it could all but eliminate coastal access to the Park.

Addressing the bill requires some discussion of the events leading up to this proposal.

The Alaska Native Claims Settlement Act allowed eligible village corporations to select lands in the areas surrounding the villages. If there were not enough lands available, ANCSA directed the Secretary of the Interior to withdraw lands (in the amount of three times the deficiency) to be available for selection by the villages to cover their deficiencies. The withdrawals were referred to as deficiency areas.

Such was the case with the CIRI villages. Lands were withdrawn for selection for several Cook Inlet villages; the largest withdrawals were located in the Talkeetna Mountains and in the general vicinity of Tuxedni and Iniskin Bays, on the west side of Cook Inlet. The public land orders specified which village corporations could select in a certain withdrawal, but did not designate a particular area in the withdrawals for each village corporation.

Both ANCSA and the regulations require selections to be "contiguous and in reasonably compact tracts." The CIRI village corporations' selections within the deficiency areas did not meet these requirements, and for that reason the selections, totaling several hundred thousand acres, were rejected by the BLM in the Spring of 1976. CIRI petitioned BLM on behalf of the villages, requesting

reconsideration of the decision. The petition was denied and CIRI appealed to the Alaska Native Claims Appeals Board.

After BLM requested that the petition be remanded for reconsideration, a negotiated settlement was reached. CIRI, representing the villages, and the Department of the Interior entered into an agreement on August 31, 1976. The Agreement attached as appendices two lists of lands, Appendix A and Appendix C, selected by the villages for possible conveyance. The Agreement, informally known as the Deficiency Agreement, stated that BLM would convey lands from the lists in accordance with the priorities contained in the Agreement, both between the lists (Appendix A first, then Appendix C if necessary), and within the Appendix C list, in the order which lands appear on that list. This is clearly set out in paragraph C of the Agreement.

CIRI would then reconvey the lands to the village corporations. Through an agreement between CIRI and the villages, CIRI was to reconvey the lands as rapidly as possible to the village corporations; where there were no conflicts (i.e. due to selection patterns) and where it was clear that the village corporations were eligible, CIRI agreed to reconvey within 10 days. [The CIRI-village agreement is Appendix B of the Agreement.] The reconveyances would be charged against the villages' entitlements as though the BLM had issued the conveyances directly to the villages. The Act of October 4, 1976 (P.L. 94-456) authorized the Secretary to use the mechanism set out in the Deficiency Agreement.

As already indicated, the 1976 Agreement made it clear that the lands described in Appendix A, containing approximately 460,000 acres, were to be conveyed first, in its entirety. Appendix C, containing approximately 500,000 acres, was the contingency plan. In the event the lands conveyed in the village area and the lands reconveyed by CIRI from Appendix A were insufficient to meet the villages' entitlements, lands would then be conveyed from Appendix

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C, in the order specified therein.

Because of several unresolved issues, the BLM was not able initially to determine whether lands from Appendix C would be necessary to fulfill village entitlements. For this reason, while the issues remained unresolved, early planning measures to implement the agreement included Appendix C lands, in case they were needed. For instance, the BLM included Appendix C lands at the beginning of the easement identification process, which is one part of the conveyance process. But inclusion of these lands in the easement identification process did not constitute a determination by BLM that conveyance of the lands would be required or made.

The unresolved issues included (a) the determination of eligibility for the villages of Alexander Creek and Salamatof; (b) resolution of the disagreement between CIRI and the Department over interpretation of the Lake Clark Land Trade Agreement, negotiated among CIRI and six villages relative to the creation of the Lake Clark National Park (the Department was not a party to the agreement, and disagreed with CIRI over the interpretation of the agreement); and (c), the selection of State mental health lands near village areas by several village corporations.

Each of the three issues was resolved only after a number of years. Upon final resolution of the first two issues, the BLM completed conveyances of Appendix A lands in 1988, totalling approximately 460,000 acres. (The mental health lands issue was not completely laid to rest until this year.)

As previously noted, under the terms of the 1976 Agreement, CIRI was to reconvey these lands within 10 days, or as rapidly as possible, to the villages. CIRI has not complied. Specifically, to date, CIRI has reconveyed approximately 150,000 acres chargeable to ANCSA section 12(a). CIRI has not reconveyed any of the remaining 310,000 acres to the villages. No acreage has been reconveyed for

the villages' entitlements under ANCSA section 12(b).

The BLM has complied with the Agreement. Specifically, it has conveyed more than enough acreage from Appendix A lands to CIRI for reconveyance to the villages to meet the villages' entitlements under ANCSA.

Therefore, it is unnecessary to convey lands from Appendix C.

This position has consistently been communicated in writing by senior Departmental officials to CIRI. It was, for example, stated by Deputy Under Secretary William Horn (acting for the Secretary) in a letter written to CIRI, dated July 14, 1981 (attached to our report). CIRI had sought permission to drill on certain lands within Appendix C. The National Park Service denied CIRI's application, CIRI appealed the decision, and the Deputy Under Secretary held that CIRI could receive no lands from Appendix C unless lands in Appendix A, when added to lands conveyed near the villages, were insufficient to meet village entitlements. (It is important to note that CIRI has never sought to challenge our interpretation of ANCSA and the 1976 Agreement in the courts.)

This position was recently thoroughly reconsidered and reaffirmed. By a letter dated December 23, 1994 (attached to our report) Assistant Secretary Armstrong held that the BLM could not convey any lands from Appendix C to CIRI. He relied on a letter of December 2, 1994, (attached to our report), from me to counsel for CIRI that discussed the history of the Agreement and its proper interpretation.

With this background in mind, we turn to H.R. 2560. In our view, H.R. 2560 has several major flaws.

First, H.R. 2560 would do more than simply enact into law the interpretation CIRI now makes of the 1976 agreement we strongly

dispute); the lands described for conveyance in H.R. 2560 are mostly within Appendix C of the 1976 Agreement; however, one tract is not in either Appendix A or Appendix C. If H.R. 2560 were enacted, CIRI and the villages would receive lands they were not entitled to under the bargained-for mutual Agreement CIRI and the Department entered in 1976. That is, the conveyances circumvent the Agreement and the priority for Appendix A lands in the Agreement.

Second, the conveyances directed by H.R. 2560 do not even follow the priority order set out in the Agreement for Appendix C lands. Specifically, H.R. 2560 bypasses approximately 23,000 acres of higher priority Appendix C lands in order to reach lower priority Appendix C coastline lands. (It is worth noting that a substantial amount of coastline land has already been conveyed under the Agreement to CIRI from Appendix A lands for reconveyance to the village corporations as part of their entitlement.)

Third, when the conveyances in the bill are combined with the lands already received by the villages, and with those they are still supposed to receive from CIRI, the total lands received will exceed the ANCSA section 12(a) entitlement for the villages os Seldovia, Tyonek, Knik, and Ninilchik by approximately 53,000 acres.

Also, if Appendix C lands are conveyed to the villages, CIRI will retain more lands under Appendix A than its remaining entitlement; the lands from Appendix C are not needed to fulfill the villages' requirements, and will exceed the village entitlements.

The mechanisms for fulfilling CIRI's ANCSA section 12(c) entitlement are found in the Terms and Conditions for Land Consolidation and Management in the Cook Inlet Area, as ratified by section 12 of the Act of January 2, 1976, (P.L. 94-204), as amended, and clarified by section 3 of the Act of October 4, 1976 (P.L. 94-456).

The BLM is conducting a comprehensive audit of all of CIRI's entitlements under ANCSA to identify issues that need resolution and areas where additional survey is required, and to obtain a complete picture of CIRI's position with regard to its entitlements. We believe that CIRI has already been provided with lands in excess of its entitlement.

Fourth, H.R. 2560 does not incorporate a survey provision found in subsection 4(b) of the Act of October 4, 1976 pertaining to conveyance of lands to CIRI for the villages. That subsection provides for an abbreviated survey of the lands conveyed to CIRI and of each reconveyance made by CIRI to villages. This offers greater efficiency and considerable cost savings to taxpayers. Under H.R. 2560, many more smaller tracts will have to be surveyed and this will be much more time-consuming and expensive.

The bill could also, as noted earlier, seriously limit public access to Lake Clark National Park and the many fine recreational opportunities there. If this proposal is carried out, the only coastal lands remaining in the Park would be steep cliffs or mud flats. Public access over water is important, since the Park is over 100 miles away from Alaska's highway system. The Alaska public, as well as out-of-state tourists, could be significantly limited in their access to the park.

To prevent this, the United States might have to buy or lease back the lands conveyed, providing a large and unwarranted windfall to CIRI and the villages at the taxpayers' expense. It makes no sense to give away lands already lawfully in Federal ownership only to buy them back.

In addition to these fundamental problems, the bill has other serious deficiencies of a more technical nature; it will be impossible to effect the conveyances in 90 days; essential easements, public and private, (including some to which CIRI is

entitled) will not be reserved; appeal rights of a decision to convey will be effectively waived; the ANCSA principle of "contiguous and in reasonably compact tracts" will be breached; and several tracts as named in the bill do not exist on the master title plats.

There are several inholdings within the areas described (including the easements) which are not protected by the bill. Thus the conveyances will likely result in takings issues of possibly substantial amounts. These and numerous other issues raised by the bill the will inevitably lead to protracted litigation.

In concluding, let me emphasize that we believe that village entitlements are met through existing arrangements, and that the bill would undermine both the bargained-for Agreement and years of interpretation and settlement arrangements under ANCSA. We recommend strongly against passage of this bill. I would be pleased to answer any questions you may have.

THE WILDERNESS SOCIETY

TRANSMITTED VIA TELEFAX

Honorable Don Young
Chairman, Resources Committee
U.S. House of Representatives
1324 Longworth House Office Bldg
Washington, DC 20515

November 21, 1995

REF: H.R. 2561, GLACIER BAY NATIONAL PARK & PRESERVE BOUNDARY ADJUSTMENT ACT OF 1995.

Dear Chairman Young:

The Wilderness Society submits this written statement on H.R. 2561, the Glacier Bay National Park & Preserve Boundary Adjustment Act of 1995, for the record and asks that it be printed in the published record of the November 7, 1995 hearing on H.R. 2561.

The Wilderness Society, founded in 1935, is a non-profit membership organization devoted to preserving wilderness and wildlife, protecting America's prime forests, parks, rivers, deserts, and shorelands, and fostering an American land ethic. The Wilderness Society has 275,000 members, 1,200 of whom live in Alaska, and many of whom use and are concerned about Glacier Bay.

The Wilderness Society strongly opposes H.R. 2561, and we recommend that the House Resources Committee, U.S. Department of the Interior, and Gustavus Electric seek and evaluate other means to achieve the goals set out in H.R. 2561.

While we understand the goal of reducing the cost of power for all of the parties concerned, we do not believe that the proposed solution in H.R. 2561 for Falls Creek achieves that, and in fact has a higher environmental impact and cost than the status quo. The environmental impacts of the proposed action would destroy an important wild natural salmon fishery and an important habitat and food source for bears and other wildlife.

ALASKA REGION
430 WEST 7TH AVENUE, ANCHORAGE, AK 99501
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Further, the land exchange proposed by this bill between the United States and the State of Alaska sets an unacceptable standard and precedent of declassifying designated national park wilderness for development purposes. It cannot be justified in terms of the purposes for which the park was established, the purposes of the World Heritage site that the park is a part of, and the purposes for which this area was designated wilderness by Congress.

In addition, it has not been demonstrated by the proponents that the Falls Creek Hydro site would eliminate the need for diesel generators in Gustavus and Bartlett Cove at the park. In fact, a more likely scenario, as has happened in other places that this was done, is that both the hydro and diesel sources of power generation will become used to maximum capacity and the park will have an actual increase in environmental impacts from the increased development allowed by the increased power capacity of having both sources available. This hardly seems like a justifiable impact to make on one of America's premier national parks and its designated wilderness area.

At the very least, such an action as is contemplated by H.R. 2561 cannot be legitimately proposed or brought to Congress without first undergoing a thorough analysis and public comment period under the requirements of the National Environmental Policy Act (NEPA) for Legislative Environmental Impact Statements, otherwise we are abandoning an established system of law and public participation in the consideration of such decisions. The public expects such consideration under NEPA for decisions that affect its interests.

In summary, The Wilderness Society opposes H.R. 2561 and recommends that another approach be found to achieving the goals of this proposed legislation.

Thank you for considering our comments.

Sincerely yours,

Allen E. Smith
Alaska Regional Director

CC: Honorable George Miller, House Resources Committee
Honorable Bruce Vento, House Resources Committee
Asst Secy for Fish, Wildlife & Parks, George T. Frampton, Jr.
Spec Asst to the Secy, USDI, Deborah Williams
Mr. Robert Barbee, Field Director, Alaska, National Park Service
Mr. James Brady, Supt, Glacier Bay National Park & Preserve

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by Wilbur Mills

November 21, 1992

Hon. Don Young
Chair, Resources Committee
1324 Longworth
U.S. House of Representatives
Washington, D.C. 20515

Re: H.R. 2561, Glacier Bay National Park and Preserve Boundary Adjustment Act

Dear Chairman Young:

I am submitting the following comments on behalf of the Sierra Club, a national environmental organization of 560,000 members with chapters in every state of the nation. Over the years our organization has taken a strong interest in Glacier Bay National Park, and has supported legislation and regulations designed to strengthen protection for the park, and to improve its management.

We strongly oppose H.R. 2561, and recommend that the Resources Committee examine alternative means of realizing the goal of the bill.

The bill would authorize a land exchange between the state and federal governments designed to allow the construction of a hydroelectric power plant in what is now park wilderness. Nine hundred and sixty acres in the Falls Creek area of the park, the site of the proposed hydro project, would be exchanged for the same amount of state land from the Dude Creek State Critical Habitat Area.

H.R. 2561:

■ is in direct conflict with federal law and long-standing Congressional policy that prohibits new dams, diversions, and water projects within national parks. It is also at odds with

the purposes for which Glacier Bay National Park and the Glacier Bay Wilderness were established in the Alaska National Interest Lands Conservation Act of 1980;

- is contrary to the park's World Heritage Site status, under which this nation pledges not to take any actions that would degrade the natural values of the park and its wilderness;

- is based on the fallacious proposition that cutting acreage out of a national park for resource exploitation is acceptable so long as there is no net loss of park acreage;

- Would take nearly a thousand acres of important habitat out of the park, including stream habitat serving the needs of brown bears, wolves, and other species that rely on salmon.

- would result in a net loss of 960 acres of protected land. The 960 acres of state land that would be added to the national park is already set aside for the protection of fish and wildlife and their habitats; and

- proposes to use state conservation system acreage--in this case a state critical habitat area--as trading stock for promoting resource exploitation. This idea has never been suggested by state administrations or the Alaska Legislature.

Adverse environmental effects of Falls Creek Hydro

Falls Creek is one of the relatively few salmon streams in the park. A preliminary environmental assessment by the project sponsor, Gustavus Electric Company, indicates that the proposed project could have adverse effects on the creek's fish and their habitat.[1] This in turn could reduce the amount of fish available to park wildlife, especially brown bears and other species that feed on salmon. Sport and commercial fishery values would also be adversely affected by a loss of productivity.

In addition, part of the project area serves as a thoroughfare for wildlife. Interference with the free use of this corridor by wildlife could have serious adverse impacts well beyond the immediate project area.

Diversion of a significant amount of Falls Creek's flow to a powerhouse well away from the creek could jeopardize the creek's fish and fish habitat in two ways. First, by reducing the amount of water needed to sustain salmon and other fish in the stream's

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[1] Streveler, G.P., Sharman, L.C., and Brakel, J.T., Potentials for Impacts on Natural Values of the Kahtaheena River (Falls Creek) Area, Preliminary Environmental Assessment of a proposed hydroelectric project, Gustavus Electric Company, January 15, 1994.

lower reach throughout the year; and second, by blocking, through the construction of a stream diversion structure, the natural downstream movement of gravel needed to replenish spawning beds in the lower reach of the creek.

According to the environmental assessment, a 1969 survey of post-spawning salmon egg density in 1/4 of the intertidal area of creek found "...one of the highest densities ever sampled in SE Alaska. Surveyors concluded that this number of eggs could, under average conditions, produce between 1,900 and 11,000 adults, which in turn must be a fraction of what the entire spawning area is capable of producing."

Measures to mitigate lower water flow and the partial blockage of gravel are outlined, but each presents problems of its own. A dam would offer the best mitigation opportunities, according to the consultants to Gustavus Electric, but a diversion structure is planned, not a dam.

The lower Falls Creek tide flats and meadows serve as a thoroughfare for bears, wolves, and other wildlife moving back and forth between the park and the adjacent Tongass National Forest, and between the beach area and the alpine and sub-alpine areas of Excursion Ridge within the park.

State ownership of the project area would open it to sport and subsistence hunting and trapping, and off-road vehicles, all uses not allowed in the park. These activities and the general increase in human presence could interference with the free movement of bears, wolves, and other species to Falls Creek itself, and to other habitats and salmon spawning streams elsewhere in the park.

According to the preliminary environmental assessment, which did not consider the impact of opening the area to hunting and trapping,

> Interruption of [wildlife] transit through the area could have implications for their use of considerable areas of Glacier Bay NP. Increased human and dog use in the Project Area is very likely to cause avoidance by these two species. *Mitigation of this impact would be very difficult, as transit of the area occurs at intervals throughout the year. Avoidance of construction activities and regulation of human use of the road during spring (as suggested for protection of black bear foraging) would help somewhat.* (Italics in original; emphasis added).

Summary and conclusions

Although we can sympathize with the desire of Gustavus Electric Company to lower power costs for its customers, we cannot agree

that hydroelectric power from Falls Creek is the appropriate way to do it.

We recommend that alternatives to Falls Creek hydro be thoroughly examined by the Committee. For example, the National Park Service proposes to build a new power plant at its Bartlett Cove headquarters at a cost of approximately $4 million. But if the agency instead contracted with Gustavus Electric for the park's power, the company might be able to produce power more economically through the installation of newer and more efficient diesel generators.

Other alternatives include more efficient use of existing power through proven energy conservation measures such as improved home insulation combined with the use of more efficient furnaces, appliances, and lighting. Co-generation is another option. Alternative energy sources such as wind, passive solar, tidal power, more efficient use of wood, and non-park hydropower are other options that should be considered. Alone or in combination, these could lower power costs to local consumers while at the same time avoid needless damage to the national park.

We recommend that the Committee request the preparation of an environmental impact statement by the Department of the Interior, with full public review and comment. This would provide the Committee with the data base, analysis, and public comment necessary for an informed decision on H.R. 2561.

Thank you for this opportunity to submit these comments. Please include this letter in the record of the November 7, 1995 hearing on H.R. 2561.

Sincerely,

Jack Hession

Jack Hession
Alaska Representative

COOK INLET REGION, INC.

bcc: Kurt Christensen
Roy M. Huhndorf
Mark W. Kroloff
Candace Beery
Frank Klett
Larry Kimball
Mary McGuire
Bill Phillips
Rick Agnew
Agnes Brown
Bruce Oskolkoff
Mark Rindner

November 22, 1995

The Honorable Don Young
Chairman
House Resources Committee
2331 Rayburn HOB
Washington, DC 20510

SUBJECT: H.R. 2560 - Conveyance of Appendix C Lands

Dear Mr. Chairman:

At the hearing on H.R. 2560, held November 7, 1995, Cook Inlet Region, Inc. ("CIRI") did not submit formal testimony, although at the request of the Committee on Resources, I did answer questions propounded by some of the Committee members. CIRI did not previously provide formal testimony because the lands that are the subject of this legislation are to be conveyed as part of the entitlement of village corporations in the Cook Inlet region. However, in light of the testimony of Solicitor Leshy, and in response to certain questions raised by the members of the Committee, CIRI now submits this testimony and asks that it be made part of the record.

As I mentioned during the hearing, I started with CIRI in 1972 as a land trainee and four years later, in 1976, I was one of the people directly involved in negotiating the Deficiency Agreement. I know that the Department promised the lands at issue in H.R. 2560 to the villages and that the intent of the Agreement was to convey those lands to the villages. Since 1976, officials in the Department have come and gone. CIRI and the villages have not. We remember the intent of the Agreement. The villages do not seek to rewrite or renegotiate the Agreement. Rather, H.R. 2560 requires the conveyance of lands promised to the villages nearly 20 years ago.

Solicitor Leshy's testimony to the contrary depended almost entirely on the argument that the meaning of the 1976 Deficiency Agreement, between the Department and CIRI, is plain and susceptible of only one interpretation, and that H.R. 2560 would strike down a "carefully crafted, mutually bargained-for" Agreement, replacing that agreement with a new disposition of lands.

This argument is simply impossible to square with the many actions taken by the Department of the Interior for more than fifteen years in reliance on precisely the

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opposite interpretation of the Agreement. If there really was just one simple "plain meaning" of the Agreement, Department officials would not have taken the very actions that prove the Department once held an interpretation consistent with the Villages' interpretation. For example, when Solicitor Leshy assured the Committee that the Agreement was susceptible to just one plain meaning, he omitted to point out that the Department's own records show that the two members of the Solicitor's office most closely involved in drafting and interpreting the Agreement held the opposite interpretation of the one now urged by the Department. The written notes recording these two Assistant Solicitors' views were prepared in 1982 and 1984, at a time when the Department had no vested interest in the interpretation other than to perform the Agreement according to its original intent. Those Assistant Solicitors' notes stated in part: "yes, you may convey lands from Ex C prior to conveying all land from Ex A."

The Department also took numerous other steps, which the villages have documented and presented with their testimony to the Committee, that were contrary to what the Solicitor now claims to be the "plain" meaning of the Agreement. If the meaning of the Agreement is indeed "plain," why was it not so "plain" previously?

Although the Solicitor tries to explain away each of the Department's prior actions, the sheer weight of the actions that the Solicitor must explain away undermines both his explanations and any credible argument that the meaning of the Agreement is plain and susceptible to only one interpretation.

There are many ways to characterize the 1976 Deficiency Agreement, but "carefully crafted" is not one of them. Representatives from the Department met with the villages in the CIRI region on August 23, 1976. Only five days later, the villages and CIRI signed an agreement (subsequently attached as Exhibit B to the Deficiency Agreement), which provided that lands conveyed to CIRI by the Department were to be reconveyed to the villages in accordance with the priorities specified by the villages when they originally made their selections in 1974. Only three days thereafter, CIRI and the Department entered into the Deficiency Agreement (which incorporated the provisions of the August 28, 1976 Agreement among CIRI and the villages and made it Exhibit B to the Deficiency Agreement). There are a number of instances in which the language of the Deficiency Agreement, and the interrelationship of its various paragraphs, is less than clear, no doubt due to the time constraints under which the Agreement was drafted. For example, on its face, the Agreement would appear to apply only to selections under Section 12(a) ANCSA, although all the parties agree that the Agreement also applies to selections under Section 12(b) of ANCSA as well.

Likewise, for the Solicitor to describe the Deficiency Agreement as "mutually bargained for" is misleading because it ignores the reasons why the Agreement was needed in the first place. The villages received no benefit from the Agreement other than what they should have received in the first place. The Agreement was necessary to solve a serious problem that had been unilaterally created by the Bureau of Land Management ("BLM") when it rejected the village selections for technical reasons, even though BLM had advised the villages how they should make their selections and had told the villages in

writing that the selections were proper. BLM's decision was criticized by members of Congress, the State of Alaska, the Native community, and even within the Department of the Interior. Indeed, even before the Deficiency Agreement was signed, Department officials expressed strong concern that the Cook Inlet villages not be prejudiced in pursuing their priority land conveyance preferences as a result of the BLM decision invalidating their selections. In particular, Deputy Assistant Secretary for Fish and Wildlife and Parks, Curtis Bohlen, wrote to the Solicitor a memo dated May 13, 1976, in which he expressed his hope that a constructive solution to the problem of the village selections could be found "in order that we may meet our obligations under ANCSA while providing a fair treatment to the Natives." Twenty years later, the villages in the Cook Inlet region are still asking the Department to provide this "fair treatment."

Solicitor Leshy also criticizes H.R. 2560, claiming that this legislation "could bring serious consequences for Native, public and private land managers across Alaska who have made decisions based on ANCSA and upon agreed-upon settlements to disputes that have occasionally risen over its implementation." As the testimony of Don Gilman, the Mayor of the Kenai Peninsula Borough, makes clear, prior decisions made by other interested parties were based on the assumption that the land in question would be conveyed to the village corporations. Indeed, as the documents that have been submitted in the record also make clear, the Department's own decisions in the past have also been predicated upon the assumption that this land would be conveyed to the village corporations.

Solicitor Leshy also argues that this legislation could "seriously impair" the public access of Alaska citizens and visitors to recreational lands in Lake Clark National Park. Again, the Solicitor's arguments omit important information. Access to Lake Clark National Park is generally by plane or waterway or through the lands that were relinquished by the village corporations in the 1976 Cook Inlet land exchange that led to the creation of the Park in the first place. Access through the lands that are the subject of H.R. 2560 is physically limited due to the mountains and glaciers that preclude entry into the park by this route. What limited physical access is available is preserved by the easement process specified in Section 17 of ANCSA. Indeed, Solicitor Leshy failed to note for the Committee that Section 17 easements guaranteeing access were previously identified by the Department on these very same lands in anticipation of conveying the lands to the villages under the Department's prior interpretation of the Deficiency Agreement.

BLM's own ANCSA Handbook provides that this Section 17 easement process will be conducted by BLM only after it determines that the land is available for conveyance. Thus, to suggest, as the Solicitor's testimony did, that the easement process that was conducted on the Appendix C lands was done "just in case the land may be conveyed" is inconsistent with the Department's own policies and the historical record. It ignores the effort, time, and expense that federal and state agencies, Native corporations, the public, and the Department must undertake to place the Section 17 easements. For example, it took the BLM three years of investigation to issue a final public easement Decision for Appendix C conveyances. BLM issued a Final Easement Decision for specific Appendix C lands in 1984. The BLM documents submitted to the Committee by the

villages show that this significant easement identification effort was not done just "in case," but because the BLM at that time was processing the lands for conveyance to CIRI to be reconveyed to the villages. Indeed, internal BLM documents from that time identify the tracts listed in H.R. 2560 as lands expected to be conveyed to Cook Inlet Region during fiscal year 1985.

Solicitor Leshy also argues that one tract identified in H.R. 2560 is not within Appendix C of the 1976 Agreement, and that the conveyances directed by H.R. 2560 do not follow the priority order set out in the Agreement for Appendix C lands. As to the one tract, this is simply the difference between old protraction diagrams, on which the original selections were based, and modern mapping information on which the lands listed in H.R. 2560 are based. One tiny sliver of original village selections may or may not now be in a different section and the villages wish to maintain their selection as to that piece.

As to the argument that the conveyances directed by H.R. 2560 do not follow the priorities set forth in Appendix C to the Deficiency Agreement, that is simply untrue. Any one who reads (i) the original village priority "rounds" (which have been on file with the Department since 1974); (ii) the general township and range list of Appendix C; and (iii) H.R. 2560 will see that the priorities of all three are absolutely consistent. Indeed, in formal written entitlement decisions issued by the Department to the villages in 1986, which have been submitted to the Committee, the Department recognized these priorities.

Solicitor Leshy also claims in his testimony that passage of the bill will result in conveyances to either CIRI or the village corporations in excess of their ANCSA entitlement. This argument is a red herring and simply untrue. The total amount of acreage that will be conveyed to the villages will remain the same regardless of whether or not the Appendix C lands listed in H.R. 2560 are conveyed to the villages. If the villages receive the lands from Appendix C, they will receive less lands from Appendix A. This controversy has always been about the location of the lands to be conveyed to the villages in fulfillment of their ANCSA entitlement. There has never been a dispute about the amount of acreage that would be conveyed to the villages and for the Department to suggest this will be a problem is without basis.

Likewise, if the villages receive the Appendix C lands listed in H.R. 2560, then CIRI, under the terms of the Deficiency Agreement, will be required to retain additional lands from Appendix A, which will result in a total conveyance to CIRI from all sources of somewhat less than its full ANCSA entitlement. Conversely, if the villages do not receive the lands in Appendix C, then CIRI will ultimately have to convey to the villages additional lands in Appendix A, thereby reducing the amount of lands in Appendix A that will be retained by CIRI. In this circumstance, CIRI will be even further under-conveyed. In no event will CIRI's entitlement change if this legislation is passed. All that will change is how much of that entitlement is fulfilled from lands in Appendix A retained by CIRI.

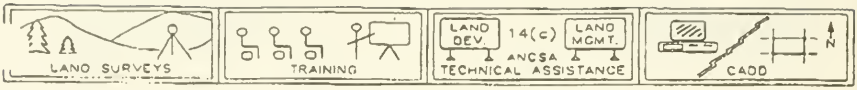
The Solicitor's testimony failed to mention that an entitlement reconciliation was performed by the Department in 1986, in written entitlement decisions delivered to the villages and in a report delivered to Congress regarding CIRI's entitlement. The factual basis for those figures has not changed since 1986, and passage of H.R. 2560 would not change them either. Simply put, a fair entitlement accounting will show no legitimate basis for a concern about over-conveyances.

I should also point out that the only reason that CIRI is retaining any lands in Appendix A is to accommodate the concerns of the Department which, in 1976, was afraid that if CIRI did not retain lands in Appendix A not otherwise conveyed to the villages, there would be isolated pockets of federal ownership surrounded by Native-owned lands. To accommodate those concerns, CIRI agreed to retain and have charged against its entitlement those lands within Appendix A that were not reconveyed to the villages. These lands, of course, are less desirable lands, which is why they were not made high priority selections by the villages.

The question has been raised by Solicitor Leshy and several of the Committee members why CIRI has not yet conveyed to the village corporations all of the land from within Appendix A that was conveyed to CIRI. CIRI is required, under the terms of its agreement with the village corporations (which itself was part of the Deficiency Agreement between CIRI and the Secretary) to convey lands to the villages in accordance with the selection priorities originally established by the villages in 1974. CIRI has now made all conveyances from lands within Appendix A that can be made under the Agreement. The next priority lands come from Appendix C lands, and unless and until those lands are conveyed (either to CIRI for reconveyance, as originally provided in the Deficiency Agreement, or directly to the villages, as provided by H.R. 2560), CIRI cannot convey any other lands to the village corporations.

Once the Appendix C lands are conveyed to the village corporations, CIRI can and will complete the remaining conveyances from Appendix A. However, if CIRI were to convey all the lands now in its possession from Appendix A, the village entitlement would be fulfilled and the villages would never receive the high priority lands they selected from Appendix C. Rather, the villages would have been forced to take lower priority lands from Appendix A. This is precisely the result that the villages wish to avoid and is the reason that the villages have turned to Congress for assistance in requiring the Department to honor its original agreement. I would note that none of the villages has expressed the desire that CIRI convey more Appendix A lands at this time. Indeed, once it became clear that the Department might be reversing its previous position on Appendix C conveyances and refusing to make those conveyances, the villages have requested that CIRI not make further conveyances from Appendix A so as not to jeopardize village entitlement.

The Solicitor also raised in his testimony the question why CIRI has not filed a lawsuit to force the Department to convey the Appendix C lands to it for reconveyance to the villages. What the Solicitor did not state in his testimony is that, as recently as March of this year, the Solicitor's office filed pleadings in the Interior Board of Land Appeals stating



McCLINTOCK LAND ASSOCIATES, INC.
11940 BUSINESS BLVD., SUITE 205, EAGLE RIVER, ALASKA 99577

October 23, 1995

Mr. Larry Kimball
Cook Inlet Region, Inc.
P.O. Box 93330
Anchorage, Alaska 99509-3330

Re: Survey Estimate - West Side of Cook Inlet

Dear Mr. Kimball:

As you requested, I have completed an estimate of the costs to survey the CIRI Appendix C lands on the west side of Cook Inlet. The lands included 68 sections within Township 4 North, Range 19 West , Township 1 North, Range 20 West, Townships 1 South, Ranges 19, 20, and 21 West, Townships 2 South, Ranges 19, 20, and 21 West, and Townships 3 South, Ranges 20 and 21 West, Seward Meridian, Alaska.

The estimate shown below assumes that the Bureau of Land Management (BLM) would contract out the surveys under either an Indian Self-Determination Act (P.L. 93-638) or standard A&E contract. The costs include both the contractor costs & fees as well as an estimate of the BLM in-house costs to administer these contracts.

It is assumed that the normal "2 mile monumentation" criteria be utilized, meaning that all boundary lines will have monuments placed no farther apart than every two miles. I also assume that corner positioning would be accomplished using GPS and that no "on the ground" lines are to be run. Each of the seven in-holdings would also have at least one corner recovered.

It is most likely that surveys of the fractional townships would be sufficient. This means that only those portions of each township to be conveyed would be surveyed, rather than surveying the whole township. Sections to be conveyed to different parties within the township would also be surveyed. Under this scenario, I estimate the total cost to be approximately $488,950.

A breakdown of costs is attached. They include contractor costs and fee as well as in-house BLM review, inspection, and administration charges. The contractor costs were determined using unit cost comparisons to a recent similar project The costs were adjusted slightly to compensate for the smaller scale of this project. I have no hard listing of BLM in-house charges for any project so reasonable costs were estimated.

Phone: (907) 694-4499 Fax: (907) 694-3297 AK Toll Free: 1-800-478-4499

This general estimate was prepared without detailed investigation into on-site conditions and individual costs. It should be used for general planning purposes only. If I were preparing a hard cost estimate for a survey we were anticipating to perform, I would go into considerably more depth and detail. However, having said that, I believe that this estimate is certainly within 20% and probably within 10% of what the final survey would cost if done within the next couple of years.

Please phone me if you have any questions or if I can be of any further assistance.

Sincerely,

William McClintock

William McClintock
Registered Professional Land Surveyor

SURVEY OF FRACTIONAL TOWNSHIPS
Cost Estimate

Contractor Costs & Fees			
Position Corners	105 @ $ 1,900 each =	$ 199,500	
Set Monuments	105 @ $ 850 each =	$ 89,250	
Recover Monuments	7 @ $ 1,900 each =	$ 13,300	
Rectangular Plats & Field Notes	10 @ $ 4,100 each =	$ 41,000	
Meander Photography	1 job =	$ 20,000	
Meander Determination from Photos	1 job =	$ 20,000	
Total Contractor Cost & Fees			$ 383,050
BLM Costs			
Contracting Office	2 men X 100 hr X $50/hr =	$ 10,000	
Field Inspection	2 men X 300 hr X $50/hr =	$ 30,000	
Field Helicopter Use	40 hrs X $750/hr wet =	$ 30,000	
Field Room & Board	2 men X 30 days X $90/day =	$ 5,400	
Office Inspection	400 hrs X $50/hr =	$ 20,000	
Monuments & Acc.	105 mons @ $100 ea. =	$ 10,500	
Total BLM Costs			$ 105,900
	TOTAL COSTS		$ 488,950

U.S. House of Representatives
Committee on Resources
Washington, DC 20515

June 30, 1995

The Honorable Bruce Babbitt
Secretary of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

Dear Mr. Secretary:

As you know, I have introduced legislation, H.R. 1342, to convey approximately 29,000 acres of lands on the westside of Cook Inlet that were selected by several ANSCA villages over twenty years ago. However, because these lands are adjacent to what later became Lake Clark National Park, it appears the Department has put these villages through what some have characterized as a Chinese water torture. First, it assisted the villages in their selection in 1974 and denied these selections a few months later. Finally, in 1994 the Department stated it had no authority to convey these lands after many repeated assurances that it would.

I understand the complexity of the legal and land management issues involved. However, the Department's inability to find a solution to this problem has stymied the conveyance of almost one third of these villages' ANSCA entitlement even though almost 25 years have passed since the passage of ANCSA. I am shocked and dismayed by this treatment as are the rest of the Alaska delegation.

As I indicated to you in our recent telephone conversation on this matter, I fully intend to go forward on H.R. 1342 when the House returns from the August recess. I have scheduled a hearing on this bill before the Full Committee on September 21, 1995.

I have closely monitored the affected ANSCA corporations' unsuccessful efforts to work with the Department to find an administrative remedy to this dispute. Because of Assistant Secretary Armstrong's final letter of December 23, 1994 indicating that the Department had "no authority" to make the conveyances, I felt that the time was appropriate to give the Department the authority it believes it lacks. Consequently, I have introduced H.R. 1342.

Although I believe my legislation is the preferred approach to solve this matter, I am willing to examine other approaches that are acceptable to both the Department and the affected ANCSA corporations. If you have an accord with the villages that is more acceptable to the Department to present before the hearing, I would be interested to discuss it. I believe that with your personal leadership on this matter, a compromise solution that addresses the respective long-term interests of both the National Park Service and village corporations can be reached.

I look forward to hearing from you on this important matter.

With warm personal regards, I remain

Sincerely,

DON YOUNG
Chairman

cc: Senator Ted Stevens
Senator Frank Murkowski
Assistant Secretary Robert Armstrong

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

NOV 7 1995

Honorable Don Young
Chairman, Committee on Resources
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This letter responds to your request for the views of this Department concerning H.R. 2560. This also responds to your letter of June 30, 1995, concerning H.R. 1342, the predecessor to H.R. 2560. We apologize for the delay in responding to the earlier letter, but we understand that your staff has received briefings by the BLM Alaska State Director.

H.R. 2560 would convey lands within the Cook Inlet Region of Alaska to five village corporations under the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA)(43 U.S.C. 1601 et seq.)

The Department is strongly opposed to enactment of H.R. 2560.

H.R. 2560 raises substantial issues of public policy and fairness. It would strike down the carefully crafted, mutually bargained-for 1976 Agreement (Agreement) between the Department and the Cook Inlet Region, Inc. (CIRI) to resolve ANCSA land issues. It would replace the Agreement with a new disposition of lands. It would result in an overconveyance of lands to both the villages and CIRI and is contrary to the terms of the Agreement and ANCSA. By re-ordering ANCSA settlements, it establishes a dangerous precedent that threatens to undermine nearly a quarter century of ANCSA implementation, including many conveyances and agreements, in order to effectively increase ANCSA entitlements and to relocate holdings to increase value. As a result it could bring serious consequences for Native, public, and private land managers across Alaska who have made decisions based on ANCSA and upon agreed-upon settlements to disputes that have occasionally arisen over its implementation. ANCSA's principles and standards and implementing arrangements have guided the selection process for nearly a quarter of a century. They should not be overridden without very good reason. To us, no such reason appears.

The bill could also seriously impair public access of Alaska citizens and visitors to prime recreational lands in the Lake Clark National Park, for it could all but eliminate coastal access to the Park.

Addressing the bill requires some discussion of the events leading up to this proposal.

The Alaska Native Claims Settlement Act allowed eligible village corporations to select lands in the areas surrounding the villages. If there were not enough lands available, ANCSA directed the Secretary of the Interior to withdraw lands (in the amount of three times the deficiency) to be available for selection by the villages to cover their deficiencies. The withdrawals were referred to as deficiency areas.

Such was the case with the CIRI villages. Lands were withdrawn for selection for several Cook Inlet villages; the largest withdrawals were located in the Talkeetna Mountains and in the general vicinity of Tuxedni and Iniskin Bays, on the west side of Cook Inlet. The public land orders specified which village corporations could select in a certain withdrawal, but did not designate a particular area in the withdrawals for each village corporation.

Both ANCSA and the regulations require selections to be "contiguous and in reasonably compact tracts." [See, e.g., 43 U.S.C. 1611(a); 43 C.F.R.2651.] The CIRI village corporations' selections within the deficiency areas did not meet these requirements, and for that reason the selections, totaling several hundred thousand acres, were rejected by the BLM in the Spring of 1976. CIRI petitioned BLM on behalf of the villages, requesting reconsideration of the decision. The petition was denied and CIRI appealed to the Alaska Native Claims Appeals Board.

After BLM requested that the petition be remanded for further consideration, a negotiated settlement was reached. CIRI, representing the villages, and the Department of the Interior entered into an agreement on August 31, 1976. The Agreement attached as appendices two lists of lands, Appendix A and Appendix C, selected by the villages for possible conveyance. The Agreement, informally known as the Deficiency Agreement, stated that BLM would convey lands from the lists in accordance with the priorities contained in the Agreement, both between the lists (Appendix A first, then Appendix C if necessary), and within the Appendix C list, in the order which lands appear on that list. This is clearly set out in paragraph C of the Agreement, which states in pertinent part:

> " To the extent the lands conveyed [from Appendix A] ... are insufficient to satisfy [the Village Corporations'] statutory entitlement, the Secretary shall ... convey ... [to CIRI] such additional lands from Appendix C as are necessary to fulfill such entitlement ... in the order therein listed ...."

CIRI would then reconvey the lands to the village corporations. Through an agreement between CIRI and the villages, CIRI was to reconvey the lands as rapidly as possible to the village

corporations; where there were no conflicts (i.e. due to selection patterns) and where it was clear that the village corporations were eligible, CIRI agreed to reconvey within 10 days. [The CIRI-village agreement is Appendix B of the Agreement.] The reconveyances would be charged against the villages' entitlements as though the BLM had issued the conveyances directly to the villages. The Act of October 4, 1976 (P.L. 94-456) authorized the Secretary to use the mechanism set out in the Deficiency Agreement.

As already indicated, the 1976 Agreement made it clear that the lands described in Appendix A, containing approximately 460,000 acres, were to be conveyed first, in its entirety. Appendix C, containing approximately 500,000 acres, was the contingency plan. In the event the lands conveyed in the village area and the lands reconveyed by CIRI from Appendix A were insufficient to meet the villages' entitlements, lands would then be conveyed from Appendix C, in the order specified therein.

Because of several unresolved issues, the BLM was not able initially to determine whether lands from Appendix C would be necessary to fulfill village entitlements. For this reason, while the issues remained unresolved, early planning measures to implement the agreement included Appendix C lands, in case they were needed. For instance, the BLM included Appendix C lands at the beginning of the easement identification process, which is one part of the conveyance process. But inclusion of these lands in the easement identification process did not constitute a determination by BLM that conveyance of the lands would be required or made.

The unresolved issues included (a) the determination of eligibility for the villages of Alexander Creek and Salamatof; (b) resolution of the disagreement between CIRI and the Department over interpretation of the Lake Clark Land Trade Agreement, negotiated among CIRI and six villages relative to the creation of the Lake Clark National Park (the Department was not a party to the agreement, and disagreed with CIRI over the interpretation of agreement); and (c), the selection of State mental health lands near village areas by several village corporations.

Each of the three issues was resolved only after a number of years. Upon final resolution of the first two issues, the BLM completed conveyances of Appendix A lands in 1988, totalling approximately 460,000 acres. (The mental health lands issue was not completely laid to rest until this year.)

As previously noted, under the terms of the 1976 Agreement, CIRI was to reconvey these lands within 10 days, or as rapidly as possible, to the villages. CIRI has not complied. Specifically, to date, CIRI has reconveyed approximately 150,000 acres

chargeable to ANCSA section 12(a). CIRI has not reconveyed any of the remaining 310,000 acres to the villages. No acreage has been reconveyed for the villages' entitlements under ANCSA section 12(b).

The BLM has complied with the Agreement. Specifically, it has conveyed more than enough acreage from Appendix A lands to CIRI for reconveyance to the villages to meet the villages' entitlements under ANCSA.

Therefore, it is unnecessary to convey lands from Appendix C.

This position has been consistently communicated in writing by senior officials of the Department to CIRI. It was stated, for example, by Deputy Under Secretary William Horn (acting for the Secretary) in a letter written to CIRI, dated July 14, 1981 (attached). CIRI had sought permission to drill on certain lands within Appendix C. The National Park Service denied CIRI's application, CIRI appealed the decision, and the Deputy Under Secretary held that CIRI could receive no lands from Appendix C unless lands in Appendix A, when added to lands conveyed near the villages, were insufficient to meet village entitlements. (It is important to note that CIRI has never sought to challenge our interpretation of ANCSA and the 1976 Agreement in the courts.)

This position was recently thoroughly reconsidered and reaffirmed. By a letter dated December 23, 1994 (attached) Assistant Secretary Armstrong held that the BLM could not convey any lands from Appendix C to CIRI. He relied on a letter of December 2, 1994, (attached), from the Department's Solicitor, John Leshy, to counsel for CIRI that discussed the history of the Agreement and its proper interpretation.

With this background in mind, we turn to H.R. 2560. In our view, H.R. 2560 has several major flaws.

First, H.R. 2560 would do more than simply enact into law the interpretation CIRI now makes of the 1976 Agreement (with which we strongly disagree, as noted above). The lands described for conveyance in H.R. 2560 are mostly within Appendix C of the 1976 Agreement; however, one tract is not in either Appendix A or Appendix C. If H.R. 2560 were enacted, CIRI and the villages would receive lands they were not entitled to under the bargained-for mutual Agreement CIRI and the Department entered in 1976. That is, the conveyances circumvent the Agreement and the priority for Appendix A lands in the Agreement.

Second, the conveyances directed by H.R. 2560 do not even follow the priority order set out in the Agreement for Appendix C lands. Specifically, H.R. 2560 bypasses approximately 23,000 acres of higher priority Appendix C lands in order to reach lower priority Appendix C coastline lands. (It is worth noting that a

substantial amount of coastline land has already been conveyed under the Agreement to CIRI from Appendix A lands for reconveyance to the village corporations as part of their entitlement.)

Third, when the conveyances in the bill are combined with the lands already received by the villages, and with those they are still supposed to receive from CIRI, the total lands received will exceed the ANCSA section 12(a) entitlement for the villages os Seldovia, Tyonek, Knik, and Ninilchik by approximately 53,000 acres.

Also, if Appendix C lands are conveyed to the villages, CIRI will retain more lands under Appendix A than its remaining entitlement; the lands from Appendix C are not needed to fulfill the villages' requirements, and will exceed the village entitlements.

The mechanisms for fulfilling CIRI's ANCSA section 12(c) entitlement are found in the Terms and Conditions for Land Consolidation and Management in the Cook Inlet Area, as ratified by section 12 of the Act of January 2, 1976, (P.L. 94-204), as amended, and clarified by section 3 of the Act of October 4, 1976 (P.L. 94-456).

The BLM is conducting a comprehensive audit of all of CIRI's entitlements under ANCSA to identify issues that need resolution and areas where additional survey is required, and to obtain a complete picture of CIRI's position with regard to its entitlements. We believe that CIRI has already been provided with lands in excess of its entitlement.

Fourth, H.R. 2560 does not incorporate a survey provision found in subsection 4(b) of the Act of October 4, 1976 pertaining to conveyance of lands to CIRI for the villages. That subsection provides for an abbreviated survey of the lands conveyed to CIRI and of each reconveyance made by CIRI to villages. This offers greater efficiency and considerable cost savings to taxpayers. H.R. 2560 will cause far more surveys of many more smaller tracts to be made, and will be far more expensive and time-consuming.

Not only would the bill undermine the 1976 agreement, set a bad and dangerous precedent for reordering established arrangements for ANCSA settlements, and overconvey lands in excess of ANCSA entitlements, it could also, as noted earlier, seriously limit public access to Lake Clark National Park and the many fine recreational opportunities there. If this proposal is carried out, the only coastal lands remaining in the Park would be steep cliffs or mud flats. Public access over water is important, since the Park is over 100 miles away from Alaska's highway system. The Alaska public, as well as out-of-state tourists, could be significantly limited in their access to the park.

To prevent this, the United States might have to buy or lease back the lands conveyed, providing a large and unwarranted windfall to CIRI and the villages at the taxpayers' expense. It makes no sense to give away lands already lawfully in Federal ownership only to buy them back.

In addition to these fundamental problems that would be created by the bill, there are other serious problems of a more technical nature; it will be impossible to effect the conveyances in 90 days; essential easements, public and private, (including some to which CIRI is entitled) will not be reserved; appeal rights of a decision to convey will be effectively waived; the ANCSA principle of "contiguous and in reasonably compact tracts" will be breached; and several tracts as named in the bill do not exist on the master tracts.

There are several inholdings within the areas described (including the easements) which are not protected by the bill; thus the conveyances will likely result in takings issues of possibly substantial amounts. These and numerous other issues raised by the bill will inevitably lead to protracted litigation.

We believe that the ANCSA entitlements of the village corporations and CIRI are met through existing mechanisms, and that H.R. 2560 is both unnecessary and contrary to the best interests of land managers in Alaska and the United States.

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

Sincerely,

Bob Armstrong

Assistant Secretary for Land and
Minerals Management

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

JUL 14 1981

Cook Inlet Region, Inc.
Atten: Ms. Margie Sagerser
Mr. Kirk McGee
P.O. Drawer 4N
Anchorage, Alaska 99509

Dear Ms. Sagerser:

This letter responds to your request that we review the determination of the National Park Service, Alaska Regional Office, denying the application of Cook Inlet Region, Inc. (CIRI) and Atlantic Richfield Corporation (ARCO) to engage in core drilling on lands within Lake Clark National Park. Based on the information at hand, we agree with the Regional Office's determination that CIRI/ARCO cannot engage in core drilling on the park lands at issue until they have been (interim) conveyed.

Our understanding is that the lands at issue -- T. 2 S., R. 20 W., section 27 -- are currently within the park boundaries and subject to the laws applicable to the park. They are also listed as "Priority One" lands in Appendix C to the August 31, 1976 agreement between the Department of the Interior and CIRI. See P.L. No. 94-456 (codified in 43 U.S.C. § 1611 note). The August 31, 1976 agreement directs the Secretary to convey such Appendix C lands, as prioritized, only "as necessary to fulfill" the village corporations' entitlement under the Alaska Native Claims Settlement Act (ANCSA) should the lands listed in Appendix A to the agreement prove insufficient to fulfill the village corporations' ANCSA entitlement. At this time, the Department cannot determine whether Appendix A lands will fulfill the village corporations' ANCSA entitlement. If Appendix A lands prove sufficient, however, the Secretary will not convey Appendix C lands to CIRI, including the lands at issue. Rather, the lands at issue will remain in Federal title as part of Lake Clark National Park.

Based on the above facts and assumptions, the Department cannot treat the lands at issue as though they have been, for all practical purposes, already conveyed to CIRI. If only a purely ministerial function was required to effect an interim conveyance, we might be able to treat the lands as CIRI holdings. However, in light of the possibility that they may remain in Federal title, the Department must administer these lands under the applicable law.

Regional Director, Anchorage, NPS

Under applicable law, core drilling is generally prohibited on lands within the National Park System unless specifically authorized by Congress. The August 31, 1976 agreement contains no language that would modify this general prohibition so as to grant CIRI a right to engage in core drilling on the lands at issue prior to (interim) conveyance. Furthermore, the Alaska National Interest Lands Conservation Act (ANILCA) makes clear that, "[u]ntil conveyed, all Federal lands within the boundaries of a conservation system unit [including Lake Clark National Park]... shall be administered in accordance with the laws applicable to such unit." ANILCA, § 906(o)(2).

Please contact us with any questions on this matter.

Sincerely,

/s/

William P. Horn
DEPUTY UNDER SECRETARY

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

DEC 23 1994

Guy Martin, Esq.
Perkins Coie
607 14th Street, N.W., Suite 800
Washington, D.C. 20005

Dear Mr. Martin:

I recently received and studied a copy of a letter dated December 2, 1994, from the Department of the Interior's Solicitor, John Leshy, to you regarding the status of Appendix C lands on the western shoreline of the Cook Inlet, Alaska. In his letter, the Solicitor stated his conclusion that the Department currently has no authority to convey Appendix C lands as requested by the Cook Inlet Region, Inc. (CIRI). Upon study, I must agree with the Solicitor's opinion.

During our several meetings on this issue, you have asked that I evaluate whether or not the Department could accommodate CIRI's request through our policies related to land conveyances to Alaska Natives. Because of the several divergent interests within the Department on this issue, I believe that any decision to attempt to accommodate CIRI's request must be made by the Secretary with the counsel of all interested Assistant Secretaries.

I understand that CIRI may ask the Alaska Congressional delegation to introduce legislation in the 104th session of Congress to clarify the meaning of Appendix C. I cannot assure you, at this time, of the position of the Department of the Interior on any proposed legislation regarding Appendix C. If legislation is introduced, the Department will provide Congress its unified opinion on this difficult issue.

I appreciate your patience with the Department's decision making process on this issue.

Sincerely,

Bob Armstrong
Assistant Secretary, Land and
Minerals Management

United States Department of the Interior

OFFICE OF THE SOLICITOR
Washington, D.C. 20240

December 2, 1994

Guy Martin, Esq.
Perkins Coie
607 14th Street, N.W., Suite 800
Washington, DC 20005

Dear Mr. Martin:

As you know, Assistant Secretary Armstrong has asked me to review the request of your client, Cook Inlet Region Incorporated (CIRI), that certain lands in Alaska be conveyed to it. The lands desired by CIRI are listed in Appendix C to the Deficiency Agreement of August 31, 1976. I appreciate your meeting with me on November 16 to discuss this matter. After careful review, including examining the brief you submitted, I have concluded that this Department is without legal authority to grant your request.

I will not recount in detail the history leading to the execution of the 1976 Deficiency Agreement. The essential facts, as I see them, are these: In the Spring of 1976 the Department found CIRI Village land selections invalid because they violated the Alaska Native Claims Settlement Act's (ANCSA's) contiguity and compactness requirements, 43 U.S.C. § 1611(a), 43 CFR § 2651. To deal with this problem and therefore accelerate completion of land conveyances contemplated by ANCSA, the Department and CIRI negotiated the so-called Deficiency Agreement. The interpretation of Paragraph C of this Agreement is at the core of the current dispute.

This Agreement is a bargained-for agreement designed to resolve the ANCSA land conveyance issues in this area to avoid further protracted litigation. The Agreement was submitted to the appropriate committees of the Senate and House of Representatives, and included in the record when Section 4 of P.L. 94-456 was considered and passed.

As explained more fully below, I believe the plain meaning of the Deficiency Agreement is that CIRI may receive Appendix C lands only if lands in Appendix A and lands otherwise available (i.e., selections in ANCSA sections 11(a)(1) and (2) withdrawals) are insufficient to meet Village entitlements. If those other lands prove to be insufficient -- thus entitling CIRI to receive lands from Appendix C -- the lands must be conveyed in accordance with Paragraphs C and L of the Deficiency Agreement. Paragraph C requires that Appendix C conveyances be made in the order listed, subject to certain limitations, and Paragraph L contains additional conditions.

Paragraph C of the Deficiency Agreement provides:

> To the extent the lands conveyed pursuant to paragraph A when added to lands otherwise heretofore received or to be received by such Village Corporations are insufficient to satisfy their statutory entitlement, the Secretary shall, for the purpose stated in paragraph B, convey subject to valid existing rights to Cook Inlet Region, Inc., such additional lands from Appendix C as are necessary to fulfill such entitlement, except to the extent conveyances of such land are inconsistent with the requirements of Section 12 of P.L. 94-204 (unless the provisions of that section do not take effect) and this paragraph C. Conveyances by the Secretary under this paragraph C shall be made from the lands therein listed in Appendix C and in the order therein listed until the requirements of this subsection are met. Whenever only a part of a listed township is needed to meet the requirements of this paragraph C, then a part of a listed township shall be conveyed from lands adjacent to lands already conveyed. (Emphasis added)

I do not find this language ambiguous. Paragraph C's first sentence plainly directs the Secretary to convey Appendix C lands to CIRI only if, and "[t]o the extent" that, other lands conveyed are insufficient to satisfy the statutory entitlement of Village Corporations. The Deficiency Agreement provides that these other lands would be conveyed pursuant to Paragraph A (which directs the Secretary to convey to CIRI, subject to valid existing rights, "all public lands described in Appendix A" to the Agreement), or would be "otherwise . . . received" by the Village Corporations. The lands in this latter, "otherwise received" category are lands conveyed directly to each Village Corporation, rather than lands conveyed to CIRI. These conveyances would come from lands withdrawn by sections 11(a)(1) and (2) of ANCSA, 43 U.S.C. § 1610 (a)(1) and (2), and from lands identified in Paragraph VII.B of the Terms and Conditions for Land Consolidation and Management in the Cook Inlet Area (T&C), once the T&C became law.

CIRI offers several arguments as to why this straightforward reading of Paragraph C is wrong. First, it contends that the parties intended that lands in Appendix C could be included in the lands "otherwise . . . received" by Village Corporations. In my judgment this reading tortures the language of the Agreement. It would allow Appendix C lands to receive priority for conveyance over Appendix A lands, and would therefore turn upside down the carefully crafted, mutually agreed upon order of conveyance described in Paragraph C. The parties took pains, for example, to require conveyances under this paragraph "from the lands therein listed in Appendix C . . . in the order therein listed" until the Native Village entitlements were satisfied. The interpretation now offered by CIRI would allow conveyances from Appendix C without regard to the priority in which they were listed, and therefore reads the prioritizing language out of the Agreement.

In effect, CIRI's interpretation assumes that the parties' objective in drafting the Agreement was simply to reverse outright the BLM's rejection of the Village selections that gave rise to the Deficiency Agreement in the first place. If that were genuinely the intent, it could have been accomplished much more simply and directly than through this complicated Deficiency

Agreement. Put another way, nothing in the Agreement, its Appendices, or the surrounding documents or circumstances supports the contention that the original Village selections would, in and of themselves, control the conveyances to be made under the Agreement.

Second, CIRI argues that the Department for nearly fifteen years actually interpreted the Deficiency Agreement in the way that CIRI now advocates. This is contradicted by the record. As you know, a letter from the Department's Deputy Under Secretary to CIRI leaders dated July 14, 1981, written in response to CIRI's appeal of the Park Service's denial of an ARCO application to drill states, in pertinent part:

> The August 31, 1976 agreement directs the Secretary to convey such Appendix C lands, as prioritized, only "as necessary to fulfill" the village corporations' entitlement under the Alaska Native Claims Settlement Act (ANCSA) should the lands listed in Appendix A to the agreement prove insufficient to fulfill the village corporations' ANCSA entitlement. At this time, the Department cannot determine whether Appendix A lands will fulfill the village corporations' ANCSA entitlement. If Appendix A lands prove sufficient, however, the Secretary will not convey Appendix C lands to CIRI, including the lands at issue. Rather, the lands at issue will remain in Federal title as part of Lake Clark National Park.

Your November 29 letter following up our meeting makes several arguments as to why this quoted statement is either irrelevant, dictum, or not inconsistent with the position CIRI is now urging. It seems to me, however, it sets out rather plainly an understanding of the 1976 Deficiency Agreement that is directly contrary to the construction CIRI is now urging. It certainly undercuts CIRI's argument that the Department's and CIRI's longstanding and consistent understanding of the 1976 Agreement was the same as the position CIRI now takes.

I do not believe this conclusion is undermined by the letter sent a few weeks earlier (June 3, 1981) to ARCO by the Regional Director of the National Park Service. This letter, which you attached to your November 29 letter, rejected ARCO's proposal to drill a shallow core hole in an area of Lake Clark National Park and Preserve. In it the Regional Director expressed his "understanding" that BLM had prepared and would soon make available for comment a draft conveyance of the land in question.

The Regional Director's letter does not focus on how the 1976 Agreement should be construed; indeed, it does not refer to the Agreement or its Appendix C at all. It was, in fact, CIRI's appeal of this letter's rejection of ARCO's drilling application that prompted the Deputy Under Secretary to write CIRI a few weeks later. As noted above, the Deputy Under Secretary did address the 1976 Agreement because his letter, unlike the Regional Director's, states his understanding that the drill site in question was on "'Priority One' lands in Appendix C to the August 31, 1976 agreement." His letter is therefore a considerably more authoritative indicator of the Department's understanding of the 1976 Agreement than

the Regional Director's letter.

CIRI also argues that certain BLM staff actions in Alaska reflect an acknowledgment and endorsement of the interpretation CIRI now places on Paragraph C. One of these is BLM's practice of using a method favorable to the Native Villages in counting selections they had relinquished in the area, and the other is BLM's procedure for identifying easements. Without delving into details, it is sufficient to say that neither constitutes an endorsement of CIRI's interpretation. At most, they shed very indirect light on the meaning to be given the Agreement, and do not challenge the direct and unambiguous pronouncement of the Depury Under Secretary's letter.

CIRI also relies on some terse, handwritten notes by some anonymous Departmental employee recounting a conversation with a Solicitor's Office attorney in 1982 that seemed to reflect an understanding of the 1976 Agreement similar to the one CIRI now advocates. I cannot give that kind of vague hearsay inside the Department the same weight as a letter to CIRI itself signed by a high level Departmental official.

For these reasons, I believe the Department currently has no authority to convey Appendix C lands as requested by CIRI. According to Departmental land managers, the lands available from Appendix A and ANCSA sections 11(a)(1) and (2) appear to be sufficient to meet all Village entitlements.

I recognize that two cases now before the Alaska federal district court could affect CIRI Village entitlements. In Weiss v. Secretary of the Interior, No. A94-072 Civil (D. Alaska), plaintiffs are attempting to relitigate the right of CIRI Villages to select mental health lands. If these plaintiffs prevail, it may be necessary to convey Appendix C lands. In Seldovia Native Ass'n v. United States, No. A91-076 Civil (D. Alaska), a CIRI Village is suing to obtain lands that will otherwise go to the State of Alaska. If the Village prevails, the amount of land CIRI must take from Appendix A will substantially increase. Until these cases are resolved, the Department will not know how many acres of lands from Appendix A will go to CIRI, nor whether Appendix A is sufficient to meet all of the villages' entitlements.

Unless and until the lands otherwise conveyed and received by the Village Corporations are found "insufficient to satisfy their stanutory entitlement," however, I must conclude that this Department has no authority to convey lands from Appendix C as requested by CIRI.

Sincerely,

John D. Leshy
Solicitor

DON YOUNG, CHAIRMAN

U.S. House of Representatives
Committee on Resources
Washington, DC 20515

November 10, 1995

Mr. John D. Leshy
Solicitor
U.S. Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

Dear Mr. Leshy:

At the hearing on H.R. 2560, held on November 7, 1995, I requested that you provide this Committee in writing, within two weeks, a detailed written calculation of the ANCSA entitlement of the village corporations in question and the effect the conveyances contemplated by H.R. 2560 would have on such entitlement. You testified you would supply that calculation within that time period.

In preparing your calculation for the material submitted to the Committee, you should make the following assumptions:

1. The lands required to be conveyed to the village corporations by H.R. 2560 will be charged against their ANSCA Section 12(a) entitlement.

2. After conveyance of those lands to the village corporations by the Department, CIRI will reconvey to the villages the amount of Appendix A lands, if any, necessary to fulfill village 12(a) entitlements, in the order of village priority rounds.

3. After those conveyances (if any are necessary), CIRI will reconvey to the villages the amount of Appendix A lands necessary to fulfill village 12(b) entitlement, in order of village priority.

4. It is my understanding that the Chickaloon-Moose Creek Native Corporation participated in the village rounds and prioritized its Appendix A and Appendix C selections at that time. However, I have been told that this village has not formally indicated whether it desires to receive its deficiency lands ahead of its Section 11(a)(1) lands. For purposes of your calculations, assume that Chickaloon does desire its Appendix A and Appendix C selections (deficiency selections) ahead of its 11(a)(1) lands. Also, please advise me what the effect on your calculations would be if you assumed instead that Chickaloon desired its 11(a)(1) lands ahead of its deficiency lands.

5. Assume that CIRI will retain those Appendix A lands already conveyed to it which are not reconveyed to the villages, as provided in paragraph E of the Deficiency Conveyance Agreement, and that such retained lands will be charged against CIRI's 12(c) out-of-region entitlement. Assume that Appendix A lands conveyed to CIRI but reconveyed by CIRI to the villages will not be charged to CIRI's entitlement.

6. Assume that the amount of village entitlement listed in each of the August 21, 1986 Decisions issued by BLM to each village, entitled "Adjustment of Entitlement under Sec. 12(a) of the Alaska Native Claims Settlement Act of December 18, 1971, Pursuant to Sec. 12(a)(3) of Public Law 94-204 and Sec. 4(a) of Public Law 94-456" is correct.

7. Assume that BLM's 1985 estimate that CIRI had 2.71 townships of remaining out-of-region 12(c) entitlement available against which to charge Appendix A lands ultimately retained by CIRI, as noted in the document dated [to be described], was correct.

I trust you will perform your calculations in the spirit of effectuating the Committee's intent with respect to H.R. 2560, which is to convey to the villages their original priority land selections without changing the acreage amount of ANSCA entitlement. If you have constructive statutory language to suggest to further that intent, the Committee would welcome such suggestions.

I look forward to receiving your response to this request by November 21, 1995. If you have any questions about this request, please contact Kurt Christensen of my staff at 226-7388.

With warm personal regards, I remain

Sincerely,

DON YOUNG
Chairman

cc: Brenda Zenan, Alaska BLM
Kim Harb, Washington, D.C. Office, BLM

Anchorage Daily News Wednesday, November 8, 1995

Young gains support for Natives' selection of Lake Clark land

Claims take in park coastline, raise Interior officials' hackles

By DAVID WHITNEY
Daily News reporter

WASHINGTON — Legislation granting Native ownership to about 30,000 acres of prime coastal real estate in Lake Clark National Park gained support during a spirited House Resources Committee hearing Tuesday.

The Natives say they're entitled to the property under their land claims, but the transfer was denounced by the Interior Department as an unjustified giveaway.

When all the rhetoric was pushed aside, it appeared that Alaska Rep. Don Young, the panel's Republican chairman, had bipartisan support for his bill and that the support could grow if the legislation is further modified.

RON ENGSTROM / Anchorage Daily News

The measure is intended to satisfy land selections for five Native village corporations under the 1971 Alaska Native Claims Settlement Act. The national park, created in 1980, is part of the Natives' aboriginal homelands.

Under an agreement negotiated between the Interior Department and Cook Inlet Region Inc. four years before the park's creation, a system was set up for the village corporations to select 460,000 acres to satisfy their claims-act entitlement.

The Interior Department said it met its obligations under that deal by transferring the last parcels to CIRI five or six years ago. Under the 1976 agreement, CIRI was supposed to immediately transfer title to the surface lands to the village corporations, retaining the subsurface mineral rights for its own uses.

But none of that acreage is inside the park boundaries and, according to Native witnesses Tuesday, much of the available land isn't what they want. The result is that CIRI has transferred only about 300,000 acres to the village corporations, which now want Congress to open the parklands to their selection for some of the rest.

"The federal government has its lands, its parks," said Agnes Brown, chair of Tyonek Native Corp. "So does the state of Alaska. We still do not have all our lands which were what we were promised in ANCSA. Is this fair?"

According to the Interior Department, however, public access to the national park could be restricted if the village

Please see Page B-3, LAKE CLARK

LAKE CLARK: Native plan irks Interior

Continued from Page B-1

corporations get their way. The Natives are seeking virtually the entire coastal strip of the park, except for some cliffs that provide no visitor access.

The department also said that if the Natives get the parklands, the federal government may end up spending taxpayer money to buy it back from them.

Tuesday's hearing began with a heated attack by Young on the Interior Department.

"The department's inability to find a solution to this problem has stopped the conveyance of nearly one-third of the village ANCSA entitlements," Young charged. He said the Interior Department was responding to environmentalist pressure to protect the park rather than fulfilling its trust responsibilities to Alaska Natives.

But John Leshy, the Interior Department's top lawyer, said the agency is not at fault. He said the lands originally sought by the village corporations already have been conveyed and that the only way they can get other lands under the 1976 deal is if their original selections are insufficient to meet their lands-act entitlements.

> *"The federal government has its lands, its parks. So does the state of Alaska. We still do not have all our lands which were what we were promised in ANCSA."*
>
> — Agnes Brown, Tyonek Native Corp.

As tensions mounted during the hour-long hearing, the ranking Democrat on the resources panel, California Rep. George Miller, said he thinks the Interior Department is being wrongly blamed for a deal the Natives sought and signed.

Miller suggested Congress might be more willing to help out the villages if they quit trying to blame someone else for their problems.

"Maybe the villages and CIRI entered into a bad agreement," Miller said. "If they did that, then say that."

But Young already had the support of some Democrats, including Rep. Neil Abercrombie of Hawaii, who said his experience seeking land-claims rights for Native Hawaiians makes him sympathetic to the Alaska Natives' plight.

The two key problems with Young's bill are concerns about visitor access to the national park and worries that CIRI could end up with more land than it is legally entitled to.

But Brown, from the Tyonek corporation, and Bruce Oskolkoff, of the Nanilchik Native Association, said they have no intention of blocking visitor access to the park. Others said that CIRI would gladly give back lands already conveyed to it in exchange for the park property going to the village corporations.

If Young's bill is amended to make these changes clear, it appears he would have no trouble getting the measure out of his committee and maybe the House. But the legislation could have rougher sledding in the Senate, especially with environmental opposition to reducing the size of the park mounting.

"We're not going to lay down on this," said Jack Hession of the Sierra Club. "This issue is not over."

B8 Anchorage Daily News Wednesday, November 15, 1995

Clearing up Lake Clark issues

The Daily News article (Nov. 8), "Young gains support for Natives' selection of Lake Clark land," contains several misperceptions. This letter serves to clarify several of these misperceptions.

House Resolution 1342 conveys to five Native villages 30,000 acres of their ANCSA entitlement. CIRI is only the administrator for conveyance of these lands to the villages. The villages have the right to their full entitlement under ANCSA, a right that has remained unfulfilled for more than 20 years. In January 1976, the villages agreed to the Cook Inlet Land Exchange. The state and federal government, the parks, and CIRI all have their lands as part of the agreement. The only party that does not have the lands promised to them are the villages.

The Daily News is right when it labels Lake Clark a "land grab;" however, it is a land grab by the Park Service. The Park Service, representing green outside interests such as the Sierra Club, is attempting to take away the villages' land entitlement.

The Park Service should recall that the Native Village Corp.'s land rights predate the creation of the Lake Clark National Park in 1980. Lake Clark National Park would not have been created except for the villages' cooperation.

Two objections to conveyance of the villages ANCSA entitlement raised by outside interests are visitor access to the national park and over conveyance of land to CIRI. These two objections are not issues as they are thoroughly addressed in ANCSA and the 1976 Cook Inlet Land Exchange Agreement. Both ANCSA and the exchange agreement provide that the secretary of the Interior may reserve easements before conveyance to Native corporations.

California Rep. George Miller is right when he suggests that the Natives may have made a "bad agreement." It is bad in the sense that we Natives trusted the Department of the Interior to convey us our land as it promised, not to add Lake Clark to a long string of broken promises.

— William C. Prosser, president
Nanilchik Native Association Inc.

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