

# Appendix A: The Land Claims and Tribal Movements of Alaska Natives

# A

## LAND CLAIMS MOVEMENT

The reduction of fur-bearing sea mammals in Alaska and the demands of the Crimean War were among the reasons the Russian Government agreed to sell Alaska to the United States. The general American public believed Alaska to be a land of ice and snow, and quickly labeled the purchase “\*Seward’s Icebox,” “Seward’s Folly,” and other things, after the Secretary of State who supported its purchase.

Ever since then, Alaska has been a mystery to virtually all who have not experienced conditions in the State on a first-hand basis. It is safe to say that virtually all of the preconceptions that one brings to Alaska will be disproved, and opposite examples encountered, even during a short visit. Alaska is vast and perhaps best described as a land of contrast and contradiction. For example, in spite of its vastness, Alaska is a small community. After an inordinate] y short stay, one begins to realize that even a small network of acquaintances will produce recurring contacts of common interest.

The transfer of Alaska from Russian rule to the United States occurred at Sitka in southeast Alaska on October 18, 1867. The 1867 Treaty of Cession guaranteed that the “uncivilized tribes,” which included those groups that had remained independent from Russian domination, would have the same protection of the laws and regulations that applied to other tribes within the United States. The most important of these protections to Native people was a recognition of their right to possess land.

The Tlingit and Haida Indians of southeast Alaska were not allowed to even watch the ceremony in which their land was transferred from one nation to another, an inauspicious beginning from the Native viewpoint. They immediately voiced their objections



to the sale and claimed that the land had been sold without their consent. They further claimed that the \$7.2 million purchase price should have been paid to them, although their objections were to go unheeded until they brought suit in the courts of the United States.

Although the 1867 Treaty of Cession and the 1884 Organic Act recognized the land rights of Alaska Natives, little was done to restrict non-Native occupation of their lands. The gold rush, followed by the development of lucrative salmon fisheries, commercial whaling, trapping, and the influx of the military, brought a large population of whites to the new territory. Everywhere, Native lands were encroached upon.

In 1935, the Jurisdictional Act was passed by the U. S. Congress, allowing the Tlingit and Haida Indians of southeast Alaska to sue the United States for loss of their lands. Creation of the Tongass National Forest, Glacier Bay National Monument, and the Metlakatla Reservation for the Tsimpsian Indians, who had moved to Alaska from Canada, eroded much of the land base of the southeast Alaska Indians.

The Hydaburg Reservation, which had been created for the Haida Indians, was invalidated by a 1952 court decision. The judge ruled that the reservation had not been validly created. In contrast to earlier judicial decisions, in which Natives had been deemed to be uncivilized, the judge in this case ruled that the Haida Indians had been assimilated (i.e., civilized through assimilation) into the white community surrounding them. It was further reasoned that the 101,000-acre reservation would be created at the expense of white people who had nothing to do with the exploitation of the Indians, further increasing discord.

Not until 1968 did the Indian Court of Claims award the Tlingit and Haida a \$7.5-million judgment, far short of the \$80-million value claimed by the Indians. The award did not provide for a land base, and the remainder of the Tlingit land in the northern region of their territory was to be included in the statewide Native claims.

The Statehood Act of 1958 granted the State of Alaska the right to select 103 million acres. At the same time it recognized the rights of Natives to

kinds they traditionally used and occupied. The State's proposed selection of land initiated a series of protests by Alaska Natives. Native people were most concerned that their hunting, fishing, and trapping grounds would be taken by the State. Village after village began to file protests with the Federal Government. In early 1963, nearly 1,000 Natives from 24 villages petitioned the Secretary of the Interior to impose a land freeze to halt all transfer of land ownership until Native land rights had been resolved. The Secretary did not respond to this petition.

The southeast Natives were the first group to organize on a regional basis. The Alaska Native Brotherhood (ANB) was organized as early as 1912, and it claims to be the oldest organization among American Indians. The ANB had attempted to organize local chapters called "camps" in communities outside the southeast, but it met with only partial success. Not until the 1960s were other regional associations formed to advocate for land and political rights of Alaska Natives. In 1963, several of the regional organizations discussed the possibility of organizing a statewide group, but the deep-rooted mistrust that persisted among different cultural groups hindered its formation.

A growing awareness of the need to take concerted action for the protection of Native land ownership finally prompted formation of the Alaska Federation of Natives (AFN) in 1966. The AFN adopted three recommendations relating to land protection: 1) a land freeze until Native claims were resolved, 2) congressional legislation to settle the claims, and 3) congressional consultation with Natives before the enactment of land claims legislation. Before 1966 ended, the Secretary of the Interior had imposed a land freeze until the land claims issue could be resolved. Imagine the leverage this provided when, in a few short years, the State would seek to build an 800-mile pipeline from Prudhoe Bay on the Arctic Coast to the City of Valdez on Prince William Sound on the Gulf of Alaska.

Because of the importance of the AFN as an advocate of Native interests in Alaska, a discussion of its history and current role in these issues is es-

essential to understanding existing Native relationships. The AFN was formed in 1966 when more than 400 Alaska Natives representing 17 organizations gathered for a three-day conference to address the need for a settlement of aboriginal land rights. Natives in different parts of Alaska had worked independently on the land claims issue, but by the mid- 1960s, it had become clear that a united, consolidated effort was needed.

Although different in culture and history, the various Indian, Eskimo, and Aleut groups shared several important concerns. These included a traditional and fundamental reliance on the land and its resources, the welfare and integrity of the community, and a growing concern about Western encroachment on lands on which Natives had relied for millennia.

Between 1966 and 1971, the AFN worked to attain passage of the Alaska Native Claims Settlement Act (ANCSA), which was signed into law on December 18, 1971. With ANCSA in place, the AFN provided technical assistance to Alaska Natives as they began to implement the Act. During the 1970s, the AFN also managed statewide human service programs. However, as Native regional nonprofit associations grew in strength and number, the AFN transferred these human service programs to them.

Since the late 1970s, the AFN has concentrated on lobbying and advocacy efforts on statewide issues, with funding provided by membership fees. The activities of the AFN are oriented mostly toward for-profit corporations. Over the years, the AFN has evolved to meet the changing needs of Alaska Natives and to respond to new challenges as they emerge.

At the State level, AFN plays an active role in the legislative process by promoting laws, policies, and programs benefiting Natives in the areas of health, education, resource development, labor, and government. In the late 1980s, the AFN turned its attention to social, tribal, and economic issues, including the problems surrounding community sanitation.

With formation of the AFN, the legislative land claims battle began in earnest. Native claims to their ancestral lands were adamantly opposed by

the State. The Prudhoe Bay oil lease sales on the North Slope brought the State of Alaska some \$900 million, and it brought support to the Natives for settlement of the land claims. It was clear that no permit for a pipeline that would carry oil from the North Slope to a southern terminal could be granted until Native claims to their land were settled. The assistance of the oil companies and other business interests ensured the passage of the land claims bill. When ANCSA was signed, Alaska Natives believed that a new and prosperous era was about to begin.

The basic provisions of the Act concerned land, money, and the establishment of Native corporations. Under the terms of the Act, Congress agreed that Alaska Natives would be compensated \$962.5 million for the extinguishment of aboriginal title to 330 million acres of land and that they would retain ownership of 44 million acres of land under fee-simple title. Congress also authorized corporations, rather than traditional Native groups or clans, to hold title to the land and assets. The land was to be divided among 12 regional and 200 village corporations. The Act was later amended to allow for the formation of a 13th regional corporation for those Alaska Natives living outside the State.

The regional corporations would hold title to subsurface resources, and village corporations title to surface resources. ANCSA allowed individuals who were alive on December 18, 1971, and who were one-fourth or more Alaskan Native, to enroll as shareholders. Unfortunately, many eligible Natives did not enroll because of an absence in their culture of any concept of land ownership. Enrollment for ownership in lands they had always used freely seemed pointless and resulted later in resentment, hardship, and seemingly unfair exclusion of title to ancestral lands.

ANCSA appeared to be a landmark legislative act. Alaska Natives were to receive more land than that held in trust for all other American Indians. Compensation for lands surrendered was nearly four times the amount all Indian tribes had won from the Indian Claims Commission over its 25-year history. In the view of many, this was pos-

sible only because of the power of the petroleum industry in the State.

The settlement was also a clear departure from previous Indian settlements. Under ANCSA, lands would be held by corporations under fee-simple title rather than as reservations held in trust by the Federal Government. Congress clearly intended that ANCSA would provide the means for economic development and assimilation of Alaska Native peoples.

Alaska Natives were initially elated over the provisions of ANCSA. It did not take long, however, for them to become aware of the complexities and problems associated with the settlement. Corporations would have to wait up to 10 years before they received title to their land, and the cost of implementing the settlement consumed most of their financial award. Natives also came to realize that perpetual ownership of their lands could not be ensured under the corporate structure and that the shareholder system did not allow for the enrollment of those Alaska Natives born after 1971.

The corporations have met with varying degrees of success. Several regional and village corporations have achieved great success, but for the most part, a large number have been less than successful. Several are on the verge of bankruptcy. Alaska Natives have proposed a series of amendments to ANCSA and are hopeful of resolving many of the corporate problems.

## TRIBAL MOVEMENT

The tribal movement in Alaska began with Natives who feared that they could lose their ancestral lands, which are held by ANCSA corporations. The concern of tribal Natives is that without their land they will lose their culture. They contend that cultural survival is based on the hunting and gathering of wildlife resources. They also fear that with a growing non-Native population in Alaska, they will lose control over their communities as well. They are concerned that the proliferation of modern institutions in the villages, including the tribal council, city council, corporation, school, and other organizations, has become a source of conflict. They also express opposition to

jurisdiction exercised by a State Government and judicial system in which they are not fully represented. They maintain that State agencies enact oppressive laws and regulations, and render decisions that often conflict with their needs and do not always represent their best interest.

A former Canadian Supreme Court Justice, Thomas R. Berger, an internationally recognized advocate of Native rights, was invited by the Inuit Circumpolar Conference (ICC) to head the Alaska Native Review Commission. The ICC is an international organization composed of Alaskan, Canadian, and Greenlandic Inuit dedicated to maintaining their culture. The ICC established the commission to assess the impacts of ANCSA. Judge Berger traveled to more than 60 villages and received testimony from Alaska Natives on ANCSA.

One conclusion was that villagers believed ANCSA represented a cultural encounter between two different societies. They reported that the concept of buying or selling land was alien to Alaska Natives and that land was communally held by a group rather than by individual stockholders. They expressed concern that the 10,000 to 12,000 Alaskan Native children born after the passage of ANCSA were not given automatic membership in the corporation, as they were in traditional social groups or clans by virtue of their birth. They talked about subsistence activities and how the sharing of resources under their traditional customs established social obligations and reinforced bonds among them.

Congress amended the Indian Reorganization Act (IRA) in 1936 to allow Alaskan Native villages to form tribal governments. Seventy villages organized themselves under the IRA council, and many other villages are governed by traditional councils. A common assumption in Alaska is that ANCSA extinguished tribal sovereignty. However, an increasing number of villages, particularly in western Alaska and the interior regions, are beginning to reassert their sovereign rights under their tribal government and judicial councils. Akiachak, which has been at the forefront of the tribal movement, was the first community to dis-

solve its local government, established under State laws, in favor of tribal government and to organize its own judicial council.

In 1985, a number of tribal governments organized themselves under the Alaska Native Coalition (ANC). The ANC was not successful in obtaining an amendment to ANCSA that would have allowed corporations to transfer their lands to tribal governments. A number of tribal governments in southwestern Alaska have united under the Yupiit Nation to further strengthen tribal governments and rights.

The tribal movement also grew in response to increasing concerns over the social problems that plague Native villages. Alcoholism and self-destructive behavior have been a problem in many villages. The suicide rate has been reported to be the highest in the country, particularly among young males. Alienation, loss of family, low income, and alcohol abuse are cited as major factors related to suicide. In an effort to control alcohol abuse, many tribal governments have prohibited the importation of alcohol into their communities.

Cultural resurgence has also been associated with the movement toward self-determination. Communities in which traditional dancing and ceremonies were prohibited by the local churches have reinstated Native dance and many of the traditional ceremonies. Native leaders and elders have organized cultural camps in which young children can be immersed in Native culture. Children spend a period of time in these camps learning about traditional ways and beliefs. The elders have reasserted their traditional authority in many villages. They participate in formal elder conferences to record traditional knowledge. Continu-

ing political efforts to protect their land bases and subsistence hunting and fishing activities have become the rallying point to protect the survival of Native cultures.

Whether the Inupiat, Yupik, Aleuts, and Athapaskans and the Tlingit, Tsimpsian, or Haida will survive as distinct cultural groups remains to be seen. It is well accepted that Native cultures have changed dramatically since their first contact with Westerners. However, it is also recognized that they retain elements and values of their traditional cultures that distinguish them from one another and set them apart from non-Natives.

Alaska Natives are on a collision course with non-Natives who oppose the tribal sovereignty movement and their subsistence rights. The ever-increasing numbers of non-Natives, with their expansion into rural communities, create competing uses for wildlife resources. Alaska Natives have become accustomed to, and dependent on, goods and services that can be obtained only from the capital economy, but the prospects for economic development in rural regions of Alaska are uncertain at best and absent at worst. The lack of economic opportunities in rural communities may accelerate the migration to urban centers.

Native corporations continue to hold all Native land except two villages that turned over their lands to the tribal government. It is unlikely that the corporations will reconvey their lands to the tribal governments, but Alaska Natives are continuing to pursue amendments to ANCSA that they believe will ensure the continued ownership of Native land. The record is clear that the Native peoples have made a firm commitment to ensure the survival of their cultures.