

**Testimony Regarding H.R. 2099, the Southeast Alaska Natives
Land Entitlement Finalization Legislation**

**By Julie E. Kitka, President
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Before the Committee on Natural Resources

U.S. House of Representatives

111th Congress

March 17, 2010

Chairman Rahall, Ranking Republican Member Hastings, and distinguished Members of this Committee, my name is Julie Kitka. I submit this testimony in my capacity as President of the Alaska Federation of Natives. It is an honor to be here before you, to present testimony knowing that this Committee has a critical role in our lives. My earliest experience in testifying was before the House Interior and Insular Affairs Committee, which is your predecessor. I can recall the awe in which this Committee inspired among Native Americans, and others, and how appreciative we were of the commitment you and your colleagues have to real policy making in this country. You have never taken this responsibility lightly, for this we will always be grateful. Thank you for your service to our country, and thank you for being so strong on Native American issues, which are life and death to us. You hold our future in your hands, and we are confident that together we can accomplish much. For the purpose of your hearing today, AFN strongly supports H.R. 2099 and urges its mark-up and passage by the House.

As President of AFN, I have worked for many years with a remarkable group of Native leadership and others to improve the opportunities and resolve the challenges faced by Alaska Native people. When I think of rapid change in the world, I can think of no better example than in our own homeland. The changes we have seen and have been impacted by are profound. But despite these changes, our land remains the touchstone of our lives.

By way of background, AFN is the largest statewide Native organization in Alaska representing more than 125,000 Alaska Natives, residing in Alaska, and more than 120,000 Alaska Natives scattered over the rest of the 49 states. AFN was organized in 1966 to facilitate bringing the various regional and village associations together in order to advocate with one voice for a fair settlement of our aboriginal land claims, which became the Alaska Native Claims Settlement Act of 1971 (ANCSA).

Today, AFN is governed by a 37-member board of directors representing villages (both federally recognized tribes and ANCSA village corporations), 12 regional tribal consortiums, and the 13 regional ANCSA corporations. AFN's annual convention is the largest annual gathering of Native people within the United States. AFN's mission is to enhance and promote the cultural, economic and political voice of the Alaska Native community. **The AFN Board of Directors, together with our Legislative Committee fully supports H.R. 2099 and urges its enactment.**

It is critical to the understanding of H.R. 2099, to understand the nature of what Congress and the President intended when they enacted the Alaska Native Claims Settlement Act, in 1971.

ANCSA is the foundation of much of the Alaska Natives economic and legal relationship with the federal government, but it is much more than that. It embodies most of our economic and relational agreements with the federal government, agreements for which our people relinquished valid legal claims to lands and

resources in Alaska, our homeland. Our leaders took a tough stand. We accepted a land claims settlement that freed the State of Alaska¹ to receive its lands and the federal government to manage its lands. The citizens of the United States and the federal government received a bargain: the Trans-Alaska oil pipeline was built, which last summer delivered the 16th billion barrel of oil to domestic consumers, from U.S. fields. 16 billion barrels of domestic oil, directly attributable to the agreements that are made possible by ANCSA. The fields of Prudhoe Bay alone have delivered several hundred billions of dollars of goods, services and taxes to the federal government. ANCSA made this possible by addressing the status and claims of Alaska Natives. For Native corporations the land conveyance process dragged on year after year, our economy struggled, and we were, by any measure, an economically disadvantaged group, and clearly a minority.²

¹ In 1971 when the Alaska Native Claims Settlement Act (ANCSA) was enacted by the Congress, Alaska was a fledgling state, not even 15 years old.

² Alaska Natives were a majority population in Alaska prior to World War II; but remain a minority on a national level.

The world-class discovery of oil in Prudhoe Bay, together with the need for clear title in order to build a pipeline across Alaska to transport the oil to meet the energy needs of our country, created a sense of urgency and a historic opportunity for a settlement of our land claims. In December 1971, after years of effort by Members of the U.S. Congress and Alaska Native leadership, the Alaska Native Claims Settlement Act (P.L. 92-203) was signed into law by President Richard Nixon.

For extinguishing aboriginal claims, Alaska Natives were allowed to retain fee simple title to 44 million acres of land and received \$962.5 million for lands transferred to the State, federal and private interests. The Act created 13 regional for-profit corporations and more than 200 village corporations to receive and oversee the land and monetary entitlements. It took years, and in some respects decades though, to get the promises of ANCSA implemented. **It is critically important to understand ANCSA was a land settlement, and the ability to retain our homeland, our identity and culture were and are paramount.** The

structure of ANCSA, of corporations owned and operated by Alaska Natives, was a secondary issue on the minds of Alaska Native people. Protecting the land and our traditional way of life, and surviving in the modern world was critically important then, as it is today.

Also, it is worth considering the basis for the distinction between laws differentiating between Native American relationships and others. In a great many cases, Native Americans entered into agreements relinquishing ownership and use and occupancy of lands for treaties and statutes. The agreements embedded in these treaties and statutes properly provide a basis for differential treatment under the law. Congress' authority comes from the unique status of Indian tribes under federal law and the plenary power of Congress to legislate on behalf of federally recognized tribes and Alaska Native corporations. *Morton v. Mancari*, 417 U.S. 535, 551-52 (U.S. 1974). For these reasons, the Supreme Court has upheld legislation that singles out Native

Americans for special treatment due to the unique history and role of dealings with Indians and has stated that as long as the special treatment can be tied rationally to the fulfillment of Congress' unique obligation toward Indians, legislation regulating commerce with Indian tribes will not be disturbed. *Mancari*, 417 U.S. at 555.

To look back now and seek to separate the economic treatment of Alaska Natives from the settlement of aboriginal claims would not be just or fair. As we meet here today, in this hearing, not all the lands that were promised to Alaska Natives have been conveyed to our people and our corporations -- 39 years after the Settlement Act of ANCSA was enacted. What is the net present value of the lost use of our lands, delayed in some cases by decades? H.R. 2099 will remedy the situation for the Tlingit, Haida and Tsimpshian Indians of the Tongass.

H.R. 2099 will allow Sealaska Corporation, the Native Corporation formed by the Tlingit, Haida and Tsimpshian Indians

to select lands to meet the purposes of ANCSA to create a sustainable economy, and to further economic and employment opportunities for their tribal shareholders. It will allow Sealaska Corporation to gain title to important cultural, historical, and Native enterprise sites that are important to the preservation of Native history and culture, and continuation of the Native way of life. The legislation is also very forward thinking in including Native futures sites to diversify economic opportunities, knowing that we live in a changing world.

What is remarkable about this legislation is the thoughtfulness that went into its development, the outreach to stakeholders, and the consideration of the future. It is not a simplistic solution to a difficult problem. It is a wise solution.

Sometimes ANCSA is referred erroneously to, as merely an “economic development statute.” To call ANCSA merely an economic development statute is like calling the Civil Rights Act a

community development law or the Voting Rights Act a polling statute. Those two laws, so fundamental to the relationship that our federal government has with minority groups, cannot rightly be minimized. To Alaska Native people, ANCSA is nearly as important as these foundational, fundamental human rights statutes. ANCSA is fundamentally recognition of the validity of the claims of Alaska Natives to lands and waters in Alaska, where our people resided for thousands of years. The timely settlement of the land claims of the Tlingit, Haida, and Tsimpshian Indians of the Tongass is just.

ANCSA corporations are not merely for-profit corporations; they are stewards of the Native homeland, sponsors of education and training opportunities, employers of “first resort” for our aboriginal people. There is so much more tied into these corporations than many people might guess. Most of our entire land base---our land is key to our heritage, culture and future---is held by the corporations, just as Congress intended in passing

ANCSA. The corporations have broader responsibilities than many other corporations, for in their hands are our settlement lands, lands which we can not afford to lose. Alaska Native corporations were not started as ordinary corporations, and were not intended to function as ordinary corporations. These corporations were required to be formed by federal law, ANCSA, a requirement not applied elsewhere in other aboriginal land settlements, or to many, if any, other corporations in America.

As these corporations began to succeed, many of the indicators of a healthy society began to improve. For example: Alaska Native life expectancy for both men and women has increased, infant mortality has decreased, poverty has been reduced from over 60% to 20% -- a major accomplishment.³ Key findings in the report commissioned by AFN shows dramatic improvements

³ In 2004, AFN commissioned a 30-year trend analysis on all major socio-economic and health indicators of the Alaska Native population. The University of Alaska, Institute of Social and Economic Research did the report. Key findings show that Alaska Natives have more jobs, higher incomes, and better living conditions, health care and education than ever. But they remain several times more likely than other Alaskans to be poor and out of work. All the economic problems Alaska Natives face are worst in remote areas, where living costs are highest. AFN can make it available upon request.

in positive indicators; dramatic decreases in negative indicators; and a **continuing thread of disparity** between the Alaska Native population and non-Alaska Native population, both in Alaska and in the U.S. in all indicators. **Overcoming this disparity must be a targeted focus of all our efforts.**

Of course, AFN does not assert that ANCSA and our Native corporations are the source of all the improvements in the nearly forty years. ⁴

I believe that it may be tempting to look at some of the recent greatest successes of Alaska Native corporations and see only success. From where we started, with small, new start-up corporations, beginning with a people that had not operated corporations before, our corporations have come a long way. But please don't skip over what we started with. We live and work in what is to most businesspeople the most remote corner of America,

⁴ Other significant impacts on well-being has been federal and state appropriations in health, education and social services; the Alaska Permanent Fund dividend – however the impacts of ANCSA are substantial.

in one of the harshest climates in the world: with a history of extreme prejudice and discrimination; a history of wariness toward a people who, in a great many cases, literally spoke a different language than most businesspeople in America; a history of exclusion from genuine business opportunity; and a history of no business history with “mainstream” large economies in America.

Our corporations have built up a capacity to provide jobs and help young people see what it takes to succeed in modern America. They have built, as intended, a managerial and business expertise that can carry forward. They have helped create an economic stability where none existed before. Our people take pride in this work. It is an accomplishment to behold, one which is worth understanding in full for its roots, path and basis in law, including Native American law.

As we look at 2010, still living within the deepest recession in our lifetime, we know we are looking at a new reality. The

environment has changed. With national unemployment figures at an all time high – we all must be concerned. Jobs, jobs and jobs have become the watchword of our times. We know we have to continue to foster innovation, economic growth and shared prosperity in this country. We have to increase our ability to compete in the global market place. For Alaska Native people, the completion of our land entitlement gets us a step further. Mark-up and passage by the House of H.R. 2099 will help Southeast Alaska’s economy, create and maintain jobs, as well as bring justice to the Tlingit, Haida and Tsimpshian Indians of the Tongass.

In conclusion, as we look towards a post-crisis recovery and how Native Americans, including Alaska Natives are helping and can help in the recovery, we request an opportunity for a dialogue with the appropriate Congressional committees on strategic, opportunity expanding ideas. We want to keep developing economic tools, infrastructure, expanding education and training for our people,

and developing our institutions and organizations to be effective in the post-crisis economy and world. It is a changed world.

We want to maintain our Native identity, our cultures and homelands. We want life opportunities and choices. We want to continue to build capacity within all our Native corporations, and tribes and to be known for our good governance and leadership.

We would be pleased to continue a dialogue on this and other matters of concern to this Committee. Thank you for the opportunity to testify.