ANCSA Lands: Navigating the Uncertainties

Tuesday, October 5, 2010
8:30 a.m. – 4:30 p.m.
Hotel Captain Cook
Anchorage, Alaska

CLE #2010-003 **6.5 General CLE Credits**

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Alaska Bar Association

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ALASKA BAR ASSOCIATION

ANCSA Lands

Tuesday, October 5, 2010
Hotel Captain Cook, Anchorage
CLE # 2010-003

Program Element	Exceeded Expectations	Met Expectations	Needs Improvement	Failed Expectations
Program Content				
Presenter Quality				
Written Materials				
Facility Quality				

Comment on the program elements:

_____

_____

_____

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☐ **Location** ☐ **Speakers** ☐ **CLE Credit** ☐ **Topic** ☐ **Other:** _____

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_____

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What topic would make a good companion program or spin off for this CLE?

_____

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_____

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Topic: _____

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(PLEASE KEEP FOR YOUR RECORDS)

This certifies that _____ has attended the Alaska Bar Association's Continuing Legal Education (CLE) presentation, **ANCSA Lands: Navigating the Uncertainties** on Tuesday, October 5, 2010, at the Hotel Captain Cook in Anchorage, AK .

Under the guidelines established by the Alaska Bar Association, this program has been approved for **6.5 general CLE credits and 0 ethics credits for a total of 6.5 CLE credits.****

Amanda Clark
ALASKA BAR ASSOCIATION

** All Alaska Bar CLE Credits are determined by a 60-minute hour.

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Document1

FACULTY

John T. Baker is a Senior Assistant Attorney General in the Natural Resources Section of the Alaska Attorney General's Office in Anchorage, where he has practiced since 1990. He represents the Alaska Department of Natural Resources, including the Division of Mining, Land and Water and the Division of Parks and Outdoor Recreation, the Alaska Department of Fish and Game, and the Alaska Commercial Fisheries Entry Commission. His practice includes original and appellate cases in state and federal courts as well as federal administrative appeals before the Interior Board of Land Appeals, primarily in cases involving Section 17(b) of ANCSA, and focuses on pubic access to and use of public land and resources, including submerged lands. A lifelong Alaskan, he received his B.A. from the University of Alaska, Anchorage, and his J.D. from the University of Colorado, Boulder. In addition to Alaska state and federal courts, he is admitted to the 9th Circuit Court of Appeals and the United States Supreme Court. In 2009 he received a Governor's Denali Award for his role in negotiating an agreement between the Alaska Department of Natural Resources and the Bureau of Land Management for a process to resolve disputed claims to submerged lands.

Brennan Cain is Corporate Counsel for The Eyak Corporation, an Alaska Native Village Corporation in the Chugach region. He has practiced law in Alaska for thirteen years, with Middleton & Timme, Timme & Cain, and as the owner of the Law Office of Brennan Cain, LLC. Brennan is the Co-Chair of the Alaska Native Law Section of the Alaska Bar Association, and is a member of the Corporate Counsel Section of the Bar. He received his Juris Doctor degree from the University of California, Davis, and his Bachelor of Science degree (magna cum laude) in Forestry and Wildlife Management from Virginia Polytechnic Institute and State University.

David S. Case is an attorney with over 30 years experience in representation of Alaska Native interests. He has held positions with the Alaska Federation of Natives, the Alaska Native Foundation, the Department of the Interior and for two years was assistant professor of political science and Native studies at the University of Alaska, Fairbanks. He is the author and co-author of ALASKA NATIVES AND AMERICAN LAWS and several law review and other scholastic articles examining American, Alaskan and Canadian issues related to the rights of indigenous peoples.

He is now in private practice emphasizing the representation of Alaska Native village corporations, tribes and rural municipalities. His practice focuses on the unique political, legal, management and resource development issues affecting rural Alaska Native institutions. He is the recipient of the "Denali Award" from the Alaska Federation of Natives for Dedication and Service to the Alaska Native Community.

Joseph D. Darnell, Deputy Regional Solicitor, U.S. Department of the Interior, Office of the Solicitor, Alaska Region. Joe has been with the Department of the Interior, Office of the Solicitor in Anchorage, Alaska, since 1992. He became Deputy Regional Solicitor in 2010. His practice focuses on resource, land management, and land conveyance issues for the U.S. Fish and Wildlife Service National Refuge System, the Bureau of Land Management, and the National Park Service. He also handles most tort and contract claims for Department of the Interior bureaus in Alaska.

Prior to working for the Office of the Solicitor Joe was in private practice in Juneau and Anchorage. He served on the staff of U.S. Senator Ted Stevens in Washington D.C. from 1980 to 1984. He has a BA in History from the University of Oregon and received his JD from George Washington University Law School n 1980. Joe was born in Seward, Alaska and raised in Juneau, Fairbanks and Kenai. His wife Joan works for the National Park Service in Anchorage. They have a twelve-year old daughter.

Dennis Hopewell is a Senior Attorney in the Alaska Regional Solicitor's Office, U.S. Department of the Interior. He came to Alaska, "for a year," as a VISTA volunteer in 1975. After working for Alaska Legal Services Corp. in Dillingham, Sitka and Anchorage, Dennis joined the Regional Solicitor's Office in 1978. He was hired to assist with the Department of the Interior's implementation of the Alaska Native Claims Settlement Act. Since that time he has served as lead attorney for the Bureau of Land Management on the conveyance of millions of acres of land under the Alaska Native Claims Settlement Act, the Alaska Statehood Act, the Alaska Native Allotment Act and, most recently, the Alaska Land Transfer Acceleration Act. Dennis was the Deputy Regional Solicitor for the Alaska Region from 1984 until June of 2010 when he gave up management duties so he could focus more attention on land conveyance and other legal matters.

Robert H. Hume, Jr. is a partner with Landye Bennett Blumstein LLP. His practice focuses on representing local, regional and national businesses respecting acquisitions, security and other contractual relationships and commercial transactions; real estate sales, leasing, financing and development; corporate and LLC organization and operation; and bankruptcy. A substantial portion of his clients are Alaska Native corporations and their affiliates facing issues unique to Native corporations. He developed and maintains the ANCSA Resource Center on the Internet.

Bob graduated from the University of Michigan in 1974 and received his J.D. *cum laude* from the University of Michigan in 1976. He has practiced law with Landye Bennett Blumstein and its predecessor firms in Alaska for over thirty years.

Melanie Baca Osborne is Vice President and General Counsel for Ahtna, Inc., the Glennallen-based Alaska Native Regional Corporation. Previously she was in private practice representing Native American and Alaska Native interests. Mrs. Osborne's practice has included Indian Self-Determination Act matters, ANCSA corporate matters, employment law, and a variety of general counsel matters for Tribes and Villages, ANCSA corporations, and tribal health providers. Mrs. Osborne is co-Chair of the Alaska Native Law Section. She received her B.A. from the University of Alaska Anchorage and her J.D. from the University of Washington School of Law, before clerking for Anchorage Presiding Superior Court Judge Elaine M. Andrews.

Geri Simon works as General Counsel for Tyonek Native Corporation. She previously worked in the tribal health system at ANTHC, Tanana Chiefs Conference and Yukon-Kuskokwim Health Corporation. She also worked for Alaska Federation of Natives and Native American Rights Fund. Geri received her undergraduate degree from the University of Washington and her law degree from Seattle University. At TNC, Geri focuses upon corporate governance, business and research, and land issues. She is a shareholder of Doyon, Limited and the village corporation representing Allakaket.

AGENDA

8:30 a.m. **Introductions**

Melanie Osborne, *Ahtna, Inc., Moderator*

8:45 a.m. **ANCSA & Conveyed Interests:**

An overview of land selections & conveyances

Brennan Cain, *The Eyak Corporation*

Allan Breitzman, *BLM, Alaska State Office, U.S. Department of the Interior*

Dennis Hopewell, *Office of the Solicitor, Alaska Region, U.S. Department of the Interior*

9:45 a.m. **Q & A**

10:15 a.m. **Break**

10:30 a.m. **Navigating the Conveyed Relationships:**

Native Allotments

Surface & Subsurface Dichotomy

7(i)

Bob Hume, *Landye Bennett Blumstein LLP*

Cecelia LaCara, *Alaska Legal Services Corporation*

Joe Darnell, *Office of the Solicitor, Alaska Region, U.S. Department of the Interior*

11:30 a.m. Q & A

12:00 p.m. **Lunch & Keynote:**

DOI Solicitor's Office, *Invited*

1:30 p.m. **Collisions Between ANCSA & Public Use:**
Navigability
17(b) easements & RS2477 ROWs
Material sites

Geri Simon, *Tyonek Native Corporation*
John Baker, *Natural Resources Section, State of Alaska, Department of Law*
Mark Melchert, *Jermain, Dunnagan & Owens, P.C.*

2:30 p.m. **Q & A**

3:00 p.m. **Break**

3:15 p.m. **The Pebble Debate**

Susan Reeves, *Reeves Amodio LLC*
Peter Van Tuyn, *Bessenyey & Van Tuyn LLC*
Sam Fortier, *Fortier & Mikko, P.C, Moderator*

4:00 p.m. **Q & A**

4:30 p.m. Adjourn

ANCSA
Surface – Subsurface Dichotomy

Robert H. Hume, Jr.
Landye Bennett Blumstein LLP
October 5, 2010

ANCSA § 14

- (a) – Immediately after selection by a Village Corporation ... the Secretary shall issue to the Village Corporation a patent to the **surface estate** ....
- (f) – When the Secretary issues a patent to a Village Corporation for the surface estate..., he shall issue to the Regional Corporation for the region in which the lands are located a patent to the **subsurface estate** in such lands ....
- (e) – Immediately after selection by a Regional Corporation, the Secretary shall convey to the Regional Corporation title to the surface and/or the subsurface estates, as is appropriate, in the lands selected.

2

Village corporation patent

NOW KNOW YE, that there is, therefore, granted by the UNITED STATES OF AMERICA, unto the above-named corporation the surface estate in the lands above described; TO HAVE AND TO HOLD the said estate with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto the said corporation, its successors and assigns, forever.

EXCEPTING AND RESERVING TO THE UNITED STATES from the lands so granted:

1. The subsurface estate therein, and all rights, privileges, immunities, and appurtenances, of whatsoever nature, accruing

3

Regional corporation patent

WHEREAS

Koniag, Inc., Regional Native Corporation

is entitled to a patent pursuant to Sec. 14(f) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(f), of the subsurface estate reserved to the United States in the hereinbelow identified patent for the surface estate in the following described lands:

Patent No. 50-86-0634

NOW KNOW YE, that there is, therefore, granted by the UNITED STATES OF AMERICA, unto the above-named corporation the subsurface estate in the lands above described; TO HAVE AND TO HOLD the said estate with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto the said corporation, its successors and assigns, forever.

4

ANCSA § 7(i)

- 70 percent of all revenues received by each Regional Corporation from the timber resources and subsurface estate patented to it … shall be divided annually by the Regional Corporation among all twelve Regional Corporations ….

5

Sand & gravel litigation

- *Aleut Corp. v. ASRC*, 421 F. Supp. 862 (D. Alaska 1976)
- ***Chugach Natives, Inc. v. Doyon, Ltd.***, 588 F.2d 723 (9th Cir. 1979)
- *ASRC v. Tyonek Native Corporation*, 725 F.2d 527 (9th Cir. 1984)
- *Tyonek Native Corp. v. CIRI*, 853 F.2d 727 (9th Cir. 1988)

6

7(i) Settlement Agreement

- ... disproportionately difficult in relation to the benefits to the Corporations to determine their Section 7(i) obligations ..., because (i) S&G deposits usually are small and localized; (ii) the cost of development is high in relation to their potential value; (iii) the cost of accounting is high; and (iv) it is difficult to arrive at a satisfactory method of accounting for use by the RCs and the VCs. ... also recognize that it is desirable to permit VCs to use S&G on their own lands for their own local needs without incurring a financial obligation to the RCs.
- Excluded first $100,000/year of gross revenues from sale or disposition of sand, stone, gravel, pumicite or cinder resources
- Committed to seek ANCSA amendment

7

1998 amendment to 7(i)

- In the case of the sale, disposition, or other use of common varieties of sand, gravel, stone, pumice, peat, clay, or cinder resources made during a fiscal year ending after October 31, 1998, the revenues received by a Regional Corporation shall not be subject to division under subparagraph (A).
- Nothing in this subparagraph is intended to or shall be construed to alter the ownership of such sand, gravel, stone, pumice, peat, clay, or cinder resources.

8

Subsurface estate = "mineral estate"

- What items are mineral estate?
- What subterranean items and features are not mineral estate?

9

Village regulation of use of subsurface estate

- ANCSA § 14(f) – [T] he right to explore, develop, or remove minerals from the subsurface estate in the lands within the **boundaries of any Native village** shall be subject to the consent of the Village Corporation.
- *Leisnoi, Inc. v. Stratman*, 154 F.3d 1062 (9th Cir. 1998)

10

Ownership vs. use rights

- Right of surface owner to use subsurface
- Right of subsurface owner to use surface

11

Surface owner use of subsurface

- *Koniag, Inc. v. Koncor Forest Resource*, 39 F.3d 991 (9th Cir. 1994)
- "It is reasonable to infer that a conveyor who has divided his land among simultaneous conveyees intends that very considerable privileges of use shall exist between them."

12

Surface owner use of subsurface (cont.)

- No other practical source for S&G
- Subsurface owner may not unreasonably deny the surface owner access to rock, sand, and gravel necessary for surface development, including price
- Surface owner may move and remove S&G without compensation
- Surface owner may use, without compensation, moved S&G ("cut and fill")
- Burden of proof on surface owner

13

Surface owner use of subsurface (cont.)

- Other uses of subterranean area
  - Wells
  - Pilings, foundations
  - Power lines

14

Subsurface owner use of surface

- ANCSA § 14(f) – any restrictions?
- Federal mining law
- Implied use rights, and obligations?
- Practical solutions, for now

15

Risk mitigation

- Title insurance
- Nondevelopment covenant

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ANCSA Surface – Subsurface Dichotomy

Robert H. Hume, Jr.
Landye Bennett Blumstein LLP
October 5, 2010

Contact Information:

Allan Breitzman, BLM ANCSA 14(c) Specialist & Townsite Trustee
BLM, Alaska State Office, AK-927
222 W. 7th Ave., #13
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Office Phone: (907) 271-5606
Cell Phone: (907) 440-5788
Fax: (907) 271-4193

E-mail: abreitzm@ak.blm.gov

Al has been with the Bureau of Land Management (BLM) for over 26 years. He manages the BLM's Alaska Native Claims Settlement Act (ANCSA) Section 14(c) Program and acts as the Alaska Townsite Trustee. Al has an undergraduate degree in Political Science with a focus on Public Administration and a J.D. from Gonzaga University School of Law.

Helpful Internet Links:

http://sdms.ak.blm.gov/sdms/ - BLM external website for land status

http://www.commerce.state.ak.us/dca/planning/mltp/mltp.htm - State Municipal Land Trustee (MLT) Program and link to list of MLT villages

http://www.commerce.state.ak.us/dca/14c-Plats.htm - ANCSA 14(c) Plats to date

http://www.commerce.state.ak.us/dca/planning/planning_central/planning_central.htm - link to planning resource booklets including the *Alaska Native Foundation ANCSA 14(c) Handbook* and *Getting Started on ANCSA 14(c)(3)*

http://www.commerce.state.ak.us/dca/profiles/profile-maps.htm - State community profile maps

Alaska Native Claims Settlement Act (ANCSA)

Pub. L. No. 92-203 (85 Stat. 688)
43 U.S.C. § 1601, *et seq.*
December 18, 1971

Amendments[1]

1. Pub. L. No. 93-153 (87 Stat. 576), November 16, 1973 – advance payments to ANCSA corporations
2. Pub. L. No. 94-204 (89 Stat. 1145), January 2, 1976 – escrow of revenues from selected lands, mergers of ANCSA corporations, ratification of agreement between U.S., State of Alaska and Cook Inlet Region Inc. (CIRI), and other provisions relating to specific conveyances and business provisions of ANCSA
3. Pub. L. No. 94-456 (90 Stat. 1934), October 4, 1976 – land withdrawals for Klukwan Corp. and conveyances in the CIRI region
4. Pub. L. No. 95-178 (91 Stat. 1369), November 15, 1977 – conveyances for ANCSA corporations in Southeast Alaska and in the CIRI region, and other financial provisions
5. Pub. L. No. 95-600 (92 Stat. 2763), November 6, 1978 – taxation
6. Pub. L. No. 96-55 (93 Stat. 386), August 14, 1979 – extends deadlines in Pub. L. No. 94-204
7. Pub. L. No. 96-487 (94 Stat. 2371), December 2, 1980 – the Alaska National Interest Lands Conservation Act (ANILCA) contains numerous and significant amendments to ANCSA, including a 2-year statute of limitations to seek judicial review of final ANCSA (and ANILCA) decisions (§902(a)), and ANILCA should be checked for amendments or new provisions whenever an ANCSA matter is considered
8. Pub. L. No. 100-241 (101 Stat. 1788), February 3, 1988 – corporate matters including issuance of new shares and authorization of certain corporate powers
9. Pub. L. No. 100-395 (102 Stat. 979), August 16, 1988 – the Submerged Lands Act of 1988 technically amends ANILCA but adopts certain BLM survey standards for ANCSA conveyances and provides finality for certain BLM navigability determinations
10. Pub. L. No. 102-415 (106 Stat. 2112), October 14, 1992 – the Alaska Land Status Technical Correction Act of 1992 is another major source of amendments to ANCSA, including: shareholder homesites; lapsed mining claims; Haida corporation account and subsurface selections; Sealaska agreement; Ahtna Native Group settlement; and Gold Creek account
11. Pub. L. No. 102-458 (106 Stat. 2267), October 23, 1992 – expedited negotiations with Kenai Native Association
12. Pub. L. No. 102-489 (106 Stat. 3138), October 24, 1992 – Koniag land exchange

[1] Sorry, there is no guarantee that absolutely every single amendment to some part of ANCSA is included in this list.

13. Pub. L. No. 104-10 (109 Stat. 155), May 18, 1995 – potential sale of CIRI stock
14. Pub. L. No. 104-42 (109 Stat. 353), November 2, 1995 –mining claims on ANCSA conveyances, report on contamination on ANCSA conveyances, report on a possible open season for Alaska Native veterans to apply for Native allotments and corporation specific amendments
15. Pub. L. No. 104-333 (110 Stat. 4117), November 12, 1996 – land exchanges for Kenai Native Association and Anaktuvak Pass, subsurface consolidation on Alaska Peninsula and authorization for CIRI villages to file suit for lands on the coast line of Lake Clark National Park
16. Pub. L. No. 105-276 (112 Stat. 2461), October 21, 1998 – adds section 41 to ANCSA to provide for filing of Native allotment application by certain Vietnam veterans
17. Pub. L. No. 105-333 (12 Stat. 3129), October 31, 1998 – the Alaska Land Bank Protection Act of 1998 addresses land banks, Calista land exchange, retained mineral estates, withdrawal of State of Alaska protests to legislative approval of Native allotments, shareholder homesites and various specific provisions of ANCSA
18. Pub. L. No. 106-194 (114 Stat. 239), May 2, 2000 – Elim lands
19. Pub. L. No. 106-559 (114 Stat. 2778) December 21, 2000 – technical (minor) amendments to Pub. L. 105-333 allowing Native allotment applications by certain Vietnam veterans
20. Pub. L. No. 107-362 (116 Stat. 3021), December 19, 2002 – Russian River Land Act ratifies settlement of CIRI's claims to historical and cemetery sites along the Russian and Kenai Rivers
21. Pub. L. No. 108-452 (118 Stat. 3575), December 10, 2004 – finally, the Alaska Land Transfer Acceleration Act is another act that must be checked when addressing ANCSA issues and it contains numerous provisions setting selection deadlines and providing new avenues for speeding up and finally resolving conveyance matters

ANCSA14C - Federal Survey Status

	ANCSA 14(c) SURVEY & PLAT STATUS *by BLM Cadastral Survey* VILLAGE NAME:	MAP OF BOUNDARIES Statute/Expired *"date of approval"*	SPECIAL INSTRUCTIONS *approved*	FIELD SURVEY *complete*	REVIEW COMPLETE *surveyor signed*	DATE PLAT APPROVED *DSD signature*	*STATE OF ALASKA* RECORDED PLAT NUMBER and DATE OFFICIALLY FILED
1	ST. GEORGE (Pribilof Islands)	6-4-86/87	4-6-83	'83	Group No. 417	1-29-85	BLM Records, Rectangular 2-15-85
2	GALENA [complete: 3 - 14(c)(1)'s]	8-15-89/90	6-15-83	'84	U.S.S. 6664, Lots 7,8,9	1-9-86	BLM Records, U.S. Survey 2-7-86
3	EKLUTNA (#1) [partial: 5 - 14(c)(1)'s]	6-4-86/87	BLM Contract Notice to Proceed 7-23-85	'85	1-31-86	2-18-86	#86-63, ANCHORAGE 4-29-86
4	UGASHIK	6-4-86/87	BLM Contract Notice to Proceed 8-27-86	'86	12-23-86	1-22-87	#87-12 & #88-14, KVICHAK 8-5-87 & 12-1-88
5	DOT LAKE	6-4-86/87	BLM Contract Notice to Proceed 2-18-86	'86	2-27-87	4-15-87	#88-15, FAIRBANKS 2-17-88
6	UNALASKA (#1)	6-4-86/87	BLM Contract Suppl. Specials 6-3-86	'86	Group No. 369	4-6-88	BLM Records, Rectangular 4-7-88
7	UNALASKA (#2) (Subdivision of U.S.S. 58)	6-4-86/87	BLM Contract Notice to Proceed 5-29-86	'86	5-11-88	8-11-88	#88-14, ALEUTIAN ISLANDS 10-21-88
8	EAGLE [partial: 3 - 14(c)(1)'s]	6-4-86/87	BLM Contract Notice to Proceed 6-18-86	'86	Group No. 356	6-16-89	BLM Records, Rectangular 6-30-89
9	UNALAKLEET (#1)	6-4-86/87	Private Survey Subdivide portion of IC No. 493	'87	12-5-87	11-19-87 (Compliance)	#87-11, CAPE NOME 12-11-87
10	PEDRO BAY	6-4-86/87	7-28-86 6-22-90	'86 '90	8-24-92	10-21-92	#92-10, ILIAMNA 10-26-92
11	ST. MARY'S	7-3-86/87	Resolution Agreement No. 86-5	n/a	n/a	n/a	No - 14(c)(1), (2), or (4) claims. 14(c)(3) by Corp./City Satisfaction Agreement for established City Limits

FY-2010 CONVEYANCE SUMMARY

CURRENT TO 6.28.10

ANCSA — TOTAL LANDS TRANSFERRED

Total All Entitlement Acres 45,624,835.41	TOTAL TO DATE	PERCENT COMPLETE	YEAR-TO-DATE	Remaining Entitlement
Interim Conveyance	15,882,535	34.81%	928,088	
Patent	27,116,354	59.43%	629,196	
Total	**42,998,889**	**94.24%**	**1,557,283**	**2,625,946.89**
Acres on Appeal	*323,012*			
Original Acres Approved pending conveyance	*134,077*			
	43,455,977	*95.25%*		

STATE

Total All Entitlement Acres 104,525,001.24	TOTAL TO DATE	PERCENT COMPLETE	YEAR-TO-DATE	
Tentative Approval	41,069,390	39.29%	923,589	
Patent	59,869,881	57.28%	2,256,387	
Total	**100,939,271**	**96.57%**	**3,179,976**	**3,585,729.78**
Acres on Appeal	*0*			
Original Acres Approved pending conveyance	*372,677*			
	101,311,949	*96.93%*		
Railroad Transfer Patents	*26,482*		*452*	
Terms & Conditions Agreement	*1,134,287*		*567*	

NATIVE ALLOTMENTS

	TOTAL PARCELS FILED	PRIOR YEAR CLOSURES *	REINSTATED PENDING	CURRENT YEAR TO DATE CLOSURES	TOTAL CLOSURES	PARCELS PENDING
TOTAL 1906 NATIVE ALLOTMENT PARCELS	16,014	15,595	115	55	15,737	425
NATIVE VET ALLOTMENTS	1,066	802	31	79	986	76
	17,080	16,397	146	134	16,723	501

ANCSA14C - Federal Survey Status

	continue: ANCSA 14(c) SURVEYS	Map approved	Specials appr	Field	Surveyor sign	DSD sign	Plat No. & Recording Dist.
12	EKWOK	6-4-86/87	(BLM In-House) Assignment Inst: 8-17-87	'87	4-10-89	5-16-89	#89-7, BRISTOL BAY 5-18-89
13	TAKOTNA	6-4-86/87	(BLM In-House) Assignment Inst: 8-15-87	'87	1-24-90	3-7-90	#90-2, MT. McKINLEY 3-23-90
14	PORT HEIDEN	6-4-86/87	8-26-87 6-29-89	'87 '89	2-5-92	2-20-92	#92-2, KVICHAK 2-24-92
15	KALTAG	6-4-86/87	2-16-88	'88	U.S.S. 9623 Lots 1 & 2	4-23-90	#2008-2, NULATO 5-5-08 BLM Records, USS, 5-10-90
16	UNALAKLEET (#2) [11 - remote 14(c)((1) claims]	6-4-86/87	3-18-88 3-23-90	'88 '91	7-21-92	9-25-92	#92-10, CAPE NOME 10-2-92
17	KOKHANOK	6-4-86/87	6-9-88 9-15-89	'88 '90	2-19-92	3-18-92	#92-2, ILIAMNA 4-7-92
18	NEWHALEN	6-4-86/87	6-9-88	'88	4-19-91	5-17-91	#91-3, ILIAMNA 5-21-91
19	FALSE PASS	4-21-87/88	8-1-88	'88	1-26-90	2-14-90	#90-2, ALEUTIAN ISLANDS 2-15-90
20	WALES	7-15-88/89	7-19-88	'88	9-17-91	1-10-92	#92-1, CAPE NOME 1-22-92
21	NELSON LAGOON	6-18-87/88	8-1-88	'88	5-20-92	6-5-92	#92-24, ALEUTIAN ISLANDS 6-16-92
22	SELDOVIA	6-9-88 to 6-7-89 3-1-95/96	4-5-88 (auto surveyor)	N/A	N/A	N/A	NOTE: Court action filed by the City against Seldovia Native Association. Resolved by agreement on 2-28-95.
23	NEW STUYAHOK	6-4-86/87	9-8-88	'89	6-9-92	11-24-92	#92-19, BRISTOL BAY 12-1-92

ANCSA14C - Federal Survey Status

	continue: ANCSA 14(c) SURVEYS	Map approved	Specials appr.	Field	Surveyor sign	DSD sign	Plat No. & Recording Dist.
24	LEWIS POINT	9-9-88/89	4-18-89	'89	11-27-90	2-4-91	#91-7, BRISTOL BAY 2-7-91
25	EKLUTNA (#2) [Birchwood Airport - 14(c)(4)]	6-4-86/87	5-10-89	'89	9-19-91	10-18-91	#91-68, ANCHORAGE 10-22-91
26	TATITLEK	12-22-87/88	5-30-89	'89	4-16-91	4-18-91	#91-2, VALDEZ 4-23-91
27	DEERING	11-23-87/88	6-12-89	'89	1-2-92	2-19-92	#92-3, CAPE NOME 2-24-92
28	COUNCIL	7-21-89/90	9-11-89	'89	4-16-92	3-18-99	#99-3, NOME 3/31/1999
29	SOLOMON	8-11-89/90	9-15-89	'89	1-13-92	6-5-92	#92-7, CAPE NOME 6-19-92
30	DILLINGHAM (#2) [partial: 4 - remote 14(c)(1)'s]	3-13-90/91	4-16-90	'90	1-13-92	3-17-93	#93-1, BRISTOL BAY 4-6-93
31	IGUSHIK	3-19-90/91	5-18-90	'90	7-7-91	9-11-91	#91-17, BRISTOL BAY 9-13-91
32	KOBUK	9-28-88/89	5-30-90	'90	6-12-92	9-29-92	#92-6, KOTZEBUE 10-6-92
33	EKUK	4-10-90/91	6-19-90	'90	1-14-92	5-7-92	#92-13, BRISTOL BAY 5-12-92
34	SHUNGNAK	6-18-90/91	8-15-90	'90	1-18-94	7-1-94	#94-5, KOTZEBUE 7-19-94
35	McGRATH	5-11-88/89	6-6-90	'91	2-25-93	5-17-93	#93-4, MT. McKINLEY 5-28-93

ANCSA14C - Federal Survey Status

	continue: ANCSA 14(c) SURVEYS	Map approved	Specials appr.	Field	Surveyor Sign	DSD sign	Plat No. & Recording Dist.
36	TELIDA	6-8-88/89	3-6-90 7-8-91	'91	7-9-92	10-7-92	#92-9, MT. McKINLEY 10-26-92
37	IVANOF BAY	6-7-89/90	4-16-90	'91	8-1-93	8-8-93	#93-31, ALEUTIAN ISLANDS 9-7-93
38	PERRYVILLE	8-1-90/91	5-30-91 7-12-91	'91	12-3-92	3-4-93	#93-9, ALEUTIAN ISLANDS 3-10-93
39	SOUTH NAKNEK (#1) [30 - remote 14(c)(1)'s]	6-4-86/87	6-27-90 4-30-91	'91	3-31-93	5-3-93	#93-4, KVICHAK 5-12-93
40	EGEGIK	2-26-90/91	7-17-90	'91	4-2-93	12-30-93	#94-1, KVICHAK 1-5-94
41	CLARKS POINT	10-31-89/90	7-27-90	'91	2-26-93	10-8-93	#93-12, BRISTOL BAY 10-15-93
42	PORTAGE CREEK	10-27-89/90	1-24-91	'91	5-6-93	9-14-93	#93-11, BRISTOL BAY 9-21-93
43	EVANSVILLE	11-20-89/90	6-12-91	'91	3-16-93	4-21-93	#93-142, FAIRBANKS 4-28-93
44	AKHIOK	5-15-91/92	6-26-91	'91	11-9-93	12-2-93	#93-44, KODIAK 12-14-93
45	PITKAS POINT	8-1-91/92	11-21-91	'92	8-24-93	9-29-93	#93-28, BETHEL 10-15-93
46	HOLY CROSS	9-24-91/92	5-19-92	'92	7-9-95	3-7-96	#96-4, KUSKOKWIM 3-18-96
47	SOUTH NAKNEK (#2) [complete: 14(c)(3) & 14(c)(4)]	4-10-92/93 "waiver"	8-17-92	'92	Group 552	12-03-93	BLM Records, Rectangular T. 17 S., R. 47 W., Seward Meridian

ANCSA14C - Federal Survey Status

	continue: ANCSA 14(c) SURVEYS	Map approved	Specials appr.	Field	Surveyor sign	DSD sign	Plat No. & Recording Dist.
48	ALAKANUK	7-6-92/93 "waiver"	8-17-92	'92	5-7-93	7-21-93	#93-25, BETHEL 8-9-93
49	NOORVIK (#1)	5-1-92/93 "waiver"	8-12-92	'92	12-26-93	12-10-93	#93-5, KOTZEBUE 12-22-93
50	NOORVIK (#2)	5-1-92/93 "waiver"	8-12-92	'93	12-26-93	12-10-93	#93-5, KOTZEBUE 12-22-93
51	OUZINKIE	2-11-92/93 "waiver"	7-22-92	92 & '93	3-19-96	4-17-96	#96-14, KODIAK 4-23-96
52	AFOGNAK JOINT VENTURE	11-18-91/92	6-17-92	'93	1-19-94	2-9-94	#94-4, KODIAK 2-28-94
53	SHISHMAREF (#1) [partial: 59 - 14(c)(1)'s]	11-20-92/93	private contract (D.O.T. & P.F., FBX)	'92	State of AK Survey	Compliance Letter 9-29-94	14(c)(1) claims near Airport Boundaries. Recorded - Plat No. 94-12, Nome Rec. Dist. Remaining 14(c) to be submitted in future.
54	DILLINGHAM (#1) [complete: two-core township]	6-4-86/87	8-20-93	'93/'94	11-18-98	10-6-09	#2009-12, DILLINGHAM 10-7-09
55	CHENEGA	4-12-91/92 10-9-92/93	3-23-93	'93	12-13-96	12-17-96	#96-17, VALDEZ 12-26-96
56	CHIGNIK LAGOON [partial: 19 - remote 14(c)(1)'s]	2-22-91/92	4-18-93	'93	1-3-95	2-7-95	#95-03, ALEUTIAN ISLANDS 2-22-95
57	CRAIG	6-5-92/93 1-28-94/95	6-02-93	'93	7-28-95	8-30-95	#95-57, KETCHIKAN 9-12-95
58	SAXMAN	5-29-92/93 [14(c)(1),(2)&(4)]					No 14(c)(1), (2) or (4) claims Court action filed on (c)(1) or (2) claim on 10/22/92, final cout dec. in 1996
59	LARSEN BAY	1-19-94/95	4-17-95	'95	4-9-97	4-21-97	#97-9, KODIAK 4-29-97

ANCSA14C - Federal Survey Status

	continue: ANCSA 14(c) SURVEYS	Map approved	Specials appr.	Field	Surveyor sign	DSD sign	Plat No. & Recording Dist.
60	PILOT POINT	9-14-93/94	4-7-95	'95	11-19-96	1-14-97	#97-1, KVICHAK 1-15-97
61	CHIGNIK LAKE	4-12-93/94	8-19-94	'94	1-10-96	11-5-96	#96-25, ALEUTIAN ISLANDS 11-14-96
62	COPPER CENTER	5-14-93/94 "waiver"	9-1-93	'93	4-17-95	5-23-95	#95-9, CHITINA 6-16-95
63	SALAMATOF	5-14-93/94	N/A	N/A	N/A	N/A	No 14(c) survey necessary. Description exists with which to transfer title.
64	CHUATHBALUK	7-09-93/94 "waiver"	6-22-94	'94	4-22-96	5-10-96	Note: Partial MOB [14(c)(2),(3)&(4)] #96-5, KUSKOKWIM 5-17-96
65	OLD HARBOR	7-09-93/94 "waiver"	6-21-94	'94	9-25-96	12-5-96	#96-33, KODIAK 12-26-96
66	ANIAK	10-15-93/94 "waiver"	5-17-94	'94	8-25-95	10-6-95	#95-12, KUSKOKWIM 10-19-95
67	THE KUSKOKWIM CORP. VILLAG	1-18-94/95 "waiver"		'94-partial			Note: Partial MOB [remote 14(c)(1) and (2) claims]
68	PILOT STATION	10-17-94/95	3-18-96	'96	3-6-97	3-25-97	#97-4, BETHEL 3-28-97
69	MOUNTAIN VILLAGE	6-20-96/97 partial Map	6-28-96 partial	96 private			Note: Partial MOB [all 14(c)(1) & (2) claims and a portion of 14(c)(3)] [private survey of partial in 1996]
70	ILIAMNA	3-28-95/96	4-3-96	96	2-18-98	12-24-98	#99-1, ILIAMNA 1-13-99
71	RUBY	3-1-95/96	2-8-96	96 638 K	1-23-97	1-13-98	#98-1, NULATO 1-20-98

ANCSA14C - Federal Survey Status

	continue: ANCSA 14(c) SURVEYS	Map approved	Specials appr.	Field	Surveyor sign	DSD sign	Plat No. & Recording Dist.
72	UYAK	6-21-95/96	N/A	N/A	N/A	N/A	All 14(c) claims already surveyed; no further BLM survey required.
73	KOYUKUK	9-14-95/96	2-5-97	97 638 K	5-14-98	7-17-98	#98-3, NULATO 7-24-98
74	CHIGNIK LAGOON [14(c)(3)]	9-26-95/96 "waiver"	3-3-97	97	3-30-99	4-1-99	#99-2, ALEUTIAN ISLANDS 4-1-99
75	ALEKNAGIK	4-3-96/97	5-30-97	97/98	4-20-99	5-11-99	#99-2. BRISTOL BAY 5-12-99
76	STEBBINS	10-30-95/96 "waiver"	11-23-99	2000	2-25-02	4-1-02	#02-8, CAPE NOME 4-8-02
77	NULATO	11-03-95/96 "waiver"	3-18-97	97 638 K	5-14-98	7-17-98	#98-2, NULATO 7-24-98
78	LOWER KALSKAG	4-19-96/97	4-14-98	98	8-10-99	8-30-99	#99-4, KUSKOKWIM 10-21-99
79	KASAAN	10-9-96/97	6-8-98	98	5-6-99	6-1-99	#99-33, KETCHIKAN 6-29-99
80	KARLUK	9-12-96/97	11-26-97	98	1-21-00	1-27-00	#2000-03, KODIAK 2-9-00
81	HUSLIA	11-05-96/97	11-24-99	2000	7-23-01	10-24-01	#2001-6, NULATO 11-2-01
82	CORDOVA	6-13-97/98	3-13-00	2000	2-6-02	4-15-02	#2002-04, CORDOVA 4-15-02
83	BETHEL	12-31-97/98	6-7-99	99	11-12-03	1-14-04	#2004-1, BETHEL 1-20-04

ANCSA14C - Federal Survey Status

	continue: ANCSA 14(c) SURVEYS	Map approved	Specials appr.	Field	Surveyor sign	DSD sign	Plat No. & Recording Dist.
84	MANOKOTAK	10-31-97/98	10-14-99	2000	10-8-02	1-27-03	#2003-02, BRISTOL BAY 1-29-03
85	AKHIOK/KAGUYAK	12-04-97/98	5-11-98	98	11-3-99	11-16-99	#99-28, KODIAK 12-7-99
86	NOME	7-27-98/99	1-23-01	2001	3-8-04	2-8-05	#2005-3, NOME 2-16-05
87	STEVENS VILLAGE	9-2-98/99	10-30-01	2002	6-3-03	7-11-03	No (c)(1),(2) or (4) claims #2003-3, RAMPART 10-31-03
88	CHIGNIK	3-31-99/00	1-3-01	2001	11-1-05	10-28-09	#2009-5, ALEUTIAN ISLANDS 10-28-09
89	PORT LIONS (AJV)	2-28-00/01	4-18-02	2002	2-10-06	7-5-06	#2006-8, KODIAK 7-10-06
90	NIKOLAI	1-18-00/01	8-15-03	2004	8-19-05	9-6-05	#2006-2, MT. MCKINLEY 8-8-06
91	LEVELOCK	4-13-00/01	1-19-01	2001	11-12-03	3-26-04	#2004-1, KVICHAK 3-30-04
92	KAKTOVIK	7-27-00/01	see #109	when final			Refer to #109 for final survey submission of 14(c)(2), (3) and (4) claims Awaiting 14(c)(1) claims
93	HUGHES	10-1-00/01	9-16-02	2003	2-22-05	3-1-05	#2005-1, FT. GIBBON 3-9-05
94	GEORGETOWN	1-03-01/02	4-17-01	2001	5-23-02	5-31-02	#2002-2, KUSKOKWIM 6-10-02
95	CIRCLE	4-02-01/02	N/A	N/A	N/A	N/A	No survey work needed

ANCSA14C - Federal Survey Status

	continue: ANCSA 14(c) SURVEYS	Map approved	Specials appr.	Field	Surveyor sign	DSD sign	Plat No. & Recording Dist.
96	TOGIAK	4-23-01/02	5-15-03	2003	12-22-04	2-22-05	#2005-2, BRISTOL BAY 2-22-05
97	KOLIGANEK	5-29-01/02	5-13-02	2002	3-16-04	6-15-04	#2004-6, BRISTOL BAY 6-16-04
98	ALLAKAKET/ALATNA	6-20-01/02	6-18-03	2003	2-22-05	3-1-05	#2008-26, FAIRBANKS 3-28-08 #2005-37, FAIRBANKS 3-9-05
99	NONDALTON	12-04-01/02	6-14-02	2002	9-9-03	9-24-03	#2003-05, ILIAMNA 9-24-03
100	ATKA	4-29-02/03	6-15-02	2002	3-7-05	4-27-05	#2005-8, ALEUTIAN ISLANDS 4-29-05
101	MANLEY HOT SPRINGS	5-9-02/03	4-15-03	2003	9-30-05	10-14-05	#2005-2, MANLEY HOT SPRINGS 11-1-05
102	NAKNEK	10-31-02/03 8-27-03/04	4-5-05	2005			Plat sent to Corp. for review and signature on 9/30/2009
103	TANACROSS	3-20-03/04	3-14-05	2005	6-30-06	8-16-06	#2006-136, FAIRBANKS 8-22-06
104	HOONAH	11-12-03/04	2-14-05	2005	10-19-06	12-5-06	#2006-29, SITKA 12-19-06
105	MEKORYUK	06-23-04/05	8-16-07	2007/08	8-13-10		plat delivered for review on 8-18-10
106	ANGOON	06-18-04/05	5-8-06	2006	9-30-08	11-12-08	#2008-35, JUNEAU 11-24-08
107	TWIN HILLS	12-05-05/06	4-13-06	2006	4-21-08	7-3-08	#2008-12, BRISTOL BAY 7-3-08

If the village had on the 1970 census enumeration date a Native population between—	It shall be entitled to a patent to an area of public lands equal to—
400 and 599	138,240 acres.
600 or more	161,280 acres.

The lands patented shall be those selected by the Village Corporation pursuant to section 1611(a) of this title. In addition, the Secretary shall issue to the Village Corporation a patent to the surface estate in the lands selected pursuant to section 1611(b) of this title.

(b) Native villages listed in section 1615 and qualified for land benefits; patents for surface estates; issuance; acreage

Immediately after selection by any Village Corporation for a Native village listed in section 1615 of this title which the Secretary finds is qualified for land benefits under this chapter, the Secretary shall issue to the Village Corporation a patent to the surface estate to 23,040 acres. The lands patented shall be the lands within the township or townships that enclose the Native village, and any additional lands selected by the Village Corporation from the surrounding townships withdrawn for the Native village by section 1615(a) of this title.

(c) Patent requirements; order of conveyance; vesting date; advisory and appellate functions of Regional Corporations on sales, leases, or other transactions prior to final commitment

Each patent issued pursuant to subsections (a) and (b) of this section shall be subject to the requirements of this subsection. Upon receipt of a patent or patents:

(1) the Village Corporation shall first convey to any Native or non-Native occupant, without consideration, title to the surface estate in the tract occupied as of December 18, 1971 (except that occupancy of tracts located in the Pribilof Islands shall be determined as of the date of initial conveyance of such tracts to the appropriate Village Corporation) as a primary place of residence, or as a primary place of business, or as a subsistence campsite, or as headquarters for reindeer husbandry;

(2) the Village Corporation shall then convey to the occupant, either without consideration or upon payment of an amount not in excess of fair market value, determined as of the date of initial occupancy and without regard to any improvements thereon, title to the surface estate in any tract occupied as of December 18, 1971 by a nonprofit organization;

(3) the Village Corporation shall then convey to any Municipal Corporation in the Native village or to the State in trust for any Municipal Corporation established in the Native village in the

future, title to the remaining surface estate of the improved land on which the Native village is located and as much additional land as is necessary for community expansion, and appropriate rights-of-way for public use, and other foreseeable community needs: *Provided*, That the amount of lands to be transferred to the Municipal Corporation or in trust shall be no less than 1,280 acres unless the Village Corporation and the Municipal Corporation or the State in trust can agree in writing on an amount which is less than one thousand two hundred and eighty acres: *Provided further*, That any net revenues derived from the sale of surface resources harvested or extracted from lands reconveyed pursuant to this subsection shall be paid to the Village Corporation by the Municipal Corporation or the State in trust: *Provided, however*, That the word "sale", as used in the preceding sentence, shall not include the utilization of surface resources for governmental purposes by the Municipal Corporation or the State in trust, nor shall it include the issuance of free use permits or other authorization for such purposes;

(4) the Village Corporation shall convey to the Federal Government, State, or to the appropriate Municipal Corporation, title to the surface estate for airport sites, airway beacons, and other navigation aids as such existed on December 18, 1971, together with such additional acreage and/or easements as are necessary to provide related governmental services and to insure safe approaches to airport runways as such airport sites, runways, and other facilities existed as of December 18, 1971; and

(5) for a period of ten years after December 18, 1971, the Regional Corporation shall be afforded the opportunity to review and render advice to the Village Corporations on all land sales, leases or other transactions prior to any final commitment.

There is authorized to be appropriated such sums as may be necessary for the purpose of providing technical assistance to Village Corporations established pursuant to this chapter in order that they may fulfill the reconveyance requirements of this subsection. The Secretary may make funds available as grants to ANCSA or nonprofit corporations that maintain in-house land planning and management capabilities.

(d) Rule of approximation with respect to acreage limitations

(1) The Secretary may apply the rule of approximation with respect to the acreage limitations contained in this section.

(2) For purposes of applying the rule of approximation under this section, the largest legal subdivision that may be conveyed in excess of the applicable acreage limitation specified in subsection (a) of this section shall be—

Bureau of Land Management

ANCSA 14(c) Map of Boundary and Cadastral Survey Status for AHTNA Communities

7/08/10

Village Corporations for the following communities have submitted ANCSA 14(c) Maps of Boundaries and the BLM has completed the 14(c) survey obligation:

Copper Center - except 14(c)(4)

Village Corporations for the following communities have not submitted a Map of Boundaries to date:

Cantwell
Chistochina
Chitina
Copper Center - 14(c)(4)
Gakona
Gulkana
Mentasta Lake
Tazlina

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Bureau of Land Management

ANCSA 14(c) Map of Boundary and Cadastral Survey Status for Aleut Region Communities

10/05/10

Village Corporations for the following communities have submitted ANCSA 14(c) Maps of Boundaries and the BLM has completed its 14(c) survey obligation:

St. George
Nelson Lagoon
False Pass
Unalaska
Atka

Village Corporations for the following communities have submitted ANCSA 14(c) Maps of Boundaries and the BLM is in the process of completing its 14(c) survey obligation:

None

Village Corporations for the following communities have not submitted a Map of Boundaries to date:

St. Paul
Sand Point
Unga
King Cove
Belkofski
Akutan
Pauloff Harbor
Nikolski

Bureau of Land Management

ANCSA 14(c) Map of Boundary and Cadastral Survey Status for Arctic Slope Communities

10/05/10

Village Corporations for the following communities have submitted ANCSA 14(c) Maps of Boundaries and the BLM has completed its 14(c) survey obligation:

Kaktovik

Village Corporations for the following communities have submitted ANCSA 14(c) Maps of Boundaries and the BLM is in the process of completing its 14(c) survey obligation:

none

Village Corporations for the following communities have not submitted a Map of Boundaries to date:

Anaktuvuk Pass
Atkasook
Barrow
Nuiqsut
Point Hope
Point Lay
Wainwright

Bureau of Land Management

ANCSA 14(c) Map of Boundary and Cadastral Survey Status for Bristol Bay Communities

10/05/10

Village Corporations for the following communities have submitted ANCSA 14(c) Maps of Boundaries and the BLM has completed its 14(c) survey obligation:

Ugashik	Pedro Bay
Ekwok	Port Heiden
Kokhanok	Newhalen
New Stuyahok	Lewis Point
Dillingham	Igushik
Ekuk	Ivanof Bay
Perryville	South Naknek
Egegik	Clarks Point
Portage Creek	Chignik Lagoon- 14(c)(1)&(2)
Pilot Point	Chignik Lake
Iliamna	Chignik Lagoon - 14(c)(3)
Aleknagik	Manokotak
Nondalton	Levelock
Koliganek	Togiak
Twin Hills	Chignik

Village Corporations for the following communities have submitted ANCSA 14(c) Maps of Boundaries and the BLM is in the process of completing its 14(c) survey obligation:

Naknek	- surveyed 2005, plat sent to Corp for review and signature on 09-30-09
Igiugig	- future survey

Village Corporations for the following communities have not submitted a Map of Boundaries to date:

none

Bureau of Land Management

ANCSA 14(c) Map of Boundary and Cadastral Survey Status for Bering Straits Communities

10/05/10

Village Corporations for the following communities have submitted ANCSA 14(c) Maps of Boundaries and the BLM has completed its 14(c) survey obligation:

Shishmaref - only the 59 ANCSA 14(c)(1)'s by airport
Solomon
Unalakleet
Wales
Council
Stebbins
Nome

Village Corporations for the following communities have submitted ANCSA 14(c) Maps of Boundaries and the BLM is in the process of completing its 14(c) survey obligation:

Shaktoolik - future survey

Village Corporations for the following communities have not submitted a Map of Boundaries to date:

Brevig Mission
Diomede
Golovin
King Island
Koyuk
Marys Igloo
White Mountain
St. Michael
Teller

Bureau of Land Management

ANCSA 14(c) Map of Boundary and Cadastral Survey Status for Calista Communities

10/05/10

Village Corporations for the following communities have submitted ANCSA 14(c) Maps of Boundaries and the BLM has completed the 14(c) survey obligation:

Aniak	Alakanuk
Pitkas Point	Pilot Station
Chuathbaluk	Lower Kalskag
Georgetown	Bethel

Mountain Village - all (c)(1),(2) and partial (3)
St. Marys - all 14(c)(1), (2) & (4) claims
All Kuskokwim Corp. (TKC) Villages (Aniak, Crooked Creek, Chuathbaluk, Georgetown, Upper and Lower Kalskag, Napaimute, Red Devil, Sleetmute and Stony River) - all 14(c)(1) and (2) claims within each community
Mekoryuk

Village Corporations for the following communities have submitted ANCSA 14(c) Maps of Boundaries and the BLM is in the process of completing the 14(c) survey obligation:

all TKC communities - all remote 14(c)(1) & (2) claims
Chefornak - future survey
Napaimute - future survey
Toksook Bay - future survey

Village Corporations for the following communities have <u>not</u> submitted a Map of Boundaries to date:

Akiachak	Akiak	Andreafsky
Atmautluak	Eek	Bill Moores Slough
Chevak	Chuloonawik	Umkumiute
Emmonak	Goodnews Bay	Hamilton
Hooper Bay	Kasigluk	Kipnuk
Kongiganek	Kotlik	Kwethluk
Kwigillingok	Lime Village	Marshall
Napakiak	Napaskiak	Newtok
Nightmute	Nunapitchuk	Ohogamuit
Oscarville	Paimiut	Platinum
Quinhagak	Russian Mission	Scammon Bay
Sheldon Point	Tuluksak	Tuntutuliak
Tununak		

Mountain Village - remaining 14(c)(3)

St. Marys - 14(c)(3)

TKC Villages (Crooked Creek, Upper Kalskag, Red Devil, Sleetmute and Stony River) - 14(c)(3) and (4) claims

Bureau of Land Management

ANCSA 14(c) Map of Boundary and Cadastral Survey Status for Chugach Communities

10/05/10

Village Corporations for the following communities have submitted ANCSA 14(c) Maps of Boundaries and the BLM has completed its 14(c) survey obligation:

Chenega
Tatitlek
Cordova

Village Corporations for the following communities have submitted ANCSA 14(c) Maps of Boundaries and the BLM is in the process of completing its 14(c) survey obligation:

None

Village Corporations for the following communities have not submitted a Map of Boundaries to date:

Nanwalek
Port Graham

Bureau of Land Management

ANCSA 14(c) Map of Boundary and Cadastral Survey Status for Cook Inlet Communities

10/05/10

Village Corporations for the following communities have submitted ANCSA 14(c) Maps of Boundaries and the BLM has completed its 14(c) survey obligation:

Eklutna
Salamatof
Seldovia
Ninilchik

Village Corporations for the following communities have submitted ANCSA 14(c) Maps of Boundaries and the BLM is in the process of completing its 14(c) survey obligation:

Tyonek - 14(c)(3) only - awaiting submission of remaining claims

Village Corporations for the following communities have not submitted a Map of Boundaries to date:

Chickaloon
Knik
Tyonek - 14(c)(1),(2) and (4) claims

Bureau of Land Management

ANCSA 14(c) Map of Boundary and Cadastral Survey Status for Doyon Region Communities

10/05/10

Village Corporations for the following communities have submitted ANCSA 14(c) Maps of Boundaries and the BLM has completed its 14(c) survey obligation:

Evansville	Galena
McGrath	Ruby
Telida	Eagle - 14(c)(1) only
Kaltag	Takotna
Nulato	Koyukuk
Huslia	Holy Cross
Stevens Village	Circle
Alatna/Allakeket	Hughes
Dot Lake	Manley Hot Springs
Tanacross	Nikolai

Village Corporations for the following communities have submitted ANCSA 14(c) Maps of Boundaries and the BLM is in the process of completing its 14(c) survey obligation:

Ft. Yukon - future survey
Nenana - survey in 2010

Village Corporations for the following communities have not submitted a Map of Boundaries to date:

Anvik	Beaver	Birch Creek
Chalkyitsik	Grayling	Healy Lake
Minto	Northway	Rampart
Shageluk	Tanana	Eagle - 14(2),(3)&(4)

Bureau of Land Management

ANCSA 14(c) Map of Boundary and Cadastral Survey Status for Koniag Communities

10/05/10

Village Corporations for the following communities have submitted ANCSA 14(c) Maps of Boundaries and the BLM has completed its 14(c) survey obligation:

Afognak Joint Venture (Anton Larson Bay,Ayakulik, Bell Flats, Litnik, Port William, Uganik)
Larsen Bay
Ouzinkie
Woody Island
Akhiok/Kaguyak
Old Harbor
Uyak
Karluk
Tonki Cape Land Company (representing Old Harbor Native Corporation and Akhiok Kaguyak Inc.'s land interests on Afognak Island)
Afognak Native Corporation

Village Corporations for the following communities have submitted ANCSA 14(c) Maps of Boundaries and the BLM is in the process of completing its 14(c) survey obligation:

None

Village Corporations for the following communities have not submitted a Map of Boundaries to date:

None

Bureau of Land Management

ANCSA 14(c) Map of Boundary and Cadastral Survey Status for the NANA Region Communities

10/05/10

Village Corporations for the following communities have submitted ANCSA 14(c) Maps of Boundaries and the BLM has completed its 14(c) survey obligation:

Deering
Kobuk
Noorvik
Shungnak

Village Corporations for the following communities have submitted ANCSA 14(c) Maps of Boundaries and the BLM is in the process of completing its 14(c) survey obligation:

Kotzebue - future survey

Village Corporations for the following communities have not submitted a Map of Boundaries to date:

Ambler
Buckland
Kiana
Kivalina
Noatak
Selawik

Bureau of Land Management

ANCSA 14(c) Map of Boundary and Cadastral Survey Status for Sealaska Region Communities

10/05/10

Village Corporations for the following communities have submitted ANCSA 14(c) Maps of Boundaries and the BLM has completed its 14(c) survey obligation:

Craig
Saxman - ANCSA 14(c)(1), (2) and (4)
Kasaan
Angoon
Hoonah

Village Corporations for the following communities have submitted ANCSA 14(c) Maps of Boundaries and the BLM is in the process of completing its 14(c) survey obligation:

none

Village Corporations for the following communities have not submitted a Map of Boundaries to date:

Hydaburg
Kake
Klawock
Klukwan
Saxman - ANCSA 14(c)(3) only
Yakutat

Surface-Subsurface Dichotomy Program Materials Index

ANCSA §7 (excerpt)

ANCSA § 14 (excerpt)

30 U.S.C. § 22

30 U.S.C. § 181

30 U.S.C. §§ 601, 611

Chugach Natives, Inc. v. Doyon, Ltd., 588 F.2d 723 (9th Cir. 1979)

Leisnoi, Inc. v. Stratman, 154 F.3d 1062 (9th Cir. 1998)

Koniag, Inc. v. Koncor Forest Resource, 39 F.3d 991 (9th Cir. 1994)

Section 7(i) Settlement Agreement (excerpt)

Patents

Title policy excerpts

Nondevelopment covenant

February 12, 1929 (45 Stat. 1164), as amended [section 161a of Title 25, Indians], and the first section of the Act of June 24, 1938 (52 Stat. 1037) [section 162a of Title 25], the Alaska Native Fund shall, pending distributions under section 6(c) of the Settlement Act [subsec. (c) of this section] be considered to consist of funds held in trust by the Government of the United States for the benefit of Indian tribes: *Provided*, That nothing in this section shall be construed to create or terminate any trust relationship between the United States and any corporation or individual entitled to receive benefits under the Settlement Act [this chapter]."

§ 1606. Regional Corporations

(a) Division of Alaska into twelve geographic regions; common heritage and common interest of region; area of region commensurate with operations of Native association; boundary disputes, arbitration

For purposes of this chapter, the State of Alaska shall be divided by the Secretary within one year after December 18, 1971, into twelve geographic regions, with each region composed as far as practicable of Natives having a common heritage and sharing common interests. In the absence of good cause shown to the contrary, such regions shall approximate the areas covered by the operations of the following existing Native associations:

(1) Arctic Slope Native Association (Barrow, Point Hope);

(2) Bering Straits Association (Seward Peninsula, Unalakleet, Saint Lawrence Island);

(3) Northwest Alaska Native Association (Kotzebue);

(4) Association of Village Council Presidents (southwest coast, all villages in the Bethel area, including all villages on the Lower Yukon River and the Lower Kuskokwim River);

(5) Tanana Chiefs' Conference (Koyukuk, Middle and Upper Yukon Rivers, Upper Kuskokwim, Tanana River);

(6) Cook Inlet Association (Kenai, Tyonek, Eklutna, Iliamna);

(7) Bristol Bay Native Association (Dillingham, Upper Alaska Peninsula);

(8) Aleut League (Aleutian Islands, Pribilof Islands and that part of the Alaska Peninsula which is in the Aleut League);

(9) Chugach Native Association (Cordova, Tatitlek, Port Graham, English Bay, Valdez, and Seward);

(10) Tlingit-Haida Central Council (southeastern Alaska, including Metlakatla);

(11) Kodiak Area Native Association (all villages on and around Kodiak Island); and

(12) Copper River Native Association (Copper Center, Glennallen, Chitina, Mentasta).

Any dispute over the boundaries of a region or regions shall be resolved by a board of arbitrators consisting of one person selected by each of the Native associations involved, and an additional one or two persons, whichever is needed to make an odd number of arbitrators, such additional person or persons to be selected by the arbitrators selected by the Native associations involved.

(b) Region mergers; limitation

The Secretary may, on request made within one year of December 18, 1971, by representative and responsible leaders of the Native associations listed in subsection (a) of this section, merge two or more of the twelve regions: *Provided*, That the twelve regions may not be reduced to less than seven, and there may be no fewer than seven Regional Corporations.

(c) Establishment of thirteenth region for nonresident Natives; majority vote; Regional Corporation for thirteenth region

If a majority of all eligible Natives eighteen years of age or older who are not permanent residents of Alaska elect, pursuant to section 1604(c) of this title, to be enrolled in a thirteenth region for Natives who are non-residents of Alaska, the Secretary shall establish such a region for the benefit of the Natives who elected to be enrolled therein, and they may establish a Regional Corporation pursuant to this chapter.

(d) Incorporation; business for profit; eligibility for benefits; provisions in articles for carrying out chapter

Five incorporators within each region, named by the Native association in the region, shall incorporate under the laws of Alaska a Regional Corporation to conduct business for profit, which shall be eligible for the benefits of this chapter so long as it is organized and functions in accordance with this chapter. The articles of incorporation shall include provisions necessary to carry out the terms of this chapter.

(e) Original articles and bylaws: approval by Secretary prior to filing, submission for approval; amendments to articles: approval by Secretary; withholding approval in event of creation of inequities among Native individuals or groups

The original articles of incorporation and bylaws shall be approved by the Secretary before they are filed, and they shall be submitted for approval within eighteen months after December 18, 1971. The articles of incorporation may not be amended during the Regional Corporation's first five years without the approval of the Secretary. The Secretary may withhold approval under this section if in his judgment inequities among Native individuals or groups of Native individuals would be created.

(f) Board of directors; management; stockholders; provisions in articles or bylaws for number, term, and method of election

The management of the Regional Corporation shall be vested in a board of directors, all of whom, with the exception of the initial board, shall be stockholders over the age of eighteen. The number, terms, and method of election of members of the board of directors shall be fixed in the articles of incorporation or bylaws of the Regional Corporation.

(g) Issuance of stock

(1) Settlement Common Stock

(A) The Regional Corporation shall be authorized to issue such number of shares of Settlement Common Stock (divided into such classes as may be specified in the articles of incorporation to reflect the provisions of this chapter) as may be needed to issue one hundred shares of stock to each Native enrolled in

services or other rights or privileges set out for the benefit of Alaska Natives and Native Americans. Proceeds from the sale of Settlement Common Stock shall not be excluded in determining eligibility for any needs-based programs that may be provided by Federal, State or local agencies.

(i) Certain natural resource revenues; distribution among twelve Regional Corporations; computation of amount; subsection inapplicable to thirteenth Regional Corporation; exclusion from revenues

(1)(A) Except as provided by subparagraph (B), 70 percent of all revenues received by each Regional Corporation from the timber resources and subsurface estate patented to it pursuant to this chapter shall be divided annually by the Regional Corporation among all twelve Regional Corporations organized pursuant to this section according to the number of Natives enrolled in each region pursuant to section 1604 of this title. The provisions of this subsection shall not apply to the thirteenth Regional Corporation if organized pursuant to subsection (c) hereof.

(B) In the case of the sale, disposition, or other use of common varieties of sand, gravel, stone, pumice, peat, clay, or cinder resources made during a fiscal year ending after October 31, 1998, the revenues received by a Regional Corporation shall not be subject to division under subparagraph (A). Nothing in this subparagraph is intended to or shall be construed to alter the ownership of such sand, gravel, stone, pumice, peat, clay, or cinder resources.

(2) For purposes of this subsection, the term ''revenues'' does not include any benefit received or realized for the use of losses incurred or credits earned by a Regional Corporation.

(j) Corporate funds and other net income, distribution among: stockholders of Regional Corporations; Village Corporations and nonresident stockholders; and stockholders of thirteenth Regional Corporation

During the five years following December 18, 1971, not less than 10% of all corporate funds received by each of the twelve Regional Corporations under section 1605 of this title (Alaska Native Fund), and under subsection (i) of this section (revenues from the timber resources and subsurface estate patented to it pursuant to this chapter), and all other net income, shall be distributed among the stockholders of the twelve Regional Corporations. Not less than 45% of funds from such sources during the first five-year period, and 50% thereafter, shall be distributed among the Village Corporations in the region and the class of stockholders who are not residents of those villages, as provided in subsection [2] to it. In the case of the thirteenth Regional Corporation, if organized, not less than 50% of all corporate funds received under section 1605 of this title shall be distributed to the stockholders.

(k) Distributions among Village Corporations; computation of amount

Funds distributed among the Village Corporations shall be divided among them according to the ratio that the number of shares of stock registered on the books of the Regional Corporation in the names of residents of each village bears to the number of shares of stock registered in the names of residents in all villages.

(*l*) Distributions to Village Corporations; village plan: withholding funds until submission of plan for use of money; joint ventures and joint financing of projects; disagreements, arbitration of issues as provided in articles of Regional Corporation

Funds distributed to a Village Corporation may be withheld until the village has submitted a plan for the use of the money that is satisfactory to the Regional Corporation. The Regional Corporation may require a village plan to provide for joint ventures with other villages, and for joint financing of projects undertaken by the Regional Corporation that will benefit the region generally. In the event of disagreement over the provisions of the plan, the issues in disagreement shall be submitted to arbitration, as shall be provided for in the articles of incorporation of the Regional Corporation.

(m) Distributions among Village Corporations in a region; computation of dividends for nonresidents of village; financing regional projects with equitably withheld dividends and Village Corporation funds

When funds are distributed among Village Corporations in a region, an amount computed as follows shall be distributed as dividends to the class of stockholders who are not residents of those villages: The amount distributed as dividends shall bear the same ratio to the amount distributed among the Village Corporations that the number of shares of stock registered on the books of the Regional Corporation in the names of nonresidents of villages bears to the number of shares of stock registered in the names of village residents: *Provided*, That an equitable portion of the amount distributed as dividends may be withheld and combined with Village Corporation funds to finance projects that will benefit the region generally.

(n) Projects for Village Corporations

The Regional Corporation may undertake on behalf of one or more of the Village Corporations in the region any project authorized and financed by them.

(*o*) Annual audit; place; availability of papers, things, or property to auditors to facilitate audits; verification of transactions; report to stockholders

The accounts of the Regional Corporation shall be audited annually in accordance with generally accepted auditing standards by independent certified public accountants or independent licensed public accountants, certified or licensed by a regulatory authority of the State or the United States. The audits shall be conducted at the place or places where the accounts of the Regional Corporation are normally kept. All books, accounts, financial records, reports, files, and other papers, things, or property belonging to or in use by the Regional Corporation and necessary to facilitate the audits shall be available to the person or persons conducting

[2] So in original.

and at intervals of approximately two miles on straight lines. No ground survey or monumentation will be required along meanderable water boundaries. He shall survey within the areas selected or designated land occupied as a primary place of residence, as a primary place of business, and for other purposes, and any other land to be patented under this chapter.

(b) Withdrawals, selections, and conveyances pursuant to chapter: current plats of surveys or protraction diagrams; conformity to Land Survey System

All withdrawals, selections, and conveyances pursuant to this chapter shall be as shown on current plats of survey or protraction diagrams of the Bureau of Land Management, or protraction diagrams of the Bureau of the State where protraction diagrams of the Bureau of Land Management are not available, and shall conform as nearly as practicable to the United States Land Survey System.

(Pub. L. 92–203, § 13, Dec. 18, 1971, 85 Stat. 702.)

§ 1613. Conveyance of lands

(a) Native villages listed in section 1610 and qualified for land benefits; patents for surface estates; issuance; acreage

Immediately after selection by a Village Corporation for a Native village listed in section 1610 of this title which the Secretary finds is qualified for land benefits under this chapter, the Secretary shall issue to the Village Corporation a patent to the surface estate in the number of acres shown in the following table:

If the village had on the 1970 census enumeration date a Native population between—	It shall be entitled to a patent to an area of public lands equal to—
25 and 99	69,120 acres.
100 and 199	92,160 acres.
200 and 399	115,200 acres.
400 and 599	138,240 acres.
600 or more	161,280 acres.

The lands patented shall be those selected by the Village Corporation pursuant to section 1611(a) of this title. In addition, the Secretary shall issue to the Village Corporation a patent to the surface estate in the lands selected pursuant to section 1611(b) of this title.

(b) Native villages listed in section 1615 and qualified for land benefits; patents for surface estates; issuance; acreage

Immediately after selection by any Village Corporation for a Native village listed in section 1615 of this title which the Secretary finds is qualified for land benefits under this chapter, the Secretary shall issue to the Village Corporation a patent to the surface estate to 23,040 acres. The lands patented shall be the lands within the township or townships that enclose the Native village, and any additional lands selected by the Village Corporation from the surrounding townships withdrawn for the Native village by section 1615(a) of this title.

(c) Patent requirements; order of conveyance; vesting date; advisory and appellate functions of Regional Corporations on sales, leases, or other transactions prior to final commitment

Each patent issued pursuant to subsections (a) and (b) of this section shall be subject to the requirements of this subsection. Upon receipt of a patent or patents:

(1) the Village Corporation shall first convey to any Native or non-Native occupant, without consideration, title to the surface estate in the tract occupied as of December 18, 1971 (except that occupancy of tracts located in the Pribilof Islands shall be determined as of the date of initial conveyance of such tracts to the appropriate Village Corporation) as a primary place of residence, or as a primary place of business, or as a subsistence campsite, or as headquarters for reindeer husbandry;

(2) the Village Corporation shall then convey to the occupant, either without consideration or upon payment of an amount not in excess of fair market value, determined as of the date of initial occupancy and without regard to any improvements thereon, title to the surface estate in any tract occupied as of December 18, 1971 by a nonprofit organization;

(3) the Village Corporation shall then convey to any Municipal Corporation in the Native village or to the State in trust for any Municipal Corporation established in the Native village in the future, title to the remaining surface estate of the improved land on which the Native village is located and as much additional land as is necessary for community expansion, and appropriate rights-of-way for public use, and other foreseeable community needs: *Provided*, That the amount of lands to be transferred to the Municipal Corporation or in trust shall be no less than 1,280 acres unless the Village Corporation and the Municipal Corporation or the State in trust can agree in writing on an amount which is less than one thousand two hundred and eighty acres: *Provided further*, That any net revenues derived from the sale of surface resources harvested or extracted from lands reconveyed pursuant to this subsection shall be paid to the Village Corporation by the Municipal Corporation or the State in trust: *Provided, however*, That the word "sale", as used in the preceding sentence, shall not include the utilization of surface resources for governmental purposes by the Municipal Corporation or the State in trust, nor shall it include the issuance of free use permits or other authorization for such purposes;

(4) the Village Corporation shall convey to the Federal Government, State, or to the appropriate Municipal Corporation, title to the surface estate for airport sites, airway beacons, and other navigation aids as such existed on December 18, 1971, together with such additional acreage and/or easements as are necessary to provide related governmental services and to insure safe approaches to airport runways as such airport sites, runways, and other facilities existed as of December 18, 1971; and

(5) for a period of ten years after December 18, 1971, the Regional Corporation shall be af-

forded the opportunity to review and render advice to the Village Corporations on all land sales, leases or other transactions prior to any final commitment.

There is authorized to be appropriated such sums as may be necessary for the purpose of providing technical assistance to Village Corporations established pursuant to this chapter in order that they may fulfill the reconveyance requirements of this subsection. The Secretary may make funds available as grants to ANCSA or nonprofit corporations that maintain in-house land planning and management capabilities.

(d) Rule of approximation with respect to acreage limitations

(1) The Secretary may apply the rule of approximation with respect to the acreage limitations contained in this section.

(2) For purposes of applying the rule of approximation under this section, the largest legal subdivision that may be conveyed in excess of the applicable acreage limitation specified in subsection (a) of this section shall be—

(A) in the case of land managed by the Bureau of Land Management that is not within a conservation system unit, the next whole section;

(B) in the case of land managed by an agency other than the Bureau of Land Management that is not within a conservation system unit, the next quarter-section and only with concurrence of the agency; or

(C) in the case of land within a conservation system unit, a quarter of a quarter section, and if the land is managed by an agency other than the Bureau of Land Management, only with the concurrence of that agency.

(3)(A) If the Secretary determines pursuant to paragraph (2) that an entitlement of a Village Corporation (other than a Village Corporation listed in section 1615(a) of this title) or a Regional Corporation may be fulfilled by conveying a specific tract of surveyed or unsurveyed land, the Secretary and the affected Village or Regional Corporation may enter into an agreement providing that all land entitlements under this chapter shall be deemed satisfied by conveyance of the specifically identified and agreed upon tract of land.

(B) An agreement entered into under subparagraph (A) shall be—

(i) in writing;

(ii) executed by the Secretary and the Village or Regional Corporation; and

(iii) authorized by a corporate resolution adopted by the affected Village or Regional Corporation.

(C) After execution of an agreement under subparagraph (A) and conveyance of the agreed upon tract to the affected Village or Regional Corporation—

(i) the Secretary shall not make any further adjustments to calculations relating to acreage entitlements of the Village or Regional Corporation; and

(ii) the Village or Regional Corporation shall not be entitled to any further conveyances under this chapter.

(D) A Village or Regional Corporation shall not be eligible to receive land under subparagraph (A) if the Village or Regional Corporation has received the full land entitlement of the Village or Regional Corporation through—

(i) an actual conveyance of land; or

(ii) a previous agreement.

(E) If the calculations of the Secretary indicate that the final survey boundaries for any Village or Regional Corporation entitlement for which an agreement has not been entered into under this paragraph include acreage in a quantity that exceeds the statutory entitlement of the corporation by 1/10 of 1 percent or less, but not more than the applicable acreage limitation specified in paragraph (2)—

(i) the entitlement shall be considered satisfied by the conveyance of the surveyed area; and

(ii) the Secretary shall not change the survey for the sole purpose of an acreage adjustment.

(F) This paragraph does not limit or otherwise affect the ability of a Village or Regional Corporation to enter into land exchanges with the United States.

(e) Surface and/or subsurface estates to Regional Corporations

Immediately after selection by a Regional Corporation, the Secretary shall convey to the Regional Corporation title to the surface and/or the subsurface estates, as is appropriate, in the lands selected.

(f) Patents to Village Corporations for surface estates and to Regional Corporations for subsurface estates; excepted lands; mineral rights, consent of Village Corporations

When the Secretary issues a patent to a Village Corporation for the surface estate in lands pursuant to subsections (a) and (b) of this section, he shall issue to the Regional Corporation for the region in which the lands are located a patent to the subsurface estate in such lands, except lands located in the National Wildlife Refuge System and lands withdrawn or reserved for national defense purposes, including Naval Petroleum Reserve Numbered 4, for which in lieu rights are provided for in section 1611(a)(1) of this title: *Provided*, That the right to explore, develop, or remove minerals from the subsurface estate in the lands within the boundaries of any Native village shall be subject to the consent of the Village Corporation.

(g) Valid existing rights preserved; saving provisions in patents; patentee rights; administration; proportionate rights of patentee

All conveyances made pursuant to this chapter shall be subject to valid existing rights. Where, prior to patent of any land or minerals under this chapter, a lease, contract, permit, right-of-way, or easement (including a lease issued under section 6(g) of the Alaska Statehood Act) has been issued for the surface or minerals covered under such patent, the patent shall contain provisions making it subject to the lease, contract, permit, right-of-way, or easement, and the right of the lessee, contractee, permittee, or grantee to the complete enjoyment of all rights,

§ 21a. National mining and minerals policy; "minerals" defined; execution of policy under other authorized programs

The Congress declares that it is the continuing policy of the Federal Government in the national interest to foster and encourage private enterprise in (1) the development of economically sound and stable domestic mining, minerals, metal and mineral reclamation industries, (2) the orderly and economic development of domestic mineral resources, reserves, and reclamation of metals and minerals to help assure satisfaction of industrial, security and environmental needs, (3) mining, mineral, and metallurgical research, including the use and recycling of scrap to promote the wise and efficient use of our natural and reclaimable mineral resources, and (4) the study and development of methods for the disposal, control, and reclamation of mineral waste products, and the reclamation of mined land, so as to lessen any adverse impact of mineral extraction and processing upon the physical environment that may result from mining or mineral activities.

For the purpose of this section "minerals" shall include all minerals and mineral fuels including oil, gas, coal, oil shale and uranium.

It shall be the responsibility of the Secretary of the Interior to carry out this policy when exercising his authority under such programs as may be authorized by law other than this section.

(Pub. L. 91–631, title I, § 101, formerly § 2, Dec. 31, 1970, 84 Stat. 1876; Pub. L. 104–66, title I, § 1081(b), Dec. 21, 1995, 109 Stat. 721; renumbered title I, § 101, Pub. L. 104–325, § 2(1), (2), Oct. 19, 1996, 110 Stat. 3994.)

AMENDMENTS

1995—Pub. L. 104–66 in last par. struck out at end "For this purpose the Secretary of the Interior shall include in his annual report to the Congress a report on the state of the domestic mining, minerals, and mineral reclamation industries, including a statement of the trend in utilization and depletion of these resources, together with such recommendations for legislative programs as may be necessary to implement the policy of this section."

SHORT TITLE

Section 1 of Pub. L. 91–631 provided: "That this Act [enacting this section] may be cited as the 'Mining and Minerals Policy Act of 1970'."

§ 22. Lands open to purchase by citizens

Except as otherwise provided, all valuable mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, shall be free and open to exploration and purchase, and the lands in which they are found to occupation and purchase, by citizens of the United States and those who have declared their intention to become such, under regulations prescribed by law, and according to the local customs or rules of miners in the several mining districts, so far as the same are applicable and not inconsistent with the laws of the United States.

(R.S. § 2319.)

CODIFICATION

R.S. § 2319 derived from act May 10, 1872, ch. 152, § 1, 17 Stat. 91.

Words "Except as otherwise provided," were editorially supplied on authority of act Feb. 25, 1920, ch. 85, 41 Stat. 437, popularly known as the Mineral Lands Leasing Act, which is classified to chapter 3A (§ 181 et seq.) of this title.

SHORT TITLE

Sections 22 to 24, 26 to 28, 29, 30, 33 to 35, 37, 39 to 43, and 47 of this title are based on sections of the Revised Statutes which are derived from act May 10, 1872, ch. 152, 17 Stat. 91, popularly known as the "General Mining Act of 1872".

§ 23. Length of claims on veins or lodes

Mining claims upon veins or lodes of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposits, located prior to May 10, 1872, shall be governed as to length along the vein or lode by the customs, regulations, and laws in force at the date of their location. A mining claim located after the 10th day of May 1872, whether located by one or more persons, may equal, but shall not exceed, one thousand five hundred feet in length along the vein or lode; but no location of a mining claim shall be made until the discovery of the vein or lode within the limits of the claim located. No claim shall extend more than three hundred feet on each side of the middle of the vein at the surface, nor shall any claim be limited by any mining regulation to less than twenty-five feet on each side of the middle of the vein at the surface, except where adverse rights existing on the 10th day of May 1872 render such limitation necessary. The end lines of each claim shall be parallel to each other.

(R.S. § 2320.)

CODIFICATION

R.S. § 2320 derived from act May 10, 1872, ch. 152, § 2, 17 Stat. 91.

§ 24. Proof of citizenship

Proof of citizenship, under sections 21, 22 to 24, 26 to 28, 29, 30, 33 to 48, 50 to 52, 71 to 76 of this title and section 661 of title 43, may consist, in the case of an individual, of his own affidavit thereof; in the case of an association of persons unincorporated, of the affidavit of their authorized agent, made on his own knowledge, or upon information and belief; and in the case of a corporation organized under the laws of the United States, or of any State or Territory thereof, by the filing of a certified copy of their charter or certificate of incorporation.

(R.S. § 2321.)

REFERENCES IN TEXT

Sections 21, 22 to 24, 26 to 28, 29, 30, 33 to 48, 50 to 52, 71 to 76 of this title and section 661 of title 43, referred to in text, were in the original "this chapter", meaning chapter 6 of title 32 of the Revised Statutes, consisting of R.S. §§ 2318 to 2352.

CODIFICATION

R.S. § 2321 derived from act May 10, 1872, ch. 152, § 7, 17 Stat. 94.

§ 25. Affidavit of citizenship

Applicants for mineral patents, if residing beyond the limits of the district wherein the claim

SUBCHAPTER I—GENERAL PROVISIONS

§ 181. Lands subject to disposition; persons entitled to benefits; reciprocal privileges; helium rights reserved

Deposits of coal, phosphate, sodium, potassium, oil, oil shale, gilsonite (including all vein-type solid hydrocarbons), or gas, and lands containing such deposits owned by the United States, including those in national forests, but excluding lands acquired under the Appalachian Forest Act, approved March 1, 1911 (36 Stat. 961), and those in incorporated cities, towns, and villages and in national parks and monuments, those acquired under other Acts subsequent to February 25, 1920, and lands within the naval petroleum and oil-shale reserves, except as hereinafter provided, shall be subject to disposition in the form and manner provided by this chapter to citizens of the United States, or to associations of such citizens, or to any corporation organized under the laws of the United States, or of any State or Territory thereof, or in the case of coal, oil, oil shale, or gas, to municipalities. Citizens of another country, the laws, customs, or regulations of which deny similar or like privileges to citizens or corporations of this country, shall not by stock ownership, stock holding, or stock control, own any interest in any lease acquired under the provisions of this chapter.

The term ''oil'' shall embrace all nongaseous hydrocarbon substances other than those substances leasable as coal, oil shale, or gilsonite (including all vein-type solid hydrocarbons).

The term ''combined hydrocarbon lease'' shall refer to a lease issued in a special tar sand area pursuant to section 226 of this title after November 16, 1981.

The term ''special tar sand area'' means (1) an area designated by the Secretary of the Interior's orders of November 20, 1980 (45 FR 76800–76801) and January 21, 1981 (46 FR 6077–6078) as containing substantial deposits of tar sand.

The United States reserves the ownership of and the right to extract helium from all gas produced from lands leased or otherwise granted under the provisions of this chapter, under such rules and regulations as shall be prescribed by the Secretary of the Interior: *Provided further*, That in the extraction of helium from gas produced from such lands it shall be so extracted as

to cause no substantial delay in the delivery of gas produced from the well to the purchaser thereof.

(Feb. 25, 1920, ch. 85, § 1, 41 Stat. 437; Feb. 7, 1927, ch. 66, § 5, 44 Stat. 1058; Aug. 8, 1946, ch. 916, § 1, 60 Stat. 950; Pub. L. 86–705, § 7(a), Sept. 2, 1960, 74 Stat. 790; Pub. L. 97–78, § 1(1), (4), Nov. 16, 1981, 95 Stat. 1070.)

REFERENCES IN TEXT

The Appalachian Forest Act, referred to in the first undesignated paragraph, is act Mar. 1, 1911, ch. 186, 36 Stat. 961, as amended, also known as the Weeks Law, which is classified to sections 480, 500, 513 to 519, 521, 552 and 563 of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 552 of Title 16 and Tables.

AMENDMENTS

1981—Pub. L. 97–78, in first par., substituted "gilsonite (including all vein-type solid hydrocarbons)," for "native asphalt, solid and semisolid bitumen, and bituminous rock (including oil-impregnated rock or sands from which oil is recoverable only by special treatment after the deposit is mined or quarried)", and added, after first par. three paragraphs which defined "oil", "combined hydrocarbon lease", and "special tar sand area", respectively.

1960—Pub. L. 86–705 included deposits of native asphalt, solid and semisolid bitumen, and bituminous rock.

1946—Act Aug. 8, 1946, reenacted: existing par., less three provisos, as first sentence of first par., inserting "potassium" after "sodium", which was also included in the 1927 amendment, and substituting provision for disposition of deposits "in incorporated cities, towns, and villages, and in national parks and monuments, those acquired under other Acts subsequent to February 25, 1920, and lands within the naval petroleum and oil-shale reserves" for such disposition "in national parks, and in lands withdrawn or reserved for military or naval uses or purposes" and phrase "associations of such citizens" for "any association of such persons"; former third proviso as second sentence of first par.; former first proviso, as second par., inserting reservation of ownership provision and striking out "permitted" before "leased or otherwise granted"; and former second proviso as proviso in second par.

1927—Act Feb. 7, 1927, included deposits of potassium.

SHORT TITLE OF 2000 AMENDMENTS

Pub. L. 106–463, § 1, Nov. 7, 2000, 114 Stat. 2010, provided that: "This Act [amending section 184 of this title and enacting provisions set out as a note under section 184 of this title] may be cited as the 'Coal Market Competition Act of 2000'."

Pub. L. 106–393, title V, § 501, Oct. 30, 2000, 114 Stat. 1624, provided that: "This title [amending section 191 of this title and enacting provisions set out as a note under section 191 of this title] may be cited as the 'Mineral Revenue Payments Clarification Act of 2000'."

SHORT TITLE OF 1987 AMENDMENT

Pub. L. 100–203, title V, § 5101(a), Dec. 22, 1987, 101 Stat. 1330–256, provided that: "This subtitle [subtitle B (§§ 5101–5113) of Pub. L. 100–203, enacting sections 195 and 226–3 of this title, amending sections 187a, 187b, 188, 191, and 226 of this title and section 3148 of Title 16, Conservation, and enacting provisions set out as notes under this section and section 226 of this title] may be cited as the 'Federal Onshore Oil and Gas Leasing Reform Act of 1987'."

SHORT TITLE OF 1981 AMENDMENT

Pub. L. 97–78, Nov. 16, 1981, 95 Stat. 1070, which amended this section and sections 182, 184, 209, 226, 241, 351, and 352 of this title and enacted provisions set out as a note under this section, is popularly known as the "Combined Hydrocarbon Leasing Act of 1981".

SHORT TITLE OF 1976 AMENDMENT

Pub. L. 94–377, § 1(a), Aug. 4, 1976, 90 Stat. 1083, as amended by Pub. L. 95–554, § 8, Oct. 30, 1978, 92 Stat. 2075, provided that: "This Act [enacting sections 202a, 208–1, and 208–2 of this title, amending sections 184, 191, 201, 203, 207, 209, and 352 of this title, repealing sections 201–1 and 204 of this title, and enacting provisions set out as notes under sections 184, 201, 201–1, 203, and 204 of this title] may be cited as the 'Federal Coal Leasing Amendments Act of 1976'."

SHORT TITLE OF 1960 AMENDMENT

Section 1 of Pub. L. 86–705 provided: "That this Act [amending this section and sections 182, 184, 187a, 226, 226–1, 226–2, and 241 of this title, and enacted provisions set out as notes under sections 187a and 226 of this title] may be cited as the 'Mineral Leasing Act Revision of 1960'."

SHORT TITLE

Act Feb. 25, 1920, ch. 85, § 44, as added Dec. 22, 1987, Pub. L. 100–203, title V, § 5113, 101 Stat. 1330–263, provided that: "This Act [enacting this chapter] may be cited as the 'Mineral Leasing Act'."

This chapter is also popularly known as the "Mineral Leasing Act of 1920" and the "Mineral Lands Leasing Act".

SAVINGS PROVISION

Provisions of Federal Land Policy and Management Act of 1976, Pub. L. 94–579, Oct. 21, 1976, 90 Stat. 2743, not to be construed as permitting any person to place, or allow to be placed, spent oil shale, etc., on any Federal land other than land leased for the recovery of shale oil under the act of Feb. 25, 1920, section 181 et seq. of this title, see section 701(d) of Pub. L. 94–579, set out as a note under section 1701 of Title 43, Public Lands.

Section 15 of act Aug. 8, 1946, provided: "No repeal or amendment made by this Act [enacting sections 187a, 187b, 226c–226e, and 236b, amending this section and sections 184, 188, 193, 209, 225, 226, and 285, and repealing sections 223a, 226a, and 226b of this title] shall affect any right acquired under the law as it existed prior to such repeal or amendment, and such right shall be governed by the law in effect at the time of its acquisition; but any person holding a lease on the effective date of this Act [Aug. 8, 1946] may, by filing a statement to that effect, elect to have his lease governed by the applicable provisions of this Act instead of by the law in effect prior thereto."

CONSTRUCTION AND APPLICABILITY OF 1981 AMENDMENTS

Section 1(10), (11) of Pub. L. 97–78 provided that:

"(10) Nothing in this Act [see Short Title of 1981 Amendment note above] shall affect the taxable status of production from tar sand under the Crude Oil Windfall Profit Tax Act of 1980 (Public Law 96–223) [see Tables for classification], reduce the depletion allowance for production from tar sand, or otherwise affect the existing tax status applicable to such production.

"(11) No provision of this Act [see Short Title of 1981 Amendment note above] shall apply to national parks, national monuments, or other lands where mineral leasing is prohibited by law. The Secretary of the Interior shall apply the provisions of this Act to the Glen Canyon National Recreation Area, and to any other units of the national park system where mineral leasing is permitted, in accordance with any applicable minerals management plan if the Secretary finds that there will be no resulting significant adverse impacts on the administration of such area, or on other contiguous units of the national park system."

ADMISSION OF ALASKA AS STATE: SELECTION OF LANDS

Admission of Alaska into the Union was accomplished Jan. 3, 1959, on issuance of Proc. No. 3269, Jan.

finds that there is a failure to expend funds in accordance with the terms and conditions governing the Federal contribution for such approved projects, he shall notify the Commonwealth that further payments will not be made to the Commonwealth from appropriations under this chapter until he is satisfied that there will no longer be any such failure. Until he is so satisfied the Secretary of the Interior shall withhold the payment of any financial contributions to the Commonwealth.

(July 15, 1955, ch. 369, § 4, 69 Stat. 353.)

§ 575. Repealed. Pub. L. 105–362, title IX, § 901(i)(1), Nov. 10, 1998, 112 Stat. 3290

Section, acts July 15, 1955, ch. 369, § 5, 69 Stat. 353; Pub. L. 87–818, § 1(8), Oct. 15, 1962, 76 Stat. 935, related to annual reports to Congress by Secretary of the Interior on anthracite mine drainage and flood control program.

§ 576. Authorization of appropriations

There is hereby authorized to be appropriated such amounts as may be necessary to carry out the provisions of this chapter.

(July 15, 1955, ch. 369, § 5, formerly § 6, 69 Stat. 353; renumbered § 5, Pub. L. 105–362, title IX, § 901(i)(2), Nov. 10, 1998, 112 Stat. 3290.)

PRIOR PROVISIONS

A prior section 5 of act July 15, 1955, ch. 369, was classified to section 575 of this title, prior to repeal by Pub. L. 105–362, § 901(i)(1).

CHAPTER 15—SURFACE RESOURCES

SUBCHAPTER I—DISPOSAL OF MATERIALS ON PUBLIC LANDS

SUBCHAPTER II—MINING LOCATIONS

SUBCHAPTER I—DISPOSAL OF MATERIALS ON PUBLIC LANDS

§ 601. Rules and regulations governing disposal of materials; payment; removal without charge; lands excluded

The Secretary, under such rules and regulations as he may prescribe, may dispose of mineral materials (including but not limited to common varieties of the following: sand, stone, gravel, pumice, pumicite, cinders, and clay) and vegetative materials (including but not limited to yucca, manzanita, mesquite, cactus, and timber or other forest products) on public lands of the United States, including, for the purposes of this subchapter, land described in subchapter V of chapter 28 of title 43, if the disposal of such mineral or vegetative materials (1) is not otherwise expressly authorized by law, including, but not limited to, subchapter I of chapter 8A of title 43, and the United States mining laws, and (2) is not expressly prohibited by laws of the United States, and (3) would not be detrimental to the public interest. Such materials may be disposed of only in accordance with the provisions of this subchapter and upon the payment of adequate compensation therefor, to be determined by the Secretary: *Provided, however*, That, to the extent not otherwise authorized by law, the Secretary is authorized in his discretion to permit any Federal, State, or Territorial agency, unit or subdivision, including municipalities, or any association or corporation not organized for profit, to take and remove, without charge, materials and resources subject to this subchapter, for use other than for commercial or industrial purposes or resale. Where the lands have been withdrawn in aid of a function of a Federal department or agency other than the department headed by the Secretary or of a State, Territory, county, municipality, water district or other local governmental subdivision or agency, the Secretary may make disposals under this subchapter only with the consent of such other Federal department or agency or of such State, Territory, or local governmental unit. Nothing in this subchapter shall be construed to apply to lands in any national park, or national monument or to any Indian lands, or lands set aside or held for the use or benefit of Indians, including lands over which jurisdiction has been transferred to the Department of the Interior by Executive order for the use of Indians. As used in this subchapter, the word ''Secretary'' means the Secretary of the Interior except that it means the Secretary of Agriculture where the lands involved are administered by him for national forest purposes or for the purposes of title III of the Bankhead-Jones Farm Tenant Act [7 U.S.C. 1010 et seq.] or where withdrawn for the purpose of any other function of the Department of Agriculture.

(July 31, 1947, ch. 406, § 1, 61 Stat. 681; July 23, 1955, ch. 375, § 1, 69 Stat. 367.)

REFERENCES IN TEXT

Subchapter V (§ 1181a et seq.) of chapter 28 of title 43, referred to in text, was in the original a reference to the Acts of Aug. 28, 1937 (50 Stat. 874), and June 24, 1954 (68 Stat. 270), as amended. For complete classification of these Acts to the Code, see Tables.

Subchapter I (§ 315 et seq.) of chapter 8A of title 43, referred to in text, was in the original a reference to the Act of June 28, 1934 (48 Stat. 1269), as amended, known as the Taylor Grazing Act. For complete classification of this Act to the Code, see Short Title note set out under section 315 of Title 43 and Tables.

The United States mining laws, referred to in text, are classified generally to this title.

The Bankhead-Jones Farm Tenant Act, referred to in text, is act July 22, 1937, ch. 517, 50 Stat. 522, as amended. Title III of such Act is classified generally to subchapter III (§ 1010 et seq.) of chapter 33 of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1000 of Title 7 and Tables.

tain Alaska lands for educational purposes, covered disposition of proceeds or income derived from reserved lands, and set out the exclusion of certain lands, was classified to section 353 of Title 48, Territories and Insular Possessions, and was repealed by Pub. L. 85–508, § 6(k), July 7, 1958, 72 Stat. 343. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1955—Act July 23, 1955, provided for the disposal of moneys received by the Secretary of Agriculture, and for the disposal of revenues from the lands described in sections 1181a to 1181j of title 43.

1950—Act Aug. 31, 1950, provided for setting apart as separate and permanent funds in the Territorial Treasury moneys received from disposal of materials from school section lands in Alaska.

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Secretary or other appropriate officer or entity in Departments of Agriculture and the Interior under this subchapter to Federal Inspector of Office of Federal Inspector for Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 601 of this title.

ADMISSION OF ALASKA AS STATE

Admission of Alaska into the Union was accomplished Jan. 3, 1959, on issuance of Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, as required by sections 1 and 8(c) of Pub. L. 85–508, July 7, 1958, 72 Stat. 339, set out as notes preceding section 21 of Title 48, Territories and Insular Possessions.

§ 604. Disposal of sand, peat moss, etc., in Alaska; contracts

Subject to the provisions of this subchapter, the Secretary may dispose of sand, stone, gravel, and vegetative materials located below high-water mark of navigable waters of the Territory of Alaska. Any contract, unexecuted in whole or in part, for the disposal under this subchapter of materials from land, title to which is transferred to a future State upon its admission to the Union, and which is situated within its boundaries, may be terminated or adopted by such State.

(July 31, 1947, ch. 406, § 4, as added Aug. 31, 1950, ch. 830, 64 Stat. 572.)

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Secretary or other appropriate officer or entity in Departments of Agriculture and the Interior under this subchapter to Federal Inspector of Office of Federal Inspector for Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 601 of this title.

ADMISSION OF ALASKA AS STATE

Admission of Alaska into the Union was accomplished Jan. 3, 1959, on issuance of Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, as required by sections 1 and 8(c) of Pub. L. 85–508, July 7, 1958, 72 Stat. 339, set out as notes preceding section 21 of Title 48, Territories and Insular Possessions.

SUBCHAPTER II—MINING LOCATIONS

§ 611. Common varieties of sand, stone, gravel, pumice, pumicite, or cinders, and petrified wood

No deposit of common varieties of sand, stone, gravel, pumice, pumicite, or cinders and no deposit of petrified wood shall be deemed a valuable mineral deposit within the meaning of the mining laws of the United States so as to give effective validity to any mining claim hereafter located under such mining laws: *Provided, however*, That nothing herein shall affect the validity of any mining location based upon discovery of some other mineral occurring in or in association with such a deposit. "Common varieties" as used in this subchapter and sections 601 and 603 of this title does not include deposits of such materials which are valuable because the deposit has some property giving it distinct and special value and does not include so-called "block pumice" which occurs in nature in pieces having one dimension of two inches or more. "Petrified wood" as used in this subchapter and sections 601 and 603 of this title means agatized, opalized, petrified, or silicified wood, or any material formed by the replacement of wood by silica or other matter.

(July 23, 1955, ch. 375, § 3, 69 Stat. 368; Pub. L. 87–713, § 1, Sept. 28, 1962, 76 Stat. 652.)

REFERENCES IN TEXT

The mining laws of the United States, referred to in text, are classified generally to this title.

AMENDMENTS

1962—Pub. L. 87–713 defined "petrified wood", and provided that no deposit of petrified wood shall be deemed a valuable mineral deposit within the mining laws of the United States.

REGULATIONS FOR REMOVAL OF LIMITED QUANTITIES OF PETRIFIED WOOD

Section 2 of Pub. L. 87–713 provided that: "The Secretary of the Interior shall provide by regulation that limited quantities of petrified wood may be removed without charge from those public lands which he shall specify."

§ 612. Unpatented mining claims

(a) Prospecting, mining or processing operations

Any mining claim hereafter located under the mining laws of the United States shall not be used, prior to issuance of patent therefor, for any purposes other than prospecting, mining or processing operations and uses reasonably incident thereto.

(b) Reservations in the United States to use of the surface and surface resources

Rights under any mining claim hereafter located under the mining laws of the United States shall be subject, prior to issuance of patent therefor, to the right of the United States to manage and dispose of the vegetative surface resources thereof and to manage other surface resources thereof (except mineral deposits subject to location under the mining laws of the United States). Any such mining claim shall also be subject, prior to issuance of patent therefor, to the right of the United States, its permittees,

ently relied on *United States v. Haseltine*, 419 F.2d 579 (9th Cir. 1970). That case excluded evidence that psychological and emotional pressures prevented the defendant from willfully failing to file his income tax returns (26 U.S.C. § 7203). The court in *Haseltine* indicated that anything short of a full insanity defense was no defense at all. *Haseltine* is clearly inapplicable to this case, however, because there the court treated the statute in question as one which required only general, not specific, intent. The inability to form specific intent has never been a defense to general intent crimes. *See United States v. Fahey*, 411 F.2d 1213 (9th Cir.), *cert. denied*, 396 U.S. 957, 90 S.Ct. 430, 24 L.Ed.2d 422 (1969).

[5] In this case, the theory of the defense was that Erskine was incapable of acting with an intent to influence the bank. Proof of this theory would probably require testimony concerning the defendant's incapacity to act for a specific purpose or to comprehend a causal connection between the information he submitted to the bank and its decision to lend him money. We express no opinion on whether Dr. Saidy was qualified to give such an opinion on the defendant's mental condition, but we do hold that the defendant was entitled to introduce competent evidence pertaining to the defense of lack of specific intent. While the competence and persuasiveness of the offered testimony can be questioned, the relevance of the subject matter cannot be.

REVERSED.

CHUGACH NATIVES, INC., Sealaska Corp., the Aleut Corp., Koniag, Inc. and Ahtna, Inc., Plaintiffs-Appellees,

v.

DOYON, LTD., Defendant-Appellant,

and

Bristol Bay Native Corp., Inc., Arctic Slope Regional Corp., Bering Straits Native Corp., et al., Defendants.

The ALEUT CORP., Sealaska Corp., Koniag, Inc., Chugach Natives, Inc., Ahtna, Inc., Plaintiffs-Appellees,

v.

BERING STRAITS NATIVE CORP., Defendant-Appellant,

and

Arctic Slope Regional Corp., Bristol Bay Native Corp., Inc., Cook Inlet Native Inc., Doyon, Ltd., and Nana Regional Corp., Inc., Defendants.

Nos. 77-1963, 77-2751.

United States Court of Appeals,
Ninth Circuit.

Dec. 26, 1978.

As Amended Jan. 23, 1979.

Appeals were taken from a judgment of the United States District Court for the District of Alaska, James A. von der Heydt, Chief Judge, holding that, under the Alaska Native Claims Settlement Act, sand and gravel are part of the subsurface estate for some purposes, but not for others. The Court of Appeals, Eugene A. Wright, Circuit Judge, held that sand and gravel were part of the subsurface estate for all purposes under the Act.

Affirmed in part and reversed in part.

1. Statutes ⇐212.6

Same words or phrases are presumed to have same meaning when used in different parts of statute, but this presumption may be rebutted if same words or phrases are used in such dissimilar connections as to warrant conclusion that they were em-

ployed in different parts of act with different intents.

2. United States ⇐105

Sand and gravel were part of subsurface estate for all purposes under Alaska Native Claims Settlement Act. Alaska Native Claim Settlement Act, §§ 12, 14 as amended 43 U.S.C.A. §§ 1611, 1613.

3. Statutes ⇐220

Subsequent legislation is not conclusive in determining congressional intent for original enactment.

Arthur Lazarus, Jr., Washington, D. C., and Allen McGrath, Anchorage, Alaska, Francis J. O'Toole (argued), Washington, D. C., and Edward G. Burton (argued), Anchorage, Alaska, for defendants-appellants.

James Atwood, Edward Weinberg, Washington, D. C., Michael M. Holmes (argued), Juneau, Alaska, for plaintiffs-appellees.

Nancy Firestone, Edward Shawaker, U. S. Dept. of Justice, and Sanford Sagalkin, Acting Asst. Atty. Gen., Washington, D. C., on brief as amicus curiae.

Appeal from the United States District Court for the District of Alaska.

Before WRIGHT, GOODWIN and ANDERSON, Circuit Judges.

EUGENE A. WRIGHT, Circuit Judge:

The single issue is whether sand and gravel are part of the surface or subsurface estate under the Alaska Native Claims Settlement Act, 43 U.S.C.A. §§ 1601, *et seq.* (West Supp.1978) (ANCSA or Claims Act). The district court decided this question by partial summary judgment and properly certified the order for an interlocutory appeal pursuant to 28 U.S.C. § 1292(b) (1976). Having granted leave to appeal, we affirm in part and reverse in part and hold that, under ANCSA, sand and gravel are part of the subsurface estate.

I.

FACTS

A. THE CLAIMS ACT.

The purpose of the Claims Act is to settle equitably the aboriginal claims made by Alaska Natives through a combination grant of land and money. Twelve Regional and 220 Village Corporations have been organized to represent Natives in geographic areas and to manage the property and funds received from the federal government.[1]

Sections 12 and 14 of the Claims Act, 43 U.S.C.A. §§ 1611, 1613 (West Supp.1978),[2] patent to the Village Corporations the surface estate in a total of 22 million acres, with the subsurface estate patented to the Regional Corporations.[3] The Regional Corporations also receive both the surface and subsurface estates in an additional 16 million acres.[4]

Section 7(i) of ANCSA, 43 U.S.C.A. § 1606(i) (West Supp.1978),[5] provides that 70% of all revenues received by each Regional Corporation from timber and subsurface estate resources must be divided among all 12 Regional Corporations in proportion to the number of Natives enrolled in each region. At least 50% of the revenues so received must be redistributed among the Village Corporations. ANCSA § 7(j).

1. Rights of a thirteenth Regional Corporation, organized to represent non-resident Natives of Alaska, are not involved in this action.

2. Future citation to 43 U.S.C.A. §§ 1611, 1613 (West Supp.1978) will refer only to ANCSA §§ 12 and 14 respectively.

3. ANCSA §§ 12(a) and 14(f) provide that, when Village Corporations select their surface estates from lands within the National Wildlife Refuges or the National Petroleum Reserve, the subsurface estate is reserved to the federal government. In such cases, the Regional Corporations affected may select "in lieu" subsurface estates from federal lands specifically withdrawn for this purpose.

4. The Secretary of the Interior is also authorized under § 14(h) to withdraw two million acres for other purposes, making the total land grant to Native groups 40 million acres.

5. Future citation to 43 U.S.C.A. § 1606 (West Supp.1978) will refer only to ANCSA § 7.

B. BACKGROUND OF THIS LITIGATION.

This action was brought originally by Aleut Regional Corporation against the Arctic Slope Regional Corporation on April 4, 1975. Following numerous cross-motions, all Regional Corporations were joined.[6] Plaintiffs seek a declaration of their rights and obligations under ANCSA § 7(i) and an accounting of timber and subsurface resource revenues received by defendants. Many of the issues below regarding the meaning and application of the revenue sharing formula under ANCSA § 7(i) either have been determined by the district court by interlocutory order or continue to be litigated. *See Aleut Corp. v. Arctic Slope Regional Corp.*, 410 F.Supp. 1196, 417 F.Supp. 900, 421 F.Supp. 862, 424 F.Supp. 397 (D.Alaska 1976).

The question here is whether sand and gravel are part of the surface or subsurface estate. The district court held that, in those lands in which the fee is divided between Regional and Village Corporations, sand and gravel are part of the surface estate belonging to the Village Corporations. In lands held entirely by the Regional Corporations, however, the district court concluded that sand and gravel are part of the subsurface estate and subject to § 7(i) revenue sharing. After proper certification by the district court under 28 U.S.C. § 1292(b) (1976), this appeal followed.[7]

II.

THE DISTRICT COURT HOLDING

The district court reached what it conceded to be a "somewhat anomalous" result in construing ANCSA § 7(i). It interpreted the term "subsurface estate" to have one meaning when a Village Corporation holds the surface estate and exactly the opposite meaning when the surface estate is owned by a Regional Corporation.

[1] An accepted rule of statutory construction is that the same words or phrases are presumed to have the same meaning when used in different parts of a statute. *United States v. Gertz*, 249 F.2d 662, 665 (9th Cir. 1957); *Sampsell v. Straub*, 194 F.2d 228, 230 (9th Cir. 1951), *cert. denied*, 343 U.S. 927, 72 S.Ct. 761, 96 L.Ed. 1338 (1952).

This presumption may be rebutted if the same words or phrases are used "in such dissimilar connections as to warrant the conclusion that they were employed in the different parts of the act with different intent." *Helvering v. Stockholms Enskilda*

6. Plaintiffs below are Ahtna, Inc.; Aleut Corp.; Chugach Natives, Inc.; Koniag, Inc.; and Sealaska Corp. Other Regional Corporations that did not join as plaintiffs were named as defendants. In addition to Arctic Slope Regional Corp., defendants below are Bering Straits Native Corp.; Bristol Bay Native Corp., Inc.; Calista Corp.; Cook Inlet Region, Inc.; Doyon, Ltd.; and Nana Regional Corp., Inc.

7. Six Regional Corporations filed separate notices of appeal. All but those appeals filed by Doyon and Bering Straits were dismissed. The parties are not aligned as appellants and appellees, nor as plaintiffs and defendants below, in relation to their respective positions on the issue appealed here.

Only some of the parties filed briefs. Appellant Doyon, appellees Bristol Bay and Cook Inlet, and Eklutna (a Village Corporation) as amicus curiae all urge that sand and gravel are part of the surface estate regardless of who owns the surface or subsurface estates. Appellees Sealaska and Koniag, and the United States as amicus curiae, maintain that sand and gravel are always part of the subsurface estate. Appellee Nana filed a short brief stating that "on balance, [Nana] holds with those who assert sand and gravel are part of the subsurface estate." The other Regional Corporations did not file briefs in this appeal, although Bering Straits indicated by letter to the clerk of the court that its position is the same as that of appellant Doyon.

Technically, the only issue on appeal here is whether the district court erred in holding that sand and gravel are part of the subsurface estate in lands entirely owned by the Regional Corporations. Our decision on this issue, however, necessarily affects the disposition of sand and gravel on dually owned lands, since, as we discuss below, the term "subsurface estate" under ANCSA must have the same meaning regardless of who owns the surface estate. Thus, we exercise our discretion to review the reasoning and holdings of the district court with respect to dually owned, as well as wholly owned, lands. *See Langnes v. Green*, 282 U.S. 531, 535–39, 51 S.Ct. 243, 75 L.Ed. 520 (1931).

Bank, 293 U.S. 84, 87, 55 S.Ct. 50, 51, 79 L.Ed. 211 (1934). *See also Atlantic Cleaners & Dyers, Inc. v. United States*, 286 U.S. 427, 433, 52 S.Ct. 607, 76 L.Ed. 1204 (1932).[8]

Application of *Helvering v. Stockholms Enskilda Bank* and *Atlantic Cleaners* here does not overcome the general presumption. Those cases provide only that the presumption may be rebutted if the same words or phrases are used in *different* parts of the statute with manifestly different intent. The district court did not find that "subsurface estate" has different meanings when used in ANCSA §§ 7(i), 12, and 14. It concluded that the term, used only once in the *same* section, ANCSA § 7(i), has opposite meanings depending upon whether a Village or Regional Corporation holds title to the surface estate.

No party argued for this result below. All maintain that, following proper principles of statutory construction, the interpretation of "subsurface estate" must be the same regardless of who owns the surface estate. We agree. We therefore must determine if sand and gravel are part of the surface or subsurface estate for all purposes under the Claims Act.

III.

CONGRESSIONAL INTENT

[2] Congress did not define "subsurface estate" in the Claims Act. Thus it is necessary to reconstruct what Congress intended to be included in the term.

A. LEGISLATIVE HISTORY OF ANCSA.

The term "subsurface estate" did not appear in the original drafts of the Claims Act.[9] H.R. 7039 provided that the Regional Corporations should receive patents to "all minerals covered by the mining and mineral leasing laws." Alaska Native Land Claims: Hearings on H.R. 3100, H.R. 7039, and H.R. 7432 Before the Subcomm. on Indian Affairs of the House Comm. on Interior and Insular Affairs, 92d Cong., 1st Sess. 36 (1971), (House Hearings). H.R. 7432, S. 835, and S. 35 contained similar language.[10]

Soon after the final hearings on the House bills concluded, counsel for the Alaska Natives submitted certain amendments to their bill, H.R. 7039. One of these, suggesting the adoption of the "surface/subsurface" language, was intended "To Clarify Intent That the Regional Corporations Receive Title to the Entire Subsurface Estate, Including All Mineral Interests." House Hearings at 377. Apparently accepting the suggestion of counsel, the House subcommittee drafted a clean bill, melding many of the provisions of H.R. 3100 and H.R. 7039, and included the "surface/subsurface" language. This bill, designated H.R. 10367, was modified only slightly by the full committee and passed by the House.

The next day the Senate passed S. 35, which still described the Regional Corporations' land grant in terms of "Minerals . . . covered by the Federal mineral leasing laws." S.Rep.No. 92–405, 92d Cong., 1st Sess. 33 (1971). Later, the Senate considered H.R. 10367, struck all after the enacting clause, substituted the provisions of S. 35, and passed it.

The differing House and Senate versions of H.R. 10367 went to a conference committee which adopted the "surface/subsurface" language in the final draft of the bill that became the Claims Act.

1. *Significance of the Language Change.*

The parties differ on the significance they assign to this language change. Those

8. Although the district court did not cite these two cases in its opinion, it apparently relied upon them in construing "subsurface estate." It referred the parties to them in certifying this question for interlocutory appeal.

9. Precursors to the final bill passed as ANCSA included three bills introduced in the House and two in the Senate: H.R. 7039 (Alaska Natives' bill); H.R. 3100 (House Indian Affairs Subcommittee (Aspinall) bill); H.R. 7432 (Administration bill); S. 835 (Alaska Natives' bill); and S. 35 (Senate Interior Committee (Jackson) bill).

10. H.R. 3100 did not then provide for severance and separate ownership of the surface and subsurface (or mineral) estates. It thus did not contain similar provisions.

corporations arguing that sand and gravel are part of the surface estate (Surface Proponents) assert that the change was a mere "technical amendment" to the original language without substantive importance. The other corporations (Subsurface Proponents) maintain that the change demonstrated congressional intent to include sand and gravel as subsurface resources.

a. *Surface Proponents.*

Doyon asserts that the legislative history establishes that Congress intended "subsurface estate" to be coextensive with "mineral estate." [11] Since neither term is defined in the Claims Act, Doyon urges that the common law definition of mineral estate should govern. *See* 2A C. Sands, Sutherland Statutory Construction § 50.01 (4th ed. 1973). The case law of the various states cited by Doyon generally holds that sand and gravel are not part of the mineral estate.[12]

After reviewing the cited cases and their underlying rationales for holding that sand and gravel are part of the surface estate, we agree with the district court that "the main identifying feature of these cases as well as those to the contrary is that they turn on their own peculiar facts and circumstances rather than on any controlling legal principles." 421 F.Supp. at 865.[13]

b. *Subsurface Proponents.*

Koniag does not dispute that "subsurface estate" includes "mineral estate," but it maintains that the common law is not helpful in defining either term. It urges us to look instead to federal public land and mineral development law in defining subsurface estate.

Koniag admits that, had the Claims Act retained the originally proposed language granting the Regional Corporations "all minerals covered by the mining and mineral leasing laws," sand and gravel would have been part of the surface estate. *See* 30

11. The legislative history does indeed support Doyon's argument. The S. 35 version of § 7(i) explicitly used the term "minerals" instead of subsurface estate. In the report on H.R. 10367, the House Committee seemingly equated "subsurface estate" with "mineral estate." H.R.No. 92–523, 92nd Cong., 1st Sess. 6, *reprinted in* [1971] U.S.Code Cong. & Admin.News, pp. 2192, 2196. Further, § 14(g) of the Claims Act itself seems to equate "subsurface estate" with "mineral estate" by distinguishing between "land" and "minerals" and "surface" and "minerals."

12. *E. g., Harper v. Talladega County,* 279 Ala. 365, 185 So.2d 388 (1966); *Kinder v. LaSalle County Carbon Coal Co.,* 310 Ill. 126, 141 N.E. 537 (1923); *Builders Supplies Co. of Goldsboro, North Carolina, Inc. v. Gainey,* 14 N.C.App. 678, 189 S.E.2d 657 (1972); *Whittle v. Wolff,* 249 Or. 217, 437 P.2d 114 (1968); *Heinatz v. Allen,* 147 Tex. 512, 217 S.W.2d 994 (1949). Although there is no federal substantive common law, reference to the common law of the various states at the time a federal statute was enacted may be helpful in construing the statute. 2A C. Sands, Sutherland Statutory Construction § 50.04 (4th ed. 1973).

13. The holding in *Whittle v. Wolff,* 249 Or. 217, 437 P.2d 114 (1968), cited by Doyon and extensively discussed by Eklutna, does not persuade us to the contrary. *Whittle* involved the Klamath Termination Act, 25 U.S.C. § 564, *et seq.* (1976), which was enacted to terminate federal supervision over the trust and restricted property of the Klamath Tribe of Indians.

At the request of the Indian owner, the United States sold an allotment of land. As required at the time by the Termination Act, 25 U.S.C. § 564g[b], the conveyance reserved the "subsurface rights" to be held in trust for a designated period. The grantee removed sand and gravel and the trustee for the Indian sued for damages.

The Oregon Supreme Court, reversing the trial court, held that sand and gravel were not part of the "subsurface rights." The court concluded that

> [i]f we were to hold in this case that the right to extract sand and gravel was reserved to the grantor, we would have to assume that those who purchase land subject to a mineral reservation do so in contemplation of the possible destruction of their interest in the event that gravel lies under the surface of the land conveyed. We do not believe that parties to land transactions in this state normally have this understanding of the effect of a mineral reservation. 437 P.2d at 117–118.

The dissent pointed out, we believe correctly, that the conveyance of public land by a deed from the United States requires a different analysis than would be the case with private parties contracting for the conveyance of private land in which the seller reserves the subsurface or mineral estate.

U.S.C. §§ 601, 611 (1976) (1955 Act).[14] It maintains, however, that the 1955 Act did not alter the *nature* of sand and gravel as minerals, but rather only excluded them as *valuable* minerals for the purpose of locating a claim under the mining and mineral leasing laws.[15] Thus, the change in the final draft of the Claims Act, made to emphasize that the Regional Corporations received "the entire subsurface estate, including all mineral interests," was intended to cover *all* minerals, including "common varieties" such as sand and gravel, under the federal mineral disposal laws. 30 U.S.C. § 601 (1976).[16]

For purposes of this analysis, we may assume that "subsurface estate" is, as Doyon asserts, coextensive with "mineral estate." As the district court noted, "[t]his position is not in contradiction with the position that subsurface estate is a broader concept than minerals covered under the Federal mineral leasing laws as the latter concept is certainly more restrictive than the general concept of minerals." 421 F.Supp. at 865.

Although we conclude that the cases excluding sand and gravel from the mineral estate are factually distinguishable from the question on appeal, we are also unpersuaded that all "common varieties" under 30 U.S.C. § 601 (1976) are minerals included in the subsurface estate under the Claims Act.

Whether the 1955 Act is authority that sand and gravel are part of the subsurface estate is questionable. Its purpose was to amend the Materials Act of July 31, 1947, 61 Stat. 681, and the mining laws "to permit more efficient management and administration of the surface resources of the

14. The basic mining law for minerals not comprehended under the Federal Mineral Leasing Act of 1920, 30 U.S.C. § 181, *et seq.* (1976) is the mining law of 1872, 30 U.S.C. § 22, *et seq.* (1976). 30 U.S.C. § 22 (1976) makes available "all valuable mineral deposits in lands belonging to the United States . . . [for] occupation and purchase, by citizens of the United States." In *Layman v. Ellis*, 52 L.D. 714 (1929), the Interior Department held that gravel which could be extracted, removed, and marketed at a profit was locatable under the mining law.

In 1955, Congress amended 30 U.S.C. §§ 601–04 and enacted 30 U.S.C. §§ 611–15 dealing, *inter alia*, with sand and gravel. Section 611 provides that "[n]o deposit of common varieties of sand, stone, [or] gravel . . . shall be deemed a valuable mineral deposit within the meaning of the mining laws of the United States." Thus, Koniag admits, sand and gravel would not have been included in a grant of "all minerals covered by the mining and mineral leasing laws."

15. Sealaska also makes this argument. In support of their contention, the Corporations quote 30 U.S.C. § 601 (1976), which refers to sand and gravel as "mineral materials," and cite two noteworthy cases.

In *United States v. U. S. Minerals Development Corp.*, 75 I.D. 127 (1968), the Interior Department concluded that, despite 30 U.S.C. § 611, some kinds of building stone are still locatable under the mining laws. The Department referred to "common varieties" as well as "uncommon varieties" as minerals. This decision was expressly approved by this circuit in *McClarty v. Secretary of the Interior*, 408 F.2d 907 (9th Cir. 1968).

In *United States v. Isabel Construction Co.*, 78 I.D. 385 (1971), the Interior Department Board of Land Appeals determined what minerals were included in a reservation of "minerals" to the United States:

> In as much as valuable deposits of sand and gravel were, for many years, regarded as minerals subject to location under the General Mining Law of 1872, 30 U.S.C. § 22, *et seq.* (1970), and since the enactment of the Multiple Surface Resources Act did not affect the mineral character of these materials, we conclude that valuable deposits of common sand and gravel are minerals, and as such would ordinarily be reserved to the United States under a reservation of "minerals."

Id. at 390.

16. Sealaska seems to argue at one point that a grant of the subsurface estate is broader than one conveying the rights to all minerals. It interprets the legislative history that Regional Corporations received "the entire subsurface estate, *including all mineral interests*" (emphasis added), to mean that the subsurface estate is composed of more than mineral rights. It apparently argues that, even if sand and gravel are not minerals, they are meant to be included in the subsurface estate because the great bulk of these resources are under the "surface" of the land.

Sealaska offers no more than its conclusory interpretation of the quoted language to support its argument. We are not convinced that "subsurface estate" encompasses more than a grant of all mineral rights in the land.

public lands by providing for multiple use of the same tracts of such lands." H.R.No. 730, 84th Cong., 1st Sess. 2, *reprinted in* [1955] U.S.Code Cong. & Admin.News, p. 2474. In view of this purpose and other parts of the legislative history, it is possible that Congress intended both the "mineral materials" and "vegetative materials" listed in 30 U.S.C. § 601 (1976) to be considered part of the surface estate under the mineral disposal laws. Indeed, the title of the chapter under which the 1955 Act was codified is entitled "Surface Resources." [17]

Despite the inconclusiveness of this part of ANCSA's legislative history, other factors convince us that Congress intended sand and gravel to be part of the subsurface estate under the Claims Act.

B. SUBSURFACE ESTATE RESERVED TO THE UNITED STATES.

Sections 12(a) and 14(f) of ANCSA allow Village Corporations to obtain the surface estate in lands within the National Wildlife Refuges or the National Petroleum Reserve. The subsurface estate in such lands is reserved to the United States. Affected Regional Corporations may select "in lieu" subsurface estates from federal lands withdrawn for this purpose.

1. *National Wildlife Refuges.*

The subsurface estate in National Wildlife Refuges is reserved to the United States to "prevent mineral development that would be incompatible with the Refuge System." H.R.Rep.No. 92-523, 92d Cong., 1st Sess. 10 *reprinted in* [1971] U.S.Code Cong. & Admin.News, pp. 2192, 2200. If sand and gravel are held to be part of the surface estate, the United States argues, Village Corporations that develop these resources will destroy the surface of refuge lands because sand and gravel can only be extracted by open pit mining.

The district court rejected this argument and concluded that ANCSA § 22(g), 43 U.S.C.A. § 1621(g) (West Supp.1978), which limits the development rights of a surface estate holder within a refuge, prohibits this possibility.[18]

Even assuming the district court is correct regarding the effect of ANCSA § 22(g), we think that an opinion letter of the Associate Solicitor of the Department of the Interior dated May 18, 1976, is evidence that sand and gravel are subsurface resources reserved to the United States in National Wildlife Reserves. Responding to a request from the Anchorage Regional Solicitor, the Associate Solicitor classified sand and gravel as part of the subsurface estate. The opinion letter states:

> The term "subsurface estate" is not defined anywhere in ANCSA; however, the term is mentioned in the Act as is the term "minerals." After studying the Act and reviewing its legislative history we

17. It is unlikely for another reason that Congress intended to include wholesale the mineral materials listed in 30 U.S.C. § 601 (1976), as part of the subsurface estate under ANCSA § 7(i). The definition of mineral materials includes common varieties of "sand, stone, gravel, pumice, pumicite, cinders, and clay." Vegetative materials include "yucca, manzanita, mesquite, cactus, and timber or other forest products." It is apparent that the classifications were based upon generic definitions of mineral and vegetable materials appropriate for the 1955 Act. Under Koniag's reasoning, even clay would be a subsurface resource subject to excavation by the Regional Corporations. We do not think Congress intended such a result.

The fact that Congress probably did not intend to include *all* mineral materials listed in 30 U.S.C. § 601 (1976) as part of the subsurface estate under ANCSA, however, does not, standing alone, convince us that sand and gravel are surface resources here.

18. Section 22(g) provides in pertinent part:

> Notwithstanding any other provision of this Act, every patent issued by the Secretary pursuant to this chapter—which covers lands lying within the boundaries of a National Wildlife Refuge on [the date of enactment of this chapter] shall contain a provision that such lands remain subject to the laws and regulations governing use and development of such Refuge. 43 U.S.C.A. § 1621(g) (West Supp.1978).

Regulations promulgated under this section provide that "[e]conomic use shall be authorized by appropriate permit only when the authorized activity on a wildlife refuge area will not be incompatible with the purposes for which the refuge was established." 50 C.F.R. § 29.1 (1977).

> conclude that the subsurface estate includes all minerals and that sand and gravel are minerals and thus a part of the subsurface.

This interpretation by the agency charged with the administration of land grants under ANCSA is entitled to great weight. *Udall v. Tallman*, 380 U.S. 1, 16, 85 S.Ct. 792, 13 L.Ed.2d 616 (1965).

2. *National Petroleum Reserve.*

Congress also reserved to the United States the subsurface estate of lands selected by Village Corporations within the National Petroleum Reserve. Although there is little in this portion of ANCSA's legislative history to explain what Congress intended to reserve as part of the subsurface estate, the Conference Report on the Naval Petroleum Reserve Production Act of 1976, 42 U.S.C. §§ 6501 *et seq.* (1976) (Reserve Act), is instructive. The report states in pertinent part:

> Inasmuch as the Alaska Native Claims Settlement Act authorized native village corporations to select certain Federally owned land in Alaska, including the right to apply for surface rights within the Naval Petroleum Reserve until December 18, 1975, this legislation authorizes the Secretary to convey such surface interests if the selections were made on or before that date, but in no event does the legislation authorize the disposition of the subsurface mineral estate within the national petroleum reserve to any person or group, except for mineral materials (e. g., sand, gravel, and crushed stone, which for the purpose of this legislation are considered to be a part of the subsurface mineral estate) which the Secretary may permit to be used for maintenance or development of local services by native communities or for use in connection with activities associated with administration of the reserve under this Act.

H.R.Rep.No. 94–942, 94th Cong., 2d Sess. 20, *reprinted in* [1976] U.S.Code Cong. & Admin.News pp. 492, 522.

We realize, as did the district court, that the Reserve Act does not specifically include sand and gravel as part of the subsurface estate under ANCSA. Nevertheless, portions of both the Reserve Act and ANCSA deal with the preservation of the surface estate in the National Petroleum Reserve, and we find the clear expression of congressional intent for the Reserve Act, which classifies sand and gravel as part of the subsurface estate, enlightening on the likely intent of Congress with respect to these resources under the Claims Act.

C. AMENDMENT TO THE CLAIMS ACT.

The Act of January 2, 1976, P.L. 94–204, 89 Stat. 1145 (1976 Amendments), amended several sections of ANCSA. Section 15 of this act conveyed the subsurface estate of certain lands to Koniag. A separate enactment was necessary because in lieu lands Koniag had selected had also been withdrawn by the Secretary of the Interior under ANCSA § 17(d)(2), 43 U.S.C.A. § 1616(d)(2) (West Supp.1978), for possible addition to the national park system as a national monument. Section 15 of the 1976 Amendments provides:

> The Secretary shall convey . . . to Koniag, Incorporated, . . . such of the subsurface estate, *other than title to or the right to remove gravel and common varieties of minerals and materials*, as is selected by said corporation . . . (Emphasis added.)

The Subsurface Proponents argue that Congress must have intended to include sand and gravel as part of the subsurface estate under ANCSA, or else it would not have needed to specifically exclude these resources in the subsurface grant to Koniag under the amendments to ANCSA.

The district court rejected this argument, noting that "[i]t is the usual rule that subsequent legislation is tenuous as evidence of earlier intent." 421 F.Supp. at 866. *See United States v. United Mine Workers of America*, 330 U.S. 258, 281–82, 67 S.Ct. 677, 91 L.Ed. 884 (1947); *United States v. Philadelphia Nat'l Bank*, 374 U.S. 321, 348–49, 83 S.Ct. 1715, 10 L.Ed.2d 915 (1963). It also reasoned that, "[w]hile the interpretation

adopted by [the Subsurface Proponents] is plausible an equally compelling argument is that Congress was aware that the sand and gravel issue had been raised in this case and desired to make it clear that subsurface did not include this material." 421 F.Supp. at 867.

[3] We are aware of the difficulties sometimes present in using subsequent legislation to determine Congressional intent for the original enactment, and we agree that subsequent legislation is not conclusive in such a determination. But we do not agree with the district court's statement of the "usual rule."

Courts have held that subsequent legislation declaring the intent of a previous enactment is entitled to great weight. *E. g., NLRB v. Bell Aerospace Co.*, 416 U.S. 267, 275, 94 S.Ct. 1757, 40 L.Ed.2d 134 (1974); *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367, 380–81, 89 S.Ct. 1794, 23 L.Ed.2d 371 (1969). *See also* 2A C. Sands, Sutherland Statutory Construction § 49.11 (4th ed. 1973). Although the 1976 Amendments do not explicitly declare the original intent of Congress under ANCSA with respect to sand and gravel, we believe they demonstrate that Congress understood these resources to be part of the subsurface estate.

The legislative history of the 1976 Amendments is devoid of any reference to this case below. There is thus no indication that Congress, in response to this litigation, wished to make it clear that sand and gravel are not part of the subsurface estate. The district court's suggestion to the contrary is only supposition. We decline to read this intent into the legislative history.

The 1976 Amendments, while not conclusive, support our holding that sand and gravel are part of the subsurface estate.

D. POLICY OF THE CLAIMS ACT.

The purpose and policy underlying the Claims Act is stated in ANCSA § 2, 43 U.S.C.A. § 1601 (West Supp.1978):

> Congress finds and declares that—
>
> (a) there is an immediate need for a fair and just settlement of all claims by Natives and Native groups of Alaska, based on aboriginal land claims; [and]
>
> (b) the settlement should be accomplished rapidly, with certainty, in conformity with the real economic and social needs of Natives . . . .

The land grant under ANCSA was a generous one, clearly intended to exceed the subsistence needs of Natives and to give them a significant economic stake in the future development of Alaska. As stated by the House Committee on Interior and Insular Affairs:

> The acreage occupied by villages and needed for normal village expansion is less than 1,000,000 acres. While some of the remaining 39,000,000 acres may be selected by the Natives because of its subsistence use, most of it will be selected for its economic potential. H.R.Rep.No. 92–253, 92d Cong., 1st Sess. 5, *reprinted in* [1971] U.S.Code Cong. & Admin.News pp. 2192, 2195.

The Surface Proponents point to this language as evidence that Congress intended Village Corporations to be economically strong entities that would select lands not only for subsistence purposes but also for their economic value. Because the extraction of sand and gravel destroys the surface, the district court concluded that "[a]s to the land to which the dual ownership applied a grant to the subsurface owner of the sand and gravel would leave the surface owner with a worthless holding. . . . [It] would in effect leave the villages, who have selected most of their land for economic potential, with nothing." 421 F.Supp. at 866.

We do not dispute that Congress intended Village Corporations to have a degree of independence from the Regional Corporations in order to protect the social and economic interests peculiar to their members. Nor do we dispute that extraction of sand and gravel destroys the surface.

We are not persuaded, however, that such facts indicate the Village Corporations would be left with "nothing" if sand and gravel are included in the subsurface estate. Nor are we convinced that Congress intend-

ed to include sand and gravel in the surface estate in order to avoid giving the Village Corporations a "worthless holding."

We agree with the district court that the revenue sharing provision in § 7(i) "was intended to achieve a rough equality in assets among all the Natives. . . . [The section] insures that all of the Natives will benefit in roughly equal proportions from these assets." 421 F.Supp. at 867.

Congress did not grant the same amount of land to each Village or Regional Corporation. It realized also that the lands selected by the Corporations would vary greatly in their present and future economic value. In order to distribute more evenly among all Natives the benefits of these disparate land grants, Congress required that 70 percent of all revenues from the development of timber and subsurface resources be distributed among the Regional Corporations.

Sand and gravel are resources that are only valuable if located near developing centers. The high cost of transportation makes it unprofitable to ship them over great distances. Construing sand and gravel to be part of the surface estate would give those Corporations near large cities and developing areas a significant economic advantage over the others.

As the district court noted with respect to lands owned entirely by Regional Corporations, "[i]t is precisely this unequal distribution of resources that section 7(i) is intended to counter." 421 F.Supp. at 867. We believe this reasoning is equally compelling when a Village Corporation, instead of a Regional Corporation, owns the surface estate.

Our holding that sand and gravel are part of the subsurface estate will not leave the Village Corporations with "nothing." Certainly some surface lands of some Village Corporations will be affected, but the destruction of village lands predicted by Doyon and Eklutna is vastly exaggerated.[19] Village Corporations whose lands are affected by the excavation of sand and gravel will also receive their share of the profits distributed under § 7(i), since 50% of the revenues received by the Regional Corporations under this section must be redistributed to the Village Corporations.

IV.

CONCLUSION

There is no readily ascertainable answer to the question here on appeal. Viewed as a whole, however, the legislative history, administrative interpretations, companion legislation, subsequent amendments, and overall policy of the Claims Act indicate that Congress intended sand and gravel to be part of the subsurface estate.

AFFIRMED IN PART AND REVERSED IN PART.

UNITED STATES of America, Appellee,

v.

Everett Alan PALMER, Appellant.

No. 78-1769.

United States Court of Appeals, Ninth Circuit.

Dec. 26, 1978.

Defendant, who had been convicted of bank robbery, moved for return of property, including cash, which had been seized at time of his arrest and placed in evidence by Government. The United States District Court for the Western District of Washington, Morell E. Sharp, J., denied the mo-

19. Eklutna correctly notes that the surface within village boundaries cannot be disturbed by Regional Corporations developing their subsurface rights without the approval of the village involved. ANCSA § 14(f) provides that "the right to explore, develop, or remove minerals from the subsurface estate in the lands within the boundaries of any Native village shall be subject to the consent of the Village Corporation."

valid Ninth Circuit authority § 910(a)'s 260–day work year does not accurately reflect Petitioner's earning capacity in the year preceding his injury, because he was not ready and willing to work a full year during that period. *Marshall v. Andrew F. Mahony Co.*, 56 F.2d 74, 78 (9th Cir.1932) ("[E]arning capacity means fitness and readiness and willingness to work ...." (quoting court below)); *see Palacios v. Campbell Industries*, 633 F.2d 840, 843 (9th Cir.1980) (compensation awards should be based on earning capacity). In my view, Mr. Matulic's explanation for his shortened work year in 1989, that he was moving and working on his house, weighs against granting him a windfall at Jones Stevedoring's expense. I am reluctant to resolve this close question in Mr. Matulic's favor where his reduced earnings are not the result of illness, layoff, or other factors beyond his control. *See Walker v. Washington Metropolitan Area Transit Authority*, 793 F.2d 319, 322 (D.C.Cir.1986) (listing such "involuntary" circumstances where use of § 910(c) has been upheld).

As for attorney's fees, the plain language of 33 U.S.C. § 928(b), as well as the statute's legislative history, led this Court to announce the following test: "the employer will not be responsible for the payment of attorneys' fees, unless the employer rejects the written recommendation of the claims examiner following the informal hearing...." *Todd Shipyards v. Director, OWCP*, 950 F.2d 607, 611 (9th Cir.1991). Since Mr. Matulic does not dispute that the claims examiner's June 24, 1991 letter proposing a settlement is the legal equivalent of an informal conference, I see no principled distinction between the present case and *Todd Shipyards*. 20 C.F.R. § 702.311 (disputes may be handled informally by conference, telephone, or written correspondence). As in *Todd Shipyards*, a dispute arose over permanent disability benefits and OWCP proposed a settlement, which the employer immediately accepted without condition but the employee did not.

The majority correctly observes that the scope of Mr. Matulic's disagreement with the claims examiner's recommendation was greater than that of the worker in *Todd Shipyards*, but this is a distinction without a difference, as a review of the fee-shifting statute reveals. Section 928(b) permits an award of attorney's fees only when the employer "refuse[s] to accept" the OWCP's recommendation; neither the worker's rejection of the recommendation nor the nature of any remaining disputes are relevant. 33 U.S.C. § 928(b). If the employer so "refuse[s] to accept [the OWCP's] written recommendation," then it must immediately pay or tender the amount "to which [it] believe[s] the employee is entitled." *Id.* "[I]f the compensation thereafter awarded is greater than the amount paid or tendered by the employer," only then the employer is liable for an attorney's fee "based solely upon the difference between the amount awarded and the amount tendered or paid." *Id.* In short, as this Court concluded in *Todd Shipyards*, "[s]ection 928(b) authorizes a payment of attorney's fees only if the employer refuses to pay the amount of compensation recommended by the claims examiner following an informal conference." *Todd Shipyards*, 950 F.2d at 610. Since Jones Stevedoring accepted the OWCP's written recommendation, the threshold condition to an award of attorney's fees has not been met, and Petitioner's disagreement with the claims examiner's recommendation is immaterial. Accordingly, although Mr. Matulic's final award is greater than that proposed by the claims examiner, "[s]ection 928(b) is inapplicable because [Jones Stevedoring] did not refuse to pay" him compensation. *Todd Shipyards*, 950 F.2d at 610. Consequently, I would affirm the denial of attorney's fees.

LEISNOI, INC., Plaintiff–Appellant,

v.

Omar STRATMAN, Defendant–Appellee.

No. 97–35775.

United States Court of Appeals,
Ninth Circuit.

Argued and Submitted July 14, 1998.

Decided Sept. 8, 1998.

Village corporation which held surface estate over portion of island pursuant to