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House Committee on Natural Resources
Subcommittee on Indian, Insular and Alaska Native Affairs
1324 Longworth House Office Building
Washington, D.C. 20515

Hearing Date: Thursday, April 26, 2018 at 2 p.m.

Hearing Title: H.R. 211 (Rep. Don Young of AK), Chugach Region Lands Study Act

Chairman Doug LaMalfa and Members of the Subcommittee:

My name is Gabriel Kompkoff and I am Chief Executive Officer of Chugach Alaska Corporation (Chugach). Chugach is the Regional Native Corporation organized under the Alaska Native Claims Settlement Act (ANCSA) for Alaska Natives historically residing in the Chugach Region as described in my statement attached. Chugach currently has approximately 2,600 Alaska Native shareholders.

It is my privilege to submit the attached testimony in support of the Chugach Region Lands Study Act, which would authorize the Secretary of the Interior to complete a land exchange with Chugach.

We greatly appreciate the introduction of this important legislation and the opportunity to submit this written statement in support of its enactment.

Sincerely,

Gabriel Kompkoff

CEO



April 26, 2018

House Resolution (H.R.) 211 (Rep. Don Young of AK) Chugach Alaska Corporation Lands Study Act

Short (Oral) Testimony

My name is Gabriel Kompkoff and I am Chief Executive Officer of Chugach Alaska Corporation (Chugach). Chugach is a regional Alaska Native Corporation organized under the Alaska Native Claims Settlement Act – also known as ANCSA. Today, Chugach has approximately 2,600 Alaska Native shareholders.

It is my privilege to testify in support of the Chugach Region Lands Study Act, which would authorize the Secretary of the Interior to complete a land exchange with Chugach.

Chugach has waited since 1971 for the promises of ANCSA to be fulfilled. A series of roadblocks, mistakes and disasters – not of Chugach’s making – have unfairly delayed the full benefits of the Settlement Act for decades.

- First, after ANCSA was passed in 1971, the only lands available to Chugach for selection were “glaciers and mountain tops” with little or no development potential.
- After subsequent federal corrective legislation was enacted, allowing Chugach to select more meaningful and valuable lands, the Exxon Valdez oil spill tragedy occurred. The spill devastated Chugach and its villages – economically, culturally and socially.
- The Exxon Valdez Oil Spill Trustee Council (also known as the EVOS Trustee Council), chose not to spend Exxon “damage reparations funds” to help Chugach villages and residents recover from the spill. Instead, they spent hundreds of millions of dollars to acquire surface estate lands from Chugach’s Village Corporations – who were in dire economic straits because of the spill – placing those purchased lands into state or federal ownership.
- Unfortunately, as a result of EVOS purchases in the name of “habitat protection” to mitigate the oil spill, 250,000 acres of Chugach subsurface estate, now lies under federal or state surface estate. This makes development of Chugach’s subsurface rights in those areas extremely difficult and controversial. Chugach has lands within Conservation System Units, other than those underlying EVOS surface estate, which could and should be exchanged for less environmentally sensitive and more commercially developable federal lands elsewhere.
- Chugach should not be subjected to criticism for doing exactly what ANCSA was intended for: To allow for the development of ANCSA lands for the benefit of Alaska Native shareholders.
- Chugach acknowledges that the difficulties and contradictions of “split estates” with respect to EVOS lands should be corrected and the land exchange that would be recommended as a result of H.R. 211 is the best and fairest way to resolve the problem.



This H.R. 211 legislation does four key things to make promises of ANCSA “real” for Chugach:

- The Departments of Interior and Agriculture must inventory no less than 500,000 acres as a “pool” from which federal lands and property can be exchanged for Chugach lands.
- Agencies must confer with each other and Chugach to develop and recommend an exchange.
- Agencies must recommend an exchange, after consultation with Chugach, to Congress.
- Any exchange that is entered into as a result of the legislation is deemed in the public interest.

Long (Written) Testimony

Introduction

The Chugach region extends from southern tip of the Kenai Peninsula to the 141st meridian near Malaspina Glacier between Icy Bay and Yakutat and covers 5,000 miles of coastline. It includes the communities of Cordova, Valdez, Whittier and Seward and the villages of Eyak, Chenega, Tatitlek, Nanwalek and Port Graham.

We request that the committee favorably consider authorizing the Secretary of the Interior to complete a land exchange with the Chugach, introduced by Representative Don Young in the 115th Congress.

The following provides for justification related to the request for a land exchange, to provide for a fair and just settlement of outstanding inequities related to the settlement of land claims rights of Alaska Natives in the Chugach region so as to fulfill the original promises of the Alaska Native Claims Settlement Act (ANCSA).

ANCSA and the Chugach Natives

ANCSA was passed into law in December 1971. Under the language of the Act, Chugach is entitled to 928,000 acres, including 550,000 acres of subsurface and 378,000 acres of full fee estate in lands to be selected by Chugach and agreed to by the United States of America, by and through James G. Watt, Secretary of the Interior, and John R. Block, Secretary of Agriculture and the State of Alaska, by and through Esther C. Wunnicke, Commissioner of the Department of Natural Resources, in settlement of its aboriginal land claims.

Following the enactment of ANCSA, the vast majority of lands in the Chugach region, approximately 70%, was unavailable for selection due to the existence of the Chugach National Forest and State of Alaska land holdings and interests. This made the selection of lands particularly difficult for Chugach. As of 1981, ten years after passage of the Settlement Act (ANCSA), an agreement had still not been reached regarding Chugach land selections. This prompted Congress to direct a study of lands in the Chugach region under Section 1430 of the Alaska National Interest Lands Conservation Act of 1980, Subsection A, Public Law 96-487, with the end goal for the parties (USFS, State of Alaska, Chugach and other concerned parties including the communities within the region) to come to agreement on land selections. However, at the end of the study the parties were not able to reach an agreement. This



eventually led to Congress making a final determination, under the Chugach Natives Inc (CNI) Agreement on the land selections, which was not in alignment with the interests of Chugach. Ultimately, Chugach received lands that were primarily comprised of “mountain tops and glaciers,” which were not ideal locations for potential development to meet the goals and promises of ANCSA – economic self-sufficiency and self-determination for the Alaska Native people. In those years, Chugach primarily focused on developing resources related to fish processing and timber harvesting as the best way to achieve economic self-sufficiency. Unfortunately, a downturn in both the timber industry and seafood processing sector following the 1989 Exxon Valdez oil spill led Chugach to file for bankruptcy in 1991.

Chugach and TAPS

In 1969, prior to the passage of ANCSA, Alaska was in the midst of realizing a tremendous economic boom with the discovery of significant oil resources at Prudhoe Bay in the Alaska North Slope. Engineers had determined the best route to move oil from Prudhoe Bay to market would be a pipeline that stretched 800 miles to Valdez, which boasted a natural deep-water port. A terminal would be built in Valdez to receive, process and load the oil onto tankers bound for market. Major producers including BP, Exxon and Atlantic Richfield (now Conoco-Phillips) would share the ownership of the pipeline, dubbed the Trans-Alaska Pipeline System (TAPS). However, to build the pipeline, several Alaska Native groups with interests in the area who were protesting land rights would have to abandon their protest in order for the State and the oil producers to move forward with building the pipeline.

Chugach was one of the Alaska Native groups in protest. The terminal was slated to be built on traditional Chugach land. After a series of meetings and under immense pressure from the State and the producers, Chugach eventually agreed to give up their claim to these lands, and the release of Valdez as a Native Village, in return for **\$1** and a promise of contracts and jobs for Chugach and our shareholders. In a statement submitted by the then President of Chugach Native Association George Olson, he said, “I want to emphasize and re-emphasize that the Native people do not wish in any way to impede the progress of the State. But it must be recognized that the contest is between the Native people of Alaska and the federal government. We seek compensation for the lands that have been taken from us.” In 1970, Alyeska Pipeline Service Company (Alyeska), owned by the oil producers, was formed as the entity to design, build, maintain and operate TAPS. While Chugach over time was able to secure certain contracts with Alyeska, other contractors including Alaska Native Corporations (ANCs) with no land rights in the region secured much more significant contracts. While contracts for Chugach subsidiaries did occur, the relative volume was inadequate relative to the promise of jobs and contracts.

By the end of 1975 the bulk of the serious contracting had ceased. This resulted in Cecil Barnes, then President of Chugach, to write Alyeska with a proposal involving camp maintenance – which was ultimately denied by Alyeska. This resulted in only one proposal available for Chugach at the time, characterized by Barnes as “our first large venture.”

Valdez is in the Chugach region, and today we do contract with TAPS operator Alyeska, providing administrative and technical services through our subsidiary Chugach Alaska Services, LLC, in addition to oil spill response in a partnership between Chugach and the villages of Tatitlek and



Chenega (TCC), both of which have been very instrumental in meeting Alaska Native hire provisions required by Section 29 of the TAPS agreement. However, inequity still exists as the promises made in return for giving up rights to the Valdez terminal property were never fully fulfilled.

The Exxon Valdez Oil Spill and Chugach

In 1989, the largest oil spill in U.S. history to that date occurred when the Exxon Valdez tanker ran aground on Bligh Reef in Prince William Sound (PWS) 30 miles from the Valdez Terminal. Eleven million gallons (~250,000 barrels) of crude oil was released into the waters of PWS. This event would forever change the face of petroleum transportation on navigable waters in the United States. Crude oil from the spill-soiled waters and washed up on the shoreline of PWS, encompassing 1,300 miles. Populations of fish, marine mammals, sea birds and shellfish are still recovering due to lack of preparation and inadequate cleanup operations. These impacts were felt especially by the PWS communities that are part of the Chugach Region. Subsistence activities, primarily hunting and fishing, were severely negatively impacted. Communities were inundated, not only with crude oil, but with outside workers who quickly moved in and virtually overwhelmed our small communities with contractors, spill response workers and equipment. While some Chugach shareholders were able to obtain jobs or benefit from the cleanup response, all of our shareholders were negatively impacted as the devastating effects of the spill on subsistence hunting and fishing were suffered over many years. Subsequently, a long drawn out settlement of claims against Exxon further eroded relationships and trust with respect to oil producers and shippers in PWS.

As a result of the spill, the Exxon Valdez Oil Spill (EVOS) Settlement Fund was established. The board of EVOS set about to purchase surface estate from ANCSA Native Village corporations in the Chugach region. The village corporations, seeing a much-needed opportunity for economic recovery from the damage caused by the spill, via the sale of their surface rights on these lands, negotiated for the sale of 249,000 acres of their lands (surface estate) to EVOS. EVOS in turn assigned (donated) the lands to various federal and state agencies, with the intention that the lands would be held for conservation. However, Chugach held the subsurface rights to all of those EVOS-acquired lands. For Chugach, it now meant having to work with federal/state agencies, instead of Native Village Corporations in our Region, in order to pursue development of Chugach's subsurface rights to these lands.

An additional negative impact of the Exxon Valdez spill and the EVOS settlement was the effect on public sentiment related to lands in PWS. Many environmental groups, conservation organizations, federal agencies, individuals and other special interest groups rallied behind an anti-development agenda for resources in PWS. While Chugach may have struggled in the past with development of its lands due to the difficulty of physical access to its lands, Chugach now also had to face a major conservation force that opposed any development on Chugach lands – lands that were specifically intended via the Settlement Act to provide for economic development for the Chugach Native People.



Despite Chugach holding the dominant subsurface estate, a direct conflict exists between Chugach's responsibility to its Native shareholders for economic development and self-sufficiency of ANCSA land, and the EVOS agenda of conservation.

Village Corporations

After Chugach's bankruptcy, the Chugach Board of Directors adopted a very conservative approach to development of their lands. Instead of land development, the advent of government contracting opportunities for disadvantaged businesses through the Small Business Administration's 8a program gave Chugach the impetus to focus on government contracting. For years, this became the overwhelming share of Chugach revenues. As Chugach focused on government contracting, land development projects were not pursued due to the challenges noted above. As a result, our villages also did not have opportunities for economic development or shareholder jobs related to land projects. In the aftermath of the Exxon Valdez spill with the EVOS settlement trust (funded largely by fines/fees on Exxon) looking to buy surface rights, our villages sold their surface estate interests as their only option for economic gain. While the cash infusion proved helpful for some villages, this one-time benefit resulted in a loss of their land rights, and for Chugach it meant a much more difficult road to any kind of economic benefit from the development and use of these lands.

Wilderness Study Area & Roadless Rule

Chugach owns or has valid selection rights to over 625,000 acres of surface, subsurface and oil and gas rights within the boundaries of the Chugach National Forest (CNF), resulting in Chugach being the largest private landowner within CNF boundaries. CNF contains 5.5 million acres of land, 98.9% of which is inventoried as "Roadless." The majority of Chugach's economically viable lands are adjacent to or surrounded by the national forest lands, resulting in no practical means of access to Chugach's inholdings except across federal lands. When applied to Roadless areas within the CNF, the potential for the Forest Service's existing Roadless rule to frustrate or impair Chugach's valid existing statutory and common law rights of access to its land is abundantly clear.

Chugach has expressed on multiple occasions our concerns and issues with the Roadless Area Conservation act. A letter submitted on August 8, 2003 by Rick Rogers, Chugach's V.P. of Lands, Resources, and Tourism to the USFS was in support of the Proposed Alaskan exemption of two national forests. The Proposed Alaskan exemption, if adopted, would exempt both the Tongass and Chugach national forest from the Roadless Rule ("the existing Roadless rule") promulgated during the Clinton Administration. Mr. Rogers states in the letter, "The Process used to create the existing Roadless rule was deeply flawed, forged by politics rather than professional reasoning, and in direct conflict with several federal laws. A single, one-size-fits-all rule that affects Roadless areas across the entire National Forest System cannot possibly address conditions unique to each Roadless area within each forest." Ultimately, the exemption did not pass through the courts, resulting in potentially limited access to Chugach's 625,000 acres of economically viable land.



Chugach does have certain rights of access to its lands through the Wilderness Study Area (WSA) and inventoried Roadless areas as a result of provisions in ANCSA and ANILCA; however, the artificial encumbrances of the Roadless policy led to more rigorous, time-consuming and expensive scrutiny. In some instances where an Environmental Assessment would have been required and adequate, a full Environmental Impact Statement will be required at much greater cost. Public perception and potential damage to the Corporation's reputation is at stake as well.

Chugach's final conveyances, after 45 years, are still pending. Much of the Chugach Region experienced either "uplift" or "subsidence" during the 1964 Alaska Earthquake. The quake was centered in the Chugach Region in Unakwik Inlet, between the communities of Whittier and Valdez. Some areas rose as much as 16 feet, exposing hundreds to thousands of feet of land that was submerged prior to the quake. The State of Alaska claims title to the avulsed lands under the Equal Footing Doctrine. The USFS also has claimed title under their impression that when the Chugach National Forest was created in 1907, the waters and submerged lands were part of that inclusion. A Memorandum of Agreement was signed between the agencies in 1992 for joint management of those lands until a settlement was reached. If the State prevails, Chugach's coastline properties would be limited to where the mean high tide line was at the date of statehood. In some cases, this could leave Chugach's coastline properties buffered by a great distance of state land and the water. Determining exactly where mean high tide line was in January of 1959 is a very complex and expensive endeavor that will further delay Chugach's remaining conveyances.

Benefits to Federal Agencies

A number of the tracts of Chugach land that the Company would consider for an exchange include those of interest to federal agencies. Below is a summary of issues we feel would be of interest to these agencies.

- The vast majority of Chugach landholdings on EVOS purchased surface lands are of high mineral potential including gold, silver, copper, zinc, manganese and other metallic minerals, along with huge resources of granite, armor rock, gravel and other industrial materials.
- On lands that the agencies received in fee, they are charged with enforcing restrictive covenants in perpetuity to protect and restore resources affected by the oil spill. Those covenants include:
 - 1). No alteration of topography,
 - 2). No alteration or modification of stream flows
 - 3). No operation of motorized vehicles, 3). No removal of vegetation,
 - 4). No removal of timber (standing or dead and down), and
 - 5). No construction of buildings or improved camping facilities.

Clearly, it was the intent of the EVOS Trustee Council to protect these lands in perpetuity for the benefit of the public and the resources. The agencies, without acquiring the subsurface estate under those lands where they own the surface estate, cannot with any certainty maintain covenants it is charged with enforcing.



- On a portion of the conservation easements, there is a provision that allows for public access on protected lands. Any activities related to mineral/gravel extraction will presumably be viewed as a detriment to the public. Therefore, it may be in the public's best interest that the agencies acquire those subsurface lands underlying conservation easements as well as those lands underlying surface estate.
- According to the EVOS Trustee Council website "By purchasing land throughout the spill region, the EVOS Trustee Council ensured that key habitats for injured species would not be further damaged by extensive development or logging, serious threats at the time of the spill. The Trustee Council felt that in an already spill-impacted environment, purchasing land could go a long way toward allowing the ecosystem to recover." Further, "The Trustee Council has dedicated nearly 60 percent of available settlement funds –over \$400 million— for habitat acquisition and protection in the spill region."
- As written in the Chugach National Forest Land Management Plan Record of Decision dated May 31, 2002 on p. 8-9, Regional Forester Dennis E. Bschor states, "My overall goal is to manage the affected lands within Prince William Sound to maintain their wild character and provide unique dispersed recreation opportunities, and to provide for the continued recovery protection, and enhancement of wildlife, fish, and other injured resources." Further, "EVOS Trustee Council Acquired Lands Management Areas will provide outstanding opportunities for solitude, isolation and quiet when traveling cross-country." CLMP Revised Land and Resource Management Plan Social Systems Desired Condition p. 4-41.
- The subsurface is the dominant estate and the owner has the right to access and develop its interest. Disturbance of the surface estate that these agencies are responsible for protecting is inevitable (if the subsurface is developed) and fails the mission and purpose of the hundreds of millions of public funds spent to conserve them.
- An exchange with Chugach (subsurface owner) would provide the public with a significant conservation benefit while providing Chugach the meaningful economic benefits it was promised under the Settlement Act.
- Regarding the USFS, National Policy includes:
 - Consolidation of Lands,
 - Eliminate need for right of ways through National Forest system lands,
 - Protection of key resources (i.e., Wilderness, endangered species, unique portions of the forest),
 - Clear direction to dispose of lands not suitable for the Forest Service,
 - Cannot acquire lands which have outstanding rights,
 - Must (should) support the CNF land and resource management plan, and
 - NEPA requires that outright purchase be considered as an alternative to exchange.
- Chugach may be willing to entertain offers for its lands within Wilderness and Wilderness Study Area units, which would help keep those system units intact. In previous discussions, these lands were of great interest to the agencies.

Chugach Land Projects & Exploration

Chugach has a responsibility to shareholders to explore opportunities to monetize our ANCSA assets to foster economic and in-region benefits. This responsibility has led us to pursue a



number of opportunities on our lands that are in the exploration or preliminary development stages:

- Chugach is in the process of developing a commercial hard rock quarry in Port Gravina, where the corporation owns the subsurface estate. The EVOS Trustee Council acquired the surface rights to this land and transferred title to the U.S. Forest Service with non-development covenants, including donating a conservation easement to the State of Alaska. The project is in the Fidalgo-Gravina Inventoried Roadless Area. Recent development progress includes quarry site development – equipping the work area with staging pads, laydown area and road from the dock location to the quarry site. The quarry will supply public infrastructure development, enhancement and repair projects within the region and throughout Alaska with high quality armor stone, rip-rap, and other construction materials for harbors, transportation infrastructure, shoreline erosion control, streambed mitigation and other projects. This is a multigenerational facility.
- Chugach has conducted, and will continue exploration of, base metal and precious metal resources on volcanogenic massive sulfide deposits on EVOS Trustee acquired lands in Port Fidalgo. Previous exploration activities have strongly indicated the presence of gold, silver, copper, lead and zinc.
- In 2016, Chugach informed the National Park Service of its intent to begin an exploration program on lands acquired by the EVOS Trustee Council and transferred to the NPS in the Kenai Fjords National Park and Kenai Maritime National Wildlife Refuge. Chugach’s subsurface on these tracts are highly prospective for gold and silver, with several successful historical mines located on or adjacent to Chugach’s subsurface.
- Chugach also owns subsurface rights on other high development potential lands acquired by the EVOS Trustees, including lands in the Western Prince William Sound in the Chugach National Forest’s Wilderness Study Area (near Eshamy Bay and Chenega Island).

Summary

The goal, promises and spirit of ANCSA were not met with the Chugach people as a result of the factors highlighted in this statement. Chugach’s interest in opening up evaluation and discussion related to a fair land exchange is justified by the history presented.

Chugach has on many occasions attempted to enter into discussions with the USFS to resolve these land claim issues. In a letter from the then USFS Forest Supervisor Joe Meade, on June 27, 2003, Mr. Meade stated clearly that the USFS was not interested in pursuing any further discussion with Chugach related to land exchanges and that they did not feel such was in the best interest of the public. Federal and state agencies, for many of the purposes stated above, have taken the position that no development will take place on these lands. However, this entirely ignores the position of the Chugach Native People and is a particular denial of the intent set forth by ANCSA. In addition, conservation efforts and federal designations of park lands, forest lands, wilderness study areas and Roadless rules have created a significant devaluation of Chugach lands. While exchange language refers to “equal value,” the fact remains that our lands



have lost significant value as a result of the action of federal and state regulatory agencies that was beyond our control.

As identified, there are many potential benefits to the agencies in pursuing a land exchange on a number of Chugach properties, which could create a beneficial outcome for all parties. We are asking for the ability under the Chugach Alaska Corporation Land Exchange Pool provision, to have our land selections reviewed in order to enter into meaningful discussion surrounding opportunities for a fair and equitable land exchange or other concessions in order for Chugach to benefit as intended under ANCSA from utilization and development of our lands.

Appendix

Caption: Port Gravina Quarry Project Development





Caption: Port Gravina Quarry Project Development

