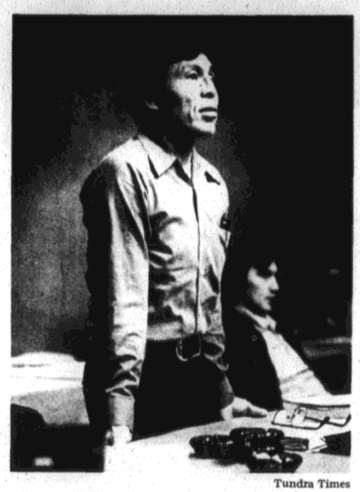
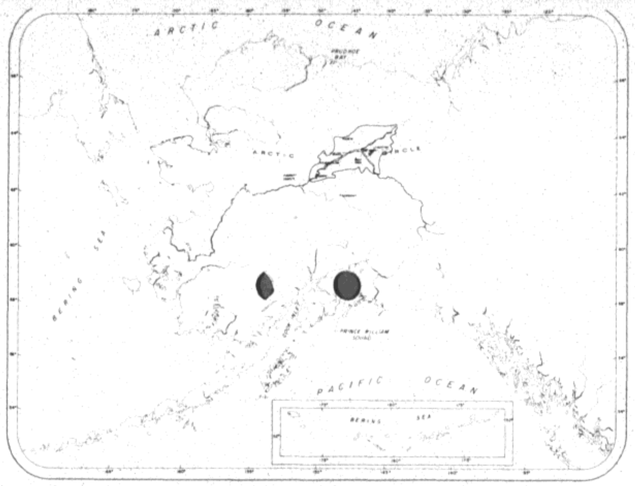
Part twelve of serial: state selections, Rampart dam cause conflicts

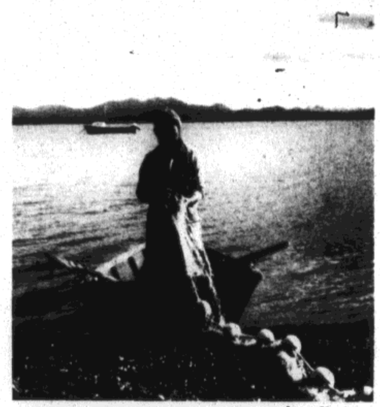
(Ed Note: This is the twelfth in a series of excerpts from the Alaska Native Land Claims book. It is the hope of the Tundra Times and Alaska Native Foundation that the publication of the series will further the understanding and implementation of all parties involved and affected by the claims Settlement Act. The book wes released by the ANF in 1976 and was also made possible by a Ford Foundation grant. Robert D. Arnold edited the text. Authors include: Janet Archibald; Margie Bauman; Nancy Yaw Davis; Robert A. Federick; Paul Gaskin; John Havelock; Gary Holthaus; Chris McNeil; Thomas Richards, Jr. Howard Rock and Rosita Worl.)



Tundra Times



PROPOSED RAMPART RESERVOIR



Joyce Hooley

Salmon fishing on Iliamna Lake near Kokhanok.

U. S. Department of the Interior

View of Sitka Indian Village, 1938.

State land selections

The greatest threat to their land rights during the early 1960's came about because of the Alaska Statehood Act. While the act recognized the right of Natives to lands which they used and occupied, it did not provide any means of assuring such use and occupancy. And by authorizing the new State government to select and obtain title to 103 million acres of land from the public domain, the continued use of lands by Natives was endangered.

One of the areas where state land selections first conflicted with Native hunting, fishing, and trapping activities was in the Minto Lakes region of Interior Alaska. The State wanted to establish a recreation area in 1961 near the Athabascan village of Minto and to construct a road so that the region would be more easily accessible to Fairbanks residents and visiting sportsmen. In addition, State officials believed that the area held potential for future development of oil and other resources. Learning of these plans of the State, the village of Minto had filed a protest with the U. S. Interior Department. They asked the federal agency to protect their rights to the region by turning down the State's application for the land.

In response to the protest, a meeting of sportsmen, biologists, conservationists, and State officials was held in 1963 to discuss the proposed road and recreation area. The chief of Minto, Richard Frank, told the group why they had filed a protest:

> Now I don't want to sound like I really hate you people, no. If we were convinced that everyone would benefit, that the people of Minto would benefit, we might go along. The attitude down there is that you people were going to put a road into Minto Lakes without even consulting the people who live there, who hunt and fish there, who use the area for a livelihood! If you people could live off Minto Flats for one year or even a quarter of a year, you would understand my point.

Frank argued that State development in the region would ruin the subsistence way of life of the Natives and urged that the recreation area be established elsewhere, where new hunting pressure would not threaten the traditional economy. He said, "A village is at stake. Ask yourself this question, is a recreation area worth the future of a village?"

Many others from villages throughout Alaska began to ask similar questions about the danger which State selections presented to their land rights. Leaders such as Ketzler and Rock, accompanied by representatives from the Association on American Indian Affairs, traveled to villages urging them to act to protect their lands from encroachment. They warned them that, unless they filed their claims and protests with the Interior Department, lands they considered theirs would soon end up as the property of the State or others.

In early 1963, about one thousand Natives from 24 villages sent a petition to Interior Secretary Stewart Udall requesting that he impose a "land freeze" to stop all transfers of land ownership for the areas surrounding these villages until Native land rights could be confirmed. The petitioners came from the Yukon River delta, the Bristol Bay area, the Aleutian Islands, and the Alaska Peninsula. No action was taken by the Interior Department in response to the petition.

Rampart Dam

Another kind of threat to lands used by Natives during this period was federal withdrawal of lands from the public domain, especially withdrawals like one for the proposed Rampart Dam. The federal project, planned to produce electric power and to create a recreation area, would have flooded numerous villages and vast land areas traditionally used by Athabascan groups.

When Allen John, a resident of Stevens Village, was informed of the proposal, he had this reaction: "We are concerned about the Rampart Dam at which the white man are gonna put in down below us. The project will ruin our hunting, trapping and fishing on which we have lived for so many years . . . What are we supposed to do, drown or something?"

A combination of the threat of impending State land selections and the proposed dam prompted Stevens Village to file a protest during June of 1963. In a letter accompanying the claim, the Stevens Village Council explained why they wanted to obtain title to an area of more than a million acres. The Council wrote, "We use an area of 1,648 square miles for hunting, fishing, and for running our traplines. This is the way in which our fathers and forefathers made their living, and we of this generation follow the same plan."

Three months later the villages of Beaver, Birch Creek, and Canyon Village also filed claims to land. But there was to be no resolution to their claims, or the claims of other villages, for eight more years.

Chapter 15 Alternative Solutions

Land rights recognized

Natives had won recognition from the Interior Department by 1963 that resolution of the issue of Native land rights was long overdue. This was shown in the report of the Alaska Task Force on Native Affairs, a three-man group appointed by Interior Secretary Stewart Udall. The report cited the failure in the Organic Act to provide a means by which Natives might obtain title. It noted that, in the ensuing 78 years, Congress had "largely sidestepped the issue of aboriginal claims," and if Congress was ever to define Native entitlement, it should do so promptly.

Recognition of Native land rights was also demonstrated in the increasing attention given the subject by Alaska's congressmen, by State officials, and by persons or groups outside of the state. These spokesmen offered a variety of solutions to the land claims issue.

Differing approaches were offered by members of Alaska's delegation in Washington, D. C. Senator Ernest Gruening suggested that the claims of Native groups should be settled in the U. S. Court of Claims. But that approach was seen by Representative Ralph Rivers as one that would take too long.

Tundra Times

The hunter.

Rivers said he believed Congress should extinguish Native land rights and award cash compensation. He opposed grants of land to Native claimants. "What would they do with it?" he asked. "They wouldn't use it. It would just lie there."

Senator E. L. "Bob" Bartlett urged that State land selections be allowed to proceed before a land settlement was reached. He said he thought that villages would not require more than one million acres in land and suggested that cash payment could be made for other lands to which Natives claimed ownership.

State officials also urged that the Natives allow the State to proceed with its selections and then enter into cooperative planning with the State for use of the lands. The director of the Alaska Division of Lands told Minto claimants, for example, that federal action might not be helpful to either the State or the Natives. He said:

> My own personal observation is that it is difficult to get anything done through the federal government. The State is more flexible to right wrongs . . . I don't think you people want a reservation. That way it would be under BIA [Bureau of Indian Affairs] contro. wouldn't it? You wouldn't be able to decide anything.

Opinions on how the Native land settlement should be approached also came from sources which were prominent in the field of national Indian affairs. William Brandon, author and historian, wrote President John F. Kennedy in 1962 requesting that he propose legislation for a claims settlement and that he halt land transfers in Alaska until the claims were settled. Early in 1963, the National Council on Indian Affairs, comprised of 16 member organizations such as the American Civil Liberties Union, Association on American Indian Affairs, and national religious groups made similar recommendations.

The report of the Alaska Task Force included specific recommendations for solution. In addition to urging Congressional action, the Task Force called for: 1) the prompt grant of up to 160 acres to individuals for their homes, fish camps, and hunting sites; 2) withdrawal of "small acreages" for village growth; and 3) designation of areas for Native use — but not ownership — in traditional food-gathering activities.

Aided by the Association on American Indian Affairs and its executive director, William Byler, Natives were successful in their efforts to prevent the Alaska Task Force recommendations from being carried out. They opposed them, in part, because there was no provision for cash payment for lands they would lose, and because no mineral rights were guaranteed for the lands on which they would have received title. They opposed the recommendations, too, because the land proposed for Native ownership included only small tracts. As the *Tundra Times* editorialized, "Natives have steadfastly maintained that they need large areas for hunting, fishing, and trapping now and for development of resources later as their economy changes . . . Small areas will not be sufficient."

Four alternatives

To this point, unacceptable solutions were better defined than those that would be acceptable. Alaska Natives were uncertain what course of action might lead to a just solution.

Four basic courses of action appeared to Natives to be open to them. They might seek: 1) to establish reserves under existing law; 2) to resolve their claims in the federal Court of Claims; 3) to obtain legislation at the State level to protect their land rights; or 4) to win a Congressional settlement.

Reserves

One possible course — establishment of reserves — was given but little consideration as a means of preserving land for their use. While this would result in designation of exclusive use areas for Natives, these areas would be held in trust by the federal government. Natives would be unable to lease, develop, or sell such land without government permission.

Twenty-three Native reserves had been established in Alaska by 1943. None was established after that time. They ranged in size from about 17 acres (for Chilkat Fisheries) to 1,408,000 acres (for Venetie and Arctic Village).

Court action

The experience of the Tlingit and Haida Indians with the courts made Native leaders reluctant to look to judicial settlement of land rights questions. In 1935, The Congress had enacted legislation which permitted the two southeastern groups to sue the federal government in the Court of Claims for land taken by the United States, most of it for the Tongass National Forest, which they historically used and occupied. In 1959, the Court of Claims had supported the claim and decreed that the Tlingits and Haidas were entitled to compensation. The compensation was later set at $7.5 million on the basis of the estimated worth of the land at the time the National Forest was established in 1907.

The Tlingit-Haida settlement took far too long to achieve, and the cash compensation seemed very small, but court action was seen as unsatisfactory for another reason: the Court of Claims had not ever been free to grant legal title to land; its only authority had been to award money for lands lost.

State legislation

Seeking action by the State government to protect land rights was also only briefly considered by Natives. One proposal introduced into the legislature would have created Native reservations of 20 square miles each surrounding the villages. Natives did not push for its passage because the land area that would be preserved for their use was too small and they were not enthusiastic about reservations. The major reason that the proposal was not adopted was that most state legislators agreed that the Native land rights issue could only be resolved by the Congress.

These legislators were right in pointing out that Congress had reserved to itself in the Organic Act the right to define the terms under which Natives might obtain title. It could be argued reply, however, that the Congress had done so by providing for reserves, allotments, and homesites.

Federal legislation

But Native groups knew these acts of Congress were clearly inadequate to the protection of their land rights. New action by the Congress was needed to provide a settlement of aboriginal claims to land.

The problem, however, of seeking congressional settlement of land claims was the enormous uncertainty of what the results might be. The Congress might grant Natives title to only a small part of their land and some cash compensation for lands given up. Or it might award only compensation. Congressional settlement could be the most rewarding or the most damaging of the four alternatives. Even though court action would take time, the legal case based upon use and occupancy might result in a fairer settlement than that which the political process would produce in the Congress.

While these alternatives were being explored in discussions among Native leaders, none was being actively pursued. A decision to do so would have to await the confederation of small, relatively weak Native associations into an organization which would have the power and resources to see it through.

Next week — regional Native associations organized