

Partial judgement made on 7 (i) litigation

An order signed by U.S. District Court Judge James A. von derHeydt has awarded a partial summary judgement in a case brought by six regional Native Corporations against the Arctic Slope Regional Corporation (ASRC) involving resource revenue sharing provisions of the Alaska Native Claims Settlement Act (ANCSA).

The memorandum and order, signed February 7 and received by the Tundra Times las week, involves more than \$13 million received by ASRC under agreements with five major oil companies. The complex legal case is concerned with a dispute over how much of this amount is to be shared with other regional Native corporations by ASRC under provision of Section 7(i) of ANCSA.

The partial summary judgement against ASRC is expected to lead to a final order which will almost

certainly be appealed by ASRC. Millions of dollars of current resource funds, and untold future resource revenues, are at stake in the litigation.

Several regions have reached sepearte settlements with ASRC in the litigation. Ahtna, Inc., The Aleut Corporation, Koniag, Inc., Sealaska Corporation, Cook Inlet Region, Inc. and Doyon, Ltd. have continued to contest ASRC's 7(i) distribution formula in the courts.

In part, ASRC has argued that money received from the oil companies was paid for damage to the surface estate and subsistence lifestyle of Natives of the region, and for services and other surface interests. ASRC claimed that only about half of the money received was directly related to the oil companies' right to extract the subsurface resource, and that 7(i) distribution should be made only on that portion.

The Court agreed that damages paid by oil companies for "unreasonable damage to the surface resources" are revenues which may be considered "liquidated damages" and should not be subject to 7(i) sharing.

Judge von derHeydt, however, indicated that no such revenues appear to be include in the ASRC oil exploration agreements. "None of the agreements contain a clause which even resembles a liquidated damages clause," wrote von der Heydt.

"This leads the court to the inescapable conclusion that this argument is an after the fact realization and that Arctic Slope could not have received any portion of these revenues as liquidated damages for unreasonable damage to the surface estate," the judge said.

The Court also addressed the question of whether a
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portion of money was for "services and alleged surface interests related to oil and gas exploration and development.

Judge von derHeydt said, "Whatever independent value these alleged elements of consideration have, Arctic Slope has brought forth no evidence that would illustrate that the revenues received for these services and other interests were not attributable to, directly related to, nor generated by acquisition of an interest in the subsurface estate."

The court also stated that revenues received for "lease options" in ASRC oil company agreements were subsurface revenues "as a matter of law."

Regional corporations represented in the case against ASRC have argued that all of the money received under the ASRC agreements with oil companies is subsurface revenue subject to the ANCSA sharing provision. They further argue that ASRC has used "labels" to class the money as other than subsurface revenue in order to lessen their 7(i) obligation.

In granting the motion for the partial summary

judgement, Judge von derHeydt concluded, "The court having examined the briefs, depositions, affidavits and exhibits, finds that there are no genuine issues of material fact, and the revenues received under these four agreements are revenues received from the subsurface estate as a matter of law and are subject to the sharing provisions of section 7(i) of ANCSA."

If the order stands under the expected appeal, only one more major area of 7(i) litigation remains to be settled. This involves determination of how "net revenue" should be figured for the resource revenue sharing distribution.

The court will be asked to decide what deductions may be made before calculated net revenue under Section 7(i). The regional corporations have agreed to the appointment of a "special master" to take evidence and summarize the positions of the regions. The master is to make a report to the court in advance of the net revenue decision process.