

# Stevens seeks to prevent 7(i) distribution of NOL monies by regional corporations

by Jeff Richardson  
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By unanimous consent, the U.S. Senate has passed a measure to prevent the distribution of net operating loss revenues under Section 7(i) of the Alaska Native Claims Settlement Act. That section provides that 70 percent of proceeds from the sale of timber and subsurface resources by a regional Native corporation shall be distributed to the other 11 regional corporations. Under Section 7(j) of ANCSA, a portion of those revenues are in turn distributed to village corporations in each region.

A class action lawsuit to force the distribution of NOL proceeds, brought in U.S. District Court in Anchorage, was dismissed last

month. Bayview Corp. of Ivanoff Bay asserted that ANCSA's revenue-sharing provision applied to all mineral and timber-based revenues, including the sale of losses on resource operations, not just those earned from the sale of the resources themselves. Bayview attorney Sam Fortier told *Tundra Times* he was filing an appeal of the dismissal.

"I'm trying to put it together as quickly as possible," Fortier said.

Bayview claims as much as \$525 million in NOL proceeds should have been shared.

Sen. Ted Stevens, who introduced the bill to block distribution of NOL proceeds under Section 7(i) of ANCSA at the urging of several regional corporations, maintains that Congress never in-

tended the revenue-sharing provision to cover the sale of losses on resource operations.

Fortier counters that when the land claims act was passed in 1971, no one contemplated that corporations would be allowed, several years later, to sell their net operating losses, and thus couldn't have had any intention about sharing such proceeds one way or the other. In that event, he argues, an interpretation of ANCSA should favor the smaller, financially weaker village corporations, many of whom struggle to just to survive, thus jeopardizing one of the key institutions created to fulfill the terms, the Congressional intentions, of the act.

Fortier also criticized hasty process used in passage of the

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Senate bill. He said a hearing was scheduled with little or no notice provided to facilitate testimony, "without any opportunity for any village corporation to be heard."

Noting that his client, at least, lacked the financial resources to mount a serious lobbying effort on Capitol Hill, Fortier suggested village views were being precluded.

"Congress ought to hear what village corporations think about it," said Fortier.

The Stevens measure was attached to a package of other ANCSA amendments, H.R. 402, passed by the House in March. With the 7(i) provision attached by the Senate, the whole package must now go to a House-Senate conference committee, where members of both houses will weigh in on the revenue sharing issue. Its final resolution is uncertain. Rep. Don Young is expected to support the Stevens proposal, but other House members may balk. Although conference committees do not take testimony, members are bound to hear from vocal stakeholders on both sides. According to Fortier, at least one congressman has indicated he will not support passage under unanimous consent.

The Bayview lawsuit was dis-

missed by Judge H. Russel Holland essentially on procedural grounds. He said a dispute between village and regional corporations was a matter for state courts to decide. Fortier says questions of interpretation of federal statutes like ANCSA are properly resolved in federal court.

Another village corporation, representing shareholders of Chevak, a community in the Calista region, attempted to join Bayview's lawsuit, but Holland's dismissal effectively preempted that move.

"Judge Holland denied their application for leave to intervene," Fortier said.

Alaska Federation of Native President Julie Kitka said the statewide organization, which represents both regional and village corporations, as well as Native non-profit groups and some tribes, is not advocating for the 7(i) amendment, although it may be attached to a package of other ANCSA technical amendments. She said individual regional corporations are advocating for the measure.

Chief critics of the Bayview position have been Arctic Slope Regional Corp. and Sealaska Corp.