

Native community well represented by various witnesses

Alaska Natives testify before House Committee

by **Jim Benedetto**

Tundra Times Editor

WASHINGTON, D.C. — The U.S. House of Representatives Committee on Interior and Insular Affairs held a hearing on H.R. 4162, the House version of the so-called "1991" legislation to amend the Alaska Native Claims Settlement Act (ANCSA).

Testimony was offered by representatives of the state of Alaska, Alaska Native political organizations, Native regional corporations and a sportsmen's group at Thursday's hearing.

Though many of the Interior and Insular Affairs committee members were unable to attend the hearing due to conflicting hearings held by other committees and subcommittees, Rep. Don Young (R-Alaska), who introduced the bill in the House, was present throughout.

Also present were a number of Alaskan students participating in the



Shown here are some of the Alaska Native students in Washington, D.C. with the Close Up Program. Chairman Udall invited the students to sit on the rostrum during the hearing.

photo by Jim Benedetto

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Hearings

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Rep. Don Young (R-Alaska) urged the committee to "take a close look at what this bill does...and does not do."

photo by Jim Benedetto

Close Up Program. The program brings high school students to the nation's capital to learn about government. Many of the students remained through much of the hearing. As the hearing got under way, the students were invited to occupy the seats of absent committee members on the rostrum.

"Mr. Chairman, we have a quorum!" one congressman quipped to the laughter of those present.

The 1991 legislation, which was crafted over the past four years by the Alaska Federation of Natives (AFN) after four conventions and numerous village meetings, is designed to provide Alaska Natives with certain options and protections for the continued ownership of lands and corporate shares received pursuant to ANCSA.

Fifteen years after passage of the act many problems still have yet to be resolved. A substantial portion of Native lands have yet to be conveyed to the regional corporations. The implementation of the act has been fraught with litigation and delays. Many of the corporations are struggling for continued survival since infusion of federal monies to the corporations ceased in 1980.

Additionally, it has become increasingly clear to Alaska Natives and others that the act was flawed in some substantial ways from the outset: the act disenfranchised Natives born after 1971, sometimes called "new Natives," from participation in the settlement; the original act would make Native corporate stock available to

non-Natives in 1991, thus raising the quite real possibility of Native loss of control over ancestral lands to outside business interests or to tax liability.

H.R. 4162 and its Senate version S. 2065, would alleviate many of the problems with the original settlement through the amendments drafted by AFN. The amendments substantially approved by AFN convention delegates late last year offer a series of choices to Native corporation shareholders.

The legislation, if adopted into federal law, will allow shareholders to decide whether or not non-Natives can purchase stock, when it would be offered, and what type of stock, with attendant restrictions, would be issued; it would allow shareholders to transfer assets to a "qualified transferee entity" (e.g., tribal council, village corporation, etc.) or subsurface rights to the villages; and would extend in perpetuity tax exemption for undeveloped Native lands.

In a brief opening statement, Rep. Young asked the committee to "take a close look at what this bill does...and does not do." Young told committee members that H.R. 4162 extends stock restrictions and land protections currently available under federal law, and allows corporations to lift restrictions and grant dissenters rights.

What the bill does not do, said Young, is affect government powers or grant new rights to land.

"Sovereignty is not part of this bill," said Young.

Emil Notti, commissioner of the

state of Alaska's Department of Community and Regional Affairs submitted testimony on behalf of Gov. Bill Sheffield in support of H.R. 4162. Notti was accompanied by John Katz, director of State/Federal Relations and special counsel to the governor.

Notti testified that "ANCSA has not achieved the high standards and purposes envisioned by Congress," and that H.R. 4162 represents "the conclu-

pending before you.

"Gov. Sheffield believes in the strength and unity of the Alaskan people," Notti continued. "He would not and could not support the objectives of legislation which would create conflict and acrimony. However, his desire to ensure fair treatment for all Alaskans...is not thwarted by the options given to Native people in H.R. 4162."

"Sovereignty is not part of this bill..."—Rep. Don Young

sions of Alaska's Native people about what is best for them in the future.

"The Sheffield administration stands with the Alaska Congressional delegation...in supporting the intent and purpose of the 1991 amendments," said Notti.

The decisions of Alaska Natives regarding the settlement act "should be respected unless they are in clear conflict with established state or federal policies," said Notti. "We find no such conflicts in the amendments

The Sheffield administration also took the Reagan administration to task in Notti's testimony in an obvious protest to proposed massive cuts in Bureau of Indian Affairs (BIA) programs. The Reagan administration's justification for the cuts is that "the benefits provided by the settlement act make such allocations unnecessary."

The conclusions reached by both the state and Native communities about

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John Katz and Commissioner Emil Notti testified on behalf of the Sheffield administration.

photo by Jim Benedetto

Hearings

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the affects of ANCSA differ markedly from those of the Reagan administration," Notti told the committee.

AFN President Janie Leask was next to offer testimony. Leask was accompanied by AFN co-chairman Glenn Fredericks and John Shively, a lobbyist for AFN who has had a major influence in the crafting of this legislation and the original settlement act.

Leask told the committee that "AFN and the entire Alaska Native community stongly urge passage of the legislation, subject to a few comparatively minor amendments."

Prompt passage of H.R. 4162 is necessary, said Leask, "to make the promise of ANCSA...a real and honest example of the fact that Congress can deal fairly with our original American citizens..."

According to Leask's testimony, there are two primary points regarding the legislation. The first is that H.R. 4162 would change a fundamental concept on which ANCSA was originally built by extending indefinitely the period of stock inalienability. Leask said that that approach is merely recognition of an accepted fact: "that this is indeed a Native settlement and there is nothing wrong with establishing institutions that are permanently controlled by the Natives."

The second point made by Leask is that the focus of ANCSA and the proposed legislation is on collective or communal rights, reflecting traditional Native values. The choices offered to Native stockholders by H.R. 4162 reflect this focus by offering each corporation the option to regulate the nature and rate of its own development.

Inspite of AFN's unflagging support

for the legislation, however, Leask urged the committee to consider several amendments.

One would change the minimum quorum needed to terminate stock restrictions back to two-thirds of the shares, as per AFN's original proposal. H.R. 4162 and S. 2065 omit that provision, which Leask says would have the effect of permitting only 26 percent of the shareholders of a

tee that the preparation of the 1991 legislation began in 1982 and progressed through four conventions, over 50 village hearings and workshops, and was extensively discussed in newspapers and newsletters throughout the state.

The next set of witnesses were NANA Regional Corporation Presi-

revenues are shared equally by the regional corporations. Huhndorf said that CIRI's position was that asking each of several hundred villages to provide a separte accounting of 7(i) revenues would only lead to disagreements and protracted litigation.

Byron Mallott explained to the committee the disadvantages, from a business perspective, of providing a



John Shively, AFN President Janie Leask, and Co-chairman Glenn Fredericks testified on behalf of AFN. Leask testified that "AFN and the entire Alaska Native community strongly urge passage of the legislation." photo by Jim Benedetto

corporation to terminate stock restriction (assuming a minimum quorum and a minimum vote in favor of termination).

Another amendment would restore AFN's proposal that stock could not be inherited by non-Natives, a provision that Leask said "is essential in our view."

In questioning by Rep. Young after her testimony, Leask told the commit-

tee that the preparation of the 1991 legislation began in 1982 and progressed through four conventions, over 50 village hearings and workshops, and was extensively discussed in newspapers and newsletters throughout the state.

Hensley told the committee that NANA "very strongly supports" H.R. 4162. Hensley also spoke in support of AFN's position that restricted stock not be inherited by non-Natives.

In his closing remarks to the committee, Hensley referred to segments of the non-Native community who question the necessity or the desirability of the 1991 amendments.

"There are some who believe that the purpose of the claims act was to assimilate Natives into western society and to eventually force us to abandon our Native values. Some of these same people say they would like us to lose our stock and land to non-Natives," Hensley said. "Protecting our land and culture has to remain our highest priority."

Hensley and the next three witnesses

20-year advance announcement of the availability of a corporation's stock. If and when a corporation decides to issue stock, said Mallott, should be based on maximizing the value of the stock according to market conditions. Mallott also spoke in favor of H.R.4162.

Roy S. Ewan, president of the ever-profitable AHTNA Inc., pointed out to the committee that "there are some success stories in the ANCSA process."

"I would say that ANCSA overall was a step in the right direction by Congress in its dealing with Native Americans. I say this in spite of negative statements being made about the legislation by individuals such as Judge Thomas Berger," Ewan said.

Ewan minimize the incongruity of Native culture with the corporate model, pointing out AHTNA's profitability, its concern for the cultural heritage of its people, and the fact that



AHTNA President Roy Ewan told the committee that "there are some success stories in the ANCSA process." photo by Jim Benedetto

"Protecting our land and culture has to remain our highest priority."

—NANA President Willie Hensley

offered oral summaries of their written testimony due to time constraints on the committee.

In the testimony of Roy Huhndorf, the CIRI president told the committee that CIRI is strongly supportive of the aims of H.R. 4162, but that one provision in the bill — authorizing the transfer of subsurface estate to village entities — could not be endorsed by CIRI. Huhndorf asked that the committee carefully consider that section of the bill because of its effect on 7(i) revenues.

Under section 7(i) of ANCSA, 70 percent of all timber and mineral

AHTNA has never jeopardized its lands by pledging it as security.

"We are not afraid of the future and we believe that in the end the people will act with courage and strength and support the integrity of their corporation. We see the need to protect our lands and we like the way the amendments do it," said Ewan.

In questioning by committee members after their testimony, the regional corporate heads testified that H.R. 4162 was "no legal subterfuge" to address the sovereignty issue. Notti, Katz and Leask, when they were asked similar questions, had had similar

responses.

They also testified that ANCSA corporations had done hundreds of millions of dollars in business during the last year, and had created employment opportunities for Alaska Natives.

When asked by Rep. Young what will happen to the ANCSA corporations if the 1991 legislation is not passed, Byron Mallott responded that Alaska Natives would return to congress one day to ask "what happened?" to their settlement.

Rep. Seiberling, who chaired the hearing in the absence of Rep. Udall, and who participated in the passage of the original settlement act in 1971, was then told by Roy Huhndorf that 1991 was like a cliff that Alaska Natives were in danger of falling over. The legislation was a ramp which would allow Native corporations the opportunity to descend less precipitously.

The next witness to testify was Senior Vice President Don Nielsen of Bristol Bay Native Corporation (BBNC), who testified in support of H.R. 4162.

"As an officer and director of a viable Native corporation, I can state firmly that we are FOR Native corporations...we are for Native control, land protections and revenue sharing, and we are for the corporate structure," Nielsen said.

Nielsen said that the automatic extension of Land Bank protections provided for in H.R. 4162 were particularly important due to the Interior Department's inaction in the field.

"Not a single land bank agreement has been signed to date," Nielsen told the committee.

Will Mayo then testified on behalf of the Tanana Chiefs Conference in support of the legislation. Mayo's testimony blended the need for amendments to ANCSA with the importance of the tribal option as an alternative way to preserve land and culture.

"The bill itself, however, does not seek to resolve the issues surrounding Native self-government in Alaska. While we strongly support continued recognition of these rights, this is not the time nor place to consider these issues," Mayo told the committee.

An additional concern of the Tanana Chiefs Conference was that ANCSA benefits not be counted in calculating eligibility for state and federal programs such as food stamps. Currently, Mayo told the committee, Native

people are being excluded from participation in some aid programs because of their ANCSA assets.

"In 1971 we had a very different view of the future than we do now. We only saw opportunities. Now we see a full panorama of difficulties and dangers faced by our people," Mayo said it was those dangers that provided Native people with the impetus to amend ANCSA.

Rep. Young, at the conclusion of Mayo's testimony, asked him what would happen if the 1991 legislation was not passed. Mayo replied that the land would have no protection.

"It is the threatening of the land which has brought the fuel to bring this sovereignty issue to a head," said Mayo.

John Borbridge, Willie Kasayulie and Al Goozmer, representing the Alaska Native Coalition, were the first to speak in opposition to H.R. 4162. The Alaska Native Coalition (ANC) is a fledgling organization of tribal government advocates. They also advocate recognition of Alaska Native tribes by the federal government on a government-to-government basis. The coalition claims to represent the views of over 120 Alaska Native governments, but it is unclear what that representation means beyond general policy issues.

Borbridge told the committee that H.R. 4162 "provides inadequate protection for the land and overlooks tribal governments."

"Moreover," Borbridge continued, "it perpetuates the second-class treatment of Alaska Native tribes," and therefore, "the Alaska Native Coalition cannot support H.R. 4162 in its present form."

It was believed by many prior to the hearing that the ANC would support the bill and urge Congress to take up the sovereignty issue.

Willie Kasayulie provided an attachment to his testimony consisting of alternative amendments prepared by the Yupiit Nation.

"These amendments have not yet been fully examined by the Alaska Native Coalition, but I feel confident that when they have completed their analysis they will endorse the amendments in full," Kasayulie said.

Alaska's Congressional delegation has stated that there is no sympathy within the Congress at this time to deal



John Borbridge, Jr., Chairman of the Alaska Native Coalition's legislative committee said his organization opposes H.R. 4162. photo by Jim Benedetto

with the sovereignty issue.

Rep. Young asked Borbridge if he would support H.R. 4162 in the absence of his organization's amendments. Borbridge replied that he would not.

Young then asked Kasayulie, "where is ANC if there is no legislation? If there's no bill, isn't the land in jeopardy?"

This apparent contradiction in the interpretation of 7(c) by the ANC and the Alaska Outdoor Council prompted the acting chairman, Rep. Sieberling, to ask how such different conclusions could be drawn from such plain language. Ross replied respectfully that "Mr. Borbridge is mistaken."

Both Ross and Somerville compared the result of federal recognition of

"We not afraid of the future...we see the need to protect our lands and we like the way the amendments do it."
—AHTNA President Roy S. Ewan

One major concern of the ANC representatives was section 7(c) of the bill, which they claimed was a covert way of establishing that there are no federally recognized tribes in Alaska. Section 7(c) reads:

Nothing in this act shall be construed as enlarging or diminishing or in any way affecting the scope of any governmental authority of a federally recognized tribe, traditional Native council, or Native council organized pursuant to the Indian Reorganization Act, as amended, or any right, privilege, or immunity of Alaskan Natives as Native Americans in their relationship with the government of the United States.

The next witnesses, Wayne Ross and Ron Somerville of the Alaska Outdoor Council, also spoke in opposition to the bill. They were also concerned with the identical section — 7(c) — but claimed it deceptively advanced the cause of Native sovereignty.

Wayne Ross told the committee, "I have today furnished you copies of the internal memoranda prepared by the attorneys working for the various Alaska Native organizations which absolutely establishes that the purpose behind the amendments you have before you was to facilitate Native sovereignty."

Alaska Native sovereignty as "a South-African style of apartheid."

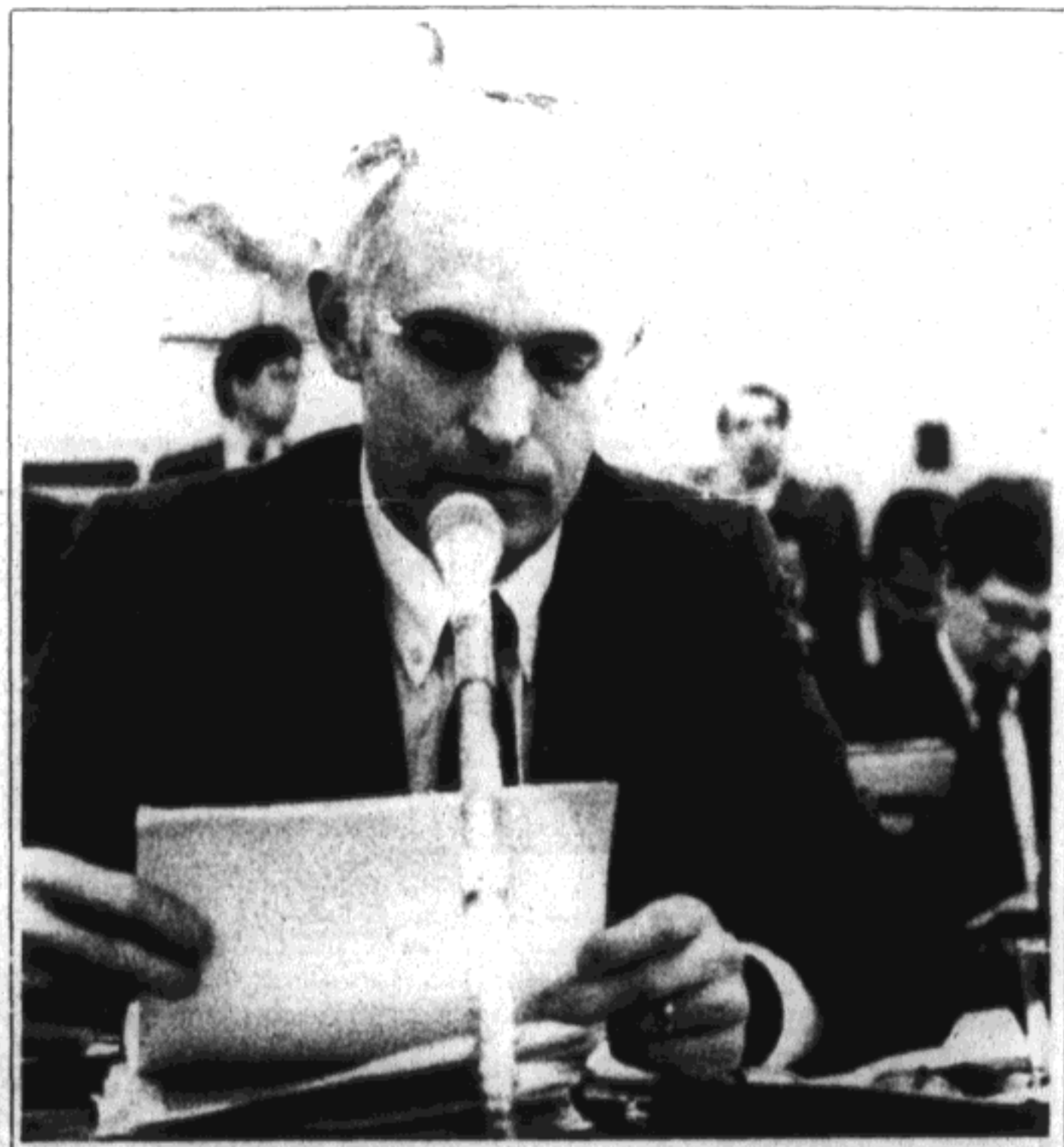
Justice Thomas Berger was the final person to give testimony. Berger spoke extemporaneously about his travels to Native villages throughout Alaska, and the concerns of their residents on 1991 issues.

Berger spoke in support of H.R. 4162, he said, because he believes that "tribal sovereignty and ANCSA corporations are not mutually exclusive...they can co-exist."

In so saying, Berger reiterated a point he has made before other audiences, that strengthening the corporations was a good idea, since they provide some economic benefit and employment to Alaska Natives.

Berger then advocated retribalization of ANCSA lands for their protection and discussed the recommendations in his book, "Village Journey."

Additional hearings are scheduled in Alaska next month. There will be a hearing on May 24 in Fairbanks, and one on May 27 in Anchorage. The bill could reach the floor of the House of Representatives for a vote this summer.



Gubernatorial candidate Ron Somerville of the Alaska Outdoor Council claimed H.R. 4162 advanced the cause of Native sovereignty. photo by Jim Benedetto