Sobering Analysis Of Aspinall Bill

REPORT

TO: Executive Committee and Delegates of the Central Council of Tlingit and Haida Indians of Alaska
FROM: John Borbridge, Jr., President, Central Council of the Tlingit and Haida Indians of Alaska.
SUBJECT: Alaska Native Land Claims

On February 1, 1971, Congressmen Aspinall and Haley introduced a bill in the House of Representatives to settle the claims of the Natives of Alaska. It is designated H.R. 3100.

While I have not completed my analysis of the bill, I must say that its provisions are very disappointing.

First of all, certain of the statements made in Section 2, the declaratory section of the bill, indicate that the draughtsman does not understand the nature or the substantive aspects of aboriginal or Indian title. As a consequence, the dignity of the title that the Natives of Alaska now possess to virtually all of the land in the State is disparaged to the extent where it is hardly recognizable as the same thing that the Supreme Court has said is as sacred as the white man's fee.

Contrary to what is inferred by the declarations of the bill,

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aboriginal title does not depend for its existence upon recognition by the Congress or any other body or officer. The law and policy of this Nation since its founding have always been that aboriginal title springs from aboriginal use and occupancy; that it affords the Native groups that hold it complete beneficial ownership of the lands subject to it; and that it can be extinguished by Congress only by an act clearly calculated to do so and upon the payment of full compensation. Rights to protection against third parties are very clear.

Contrary to the assertion of the bill, the Natives do seek title to or compensation for substantially all the land in Alaska because, as the Federal Field Committee found, this is what they presently own under aboriginal titles which have never been extinguished.

Contrary to the inferences of the statements in the bill, aboriginal title, as a matter of law, is not lost to a Native group simply because its use and occupation of the subject lands is interfered with without its consent.

And, contrary to the assumption of the bill, individuals do not lose their rights in lands aboriginally owned by the group to which they belong simply because they move to a predominantly white man's town.

Based as it is upon predicates that are in derogation of aboriginal title, it is understandable that several of the substantive provisions of the bill are also totally unsatisfactory.

First, it provides that the only lands that Native groups might receive in fee are those physically occupied by their villages and adjacent lands in quantity not to exceed three times the acreage of the lands physically occupied by their villages.

On the face of Alaska the total lands that the Natives could get under this provision wouldn't even show as specks. Secretary of Interior Rogers Morton, in embracing this formula before the Senate Interior and Insular Affairs Committee in hearings on February 17, generously estimated that it would provide approximately 5 million acres. Native spokesmen who know their villages estimate that the actual figure would be closer to 80,000 acres. Secretary Morton must be informed of the substantive aspects of our land rights. Apparently this hasn't been done in an effective manner.

The bill provides that not less than 40 million acres shall be included in subsistence use permits to be granted to villages. The rights that these permits would bestow are illusory. The Natives' use of the included areas, except in cases of emergency, would be non-exclusive and the lands would otherwise be subject to disposition under the public land laws including the Statehood Act. Once again Native land rights would be subject to "a higher use or purpose."

The makeup of the agency that would administer and distribute the monetary compensation that the Natives would receive under the bill is likewise wholly unsatisfactory. Its members would be the Governor, the Speaker and President of the Alaska House and Senate, respectively, and four Natives appointed by the Governor with the consent of the State Senate. Where is the recognition of the competency of the Natives whose ability and dedication are primarily responsible for focusing the attention of the Congress and the American Public on the Alaska Native Land Rights issue? We do not need a quasi-governmental body to do for us what we can better do for ourselves. Well-intentioned paternalism is a poor substitute for significant self-determination.

The only use that could be made of money resulting from the settlement would be to pay it out to individuals. The Central Council of the Tlingit and Haida Indians of Alaska decided, with reference to its judgement fund award, that the needs of its people far outstripped its financial resources. By institutionalizing its strength and by training Tlingit and Haidas, that organization is using its resources as leverage to obtain Federal, State and private funding. The results–more financial resources and services previously not available on such a scale to our people will soon be forthcoming. We refused to give up our right to enter significantly into the political and economic life of our State. We regard the judgment award as capital assets that were paid to us for the loss of other capital assets–our land. We also have an obligation to future generations.

Additionally the bill contains provisions calling for the termination of Federal services to the Natives of Alaska. We object to this provision. This is a land claims settlement bill. Termination is a separate subject that can be dealt with in a separate bill. It should not be imposed upon us.

No provision is made for Native villages located in or adjacent to land to which the State has received Tentative Approval. A village could be deprived of all or part of land it would otherwise receive by the exception of Tentative Approved lands from Native selections.

There is little or no likelihood that the Federal contribution from mineral leasing revenues (250 million in the first ten years subsequent to enactment) will be realized. A review of the U.S. share (10 per cent) for the decade 1961-1970 clearly indicates that this provision needs a substantive amendment. The deficit to the Natives, under this formula, could be $240 million! We are approaching the Congress in good faith–we are entitled to real compensation for the very substantive rights that we are agreeing to give up.

While H.R. 3100 as introduced can only be a disappointment to the Natives, I don't believe that it represents the final thinking of either Chairman Aspinall or Congressman Haley. I believe it is essentially a staff product which they decided to introduce because they felt that it might serve as a framework for the deliberations of their committees. There are no indications that its provisions are cast in bronze or that the sponsors and other members of the subcommittee and full committee will not be receptive to suggestions for amendment. A vigorous, well-organized and unified effort by the Natives of Alaska is absolutely necessary in the months ahead.

Chairman Aspinall and Congressman Haley have previously displayed understanding and fairness when dealing with the causes of Native peoples. I can think of no reason why they would act differently with respect to the Natives of Alaska.