

TESTIMONY OF CARL MARRS
BEFORE THE UNITED STATES SENATE
COMMITTEE ON INDIAN AFFAIRS

November 1, 2017

Chairman Hoeven, Vice Chairman Udall, and
Members of the Committee, thank you for inviting me to
testify today. My name is Carl Marrs. I am proud to say
that I am an Alaska Native and that over the past forty
years, I have served the Alaska Native community in
various roles and offices. I am presently the Chief
Executive Officer of Old Harbor Native Corporation.

My primary purpose today is to testify in support of
S. 1698, the Settlement Trust Improvement Act of 2017.
In addition, I also support S. _____, The Tribal Economic

Assistance Act of 2017 and S. 1935, the Tribal Tax and Investment Reform Act of 2017.

Congress enacted the Alaska Native Claims Settlement Act (“ANCSA”) in 1971 to accomplish “a fair and just settlement” of the aboriginal land claims of Alaska Natives. Section 2 of ANCSA mandates that this settlement should be accomplished “in conformity with the real economic and social needs of Natives.” ANCSA required Alaska Natives to form corporations to participate in the settlement. Almost immediately, it became apparent that the corporate form did not always address “the real economic and social needs of Natives.”

In 1988, Congress enacted various amendments to ANCSA in Public Law 100-241. Public Law 100-241 authorized Alaska Native Corporations to establish “Settlement Trusts,” which would have two main purposes:

- First, to exist as permanent, Native-oriented institutions to hold and manage Native land assets in perpetuity.
- Second, to provide for the health, education and economic welfare of the individual Natives who are the Settlement Trust’s beneficiaries.

These purposes are tribal in nature: the holding and managing of Native lands in perpetuity is one of the most basic of tribal functions and the Alaska Natives who are

beneficiaries of Settlement Trusts are also tribal citizens. In other words, Settlement Trusts were to be an important vehicle in making ANCSA's aboriginal land settlement multi-generational.

Unfortunately, Public Law 100-241 did not address the significant federal tax issues that Settlement Trusts present. Congress added section 646 to the Tax Code in 2001 so that Native shareholders do not have "phantom income" when assets are transferred to a Settlement Trust and so the Trust itself, rather than the Native beneficiaries, pays the taxes on the Trust income even if that income is distributed to the beneficiaries. These provisions allow a Settlement Trust greater flexibility to invest and retain assets for the long term.

Section 646 has been helpful, but in my experience the Tax Code remains a road block to the use of Settlement Trusts. Old Harbor is one of a few Native Corporations that have been able to establish and maintain a Settlement Trust, so I am very familiar with the following detrimental tax issues. First, assets must be transferred to a Settlement Trust on an after-tax basis. Second, the tax treatment is uncertain if a Native Corporation assigns its right to receive certain ANCSA cash payments to a Settlement Trust. Lastly, if appreciated assets (including Native lands) are transferred to a Settlement Trust, immediate gain will be triggered to the transferring Native Corporation.

S. 1698 addresses these aforementioned issues. First, the bill provides certain tax treatment when a Native Corporation assigns ANCSA-required payments to a Settlement Trust. Second, S. 1698 allows an Alaska Native Corporation to elect whether or not to deduct contributions to a Settlement Trust. The deduction would be the amount of any cash transferred, and if property is transferred, the deduction is limited to the amount of the Native Corporation's basis in the property. The Settlement Trust would have income in the same amount as the deduction claimed by the Native Corporation. Third, S. 1698 provides that there is no income or gain recognition to a Native Corporation when property is

transferred to a Settlement Trust. This will greatly facilitate transfers of Native lands into Trusts.

I also want to comment briefly on S. _____, the Tribal Economic Assistance Act of 2017 (“TEA Act”) and S. 1935, the Tribal Tax and Investment Reform Act of 2017. I am whole-heartily in favor of the changes that would be made by these bills, which are aimed primarily at lower 48 Tribes and their reservations. However, these bills also favorably affect Alaska Natives and their lands. This is because the Indian Employment Credit of section 45A, the accelerated depreciation provisions of section 168(j), and the New Markets Credit of section 45D all apply to “reservations” as defined in section 3 of the Indian Financing Act, and section 3 defines “reservations” to

include lands owned by Village Corporations and Regional Corporations. Also, S. 1935 clarifies that tribal charities are to be treated the same as charities controlled by other governmental entities for purposes of deduction for contributions. This parallels the deduction that S. 1698 permits an Alaska Native Corporation for contributions to a Settlement Trust.

In conclusion, I know that the Committee is aware that Alaska Natives are rich in culture and tradition but have very limited economic means. These three bills help address this imbalance. I thank the Committee for the opportunity to testify and would be pleased to answer any questions the Committee may have.

Carl Marrs