

**Statement of Hallie Bissett**  
**Executive Director of**  
**Alaska Native Village Corporation Association**

Senate Committee on Indian Affairs

United States Senate

August 23<sup>rd</sup> 2022

## CONTENTS

Hallie Bissett Written Testimony.....	3
Introduction.....	3
Alaska Native Claims Settlement Act.....	4
Contaminated Lands.....	5
Appendix.....	8
Other materials with web links.....	8
Land Swap Language.....	9
MITIGATION BANKING FOR NATIVE ALASKAN BROWNFIELD SITES.....	13

## HALLIE BISSETT WRITTEN TESTIMONY

Honorable Senators and visiting Agency leaders,

Ent'e Chin'an GooneenYoo Na'eda (Hello, thank you for being here our friends) my name is Hallie Bissett, I am Upper Cook Inlet Dena'ina Athabascan, Granddaughter of Nick Nicolai, last Traditional Chief of Sunshine Village or what is now called Talkeetna and Daughter of Ron and Debra Bissett, it is my great pleasure to welcome you to our beautiful Country here in Alaska. We are grateful to have the Honorable members of the Senate Committee on Indian Affairs, their staff, and the many agency representatives who have traveled so far to hear from the traditional stewards of these lands and our State leadership.

Often referred to as "The Last Frontier" as it relates to our membership in the United States, Alaska was one of the last areas of the World to experience Western colonization. We are here today to discuss what has happened since that time, and we are seeking your support for a long-awaited remedy to easily the greatest perpetual environmental injustice in our State.

I will be speaking today of the issue of Alaska Native Claims Settlement Act (ANCSA) Contaminated Lands. Lands that were transferred as part of a settlement to the indigenous people of Alaska as compensation for giving up title to nearly 90 percent of our homelands. While my oral testimony will be limited, I am providing this written statement to supplement.

## INTRODUCTION

I am Dena'ina Athabascan, a shareholder and former board members of Cook Inlet Regional Inc. (CIRI) the regional corporation that was created in the most populated area of the State at the time ANCSA passed. I am a current member of the Knik tribe, though my heritage is closely tied to both Montana Creek and Chickaloon Tribes in the beautiful Interior of Alaska. My ancestors and those of my fellow Alaska Natives have called this place Home for tens of thousands of years.

I am here before your committee as the Executive Director of the Alaska Native Village Corporation Association (ANVCA). ANVCA is a State-wide organization that represents the 177 Village Corporations that were created by Congress over 50 years ago. Each of these entites

represent over 250 Alaska Native Villages and a shareholder base of over 140,000 individuals and their families.

## ALASKA NATIVE CLAIMS SETTLEMENT ACT

A departure from status quo, the Alaska Native Claims Settlement Act (ANCSA) served as the modern day Indian Treaty between Alaska Native People and The United States. It is important first to understand the moment in time that ANCSA was passed in 1971 was long after Congress had discontinued signing Treaties with Native Nations in 1867. At that time the United States entered the unfortunate "Indian Termination Era" marked by forced adoptions as well as indigenous children being forcibly removed from their homes and sent to boarding schools, all in an attempt to "Kill the Indian and Save the Man". Beginning in the 1960s, United States made a positive turn towards a new era referred to as the "Indian Self Determination Era". It is important to remember this because ANCSA straddles both markedly different Indian policy approaches ANCSA includes elements of both. The Act was supposed to settle long standing land claims that dated back over one hundred years, beginning with the sale of Alaska to the United States from Russia and accelerating with the passage of the Alaska Statehood Act (1958) and a significant discovery of Oil deposits on Alaska's North Slope.

In the late 1960s Aboriginal title was still left unsettled, as the State and Federal Government began selecting lands during this timeframe, Alaska Native people united and filed claims to 100 percent of Alaska, working together through a newly established Native News outlet the Tundra Times, our people were informed of the movement to advocate for our lands.

Then Secretary of Department of Interior Stewart Udall responded by instituting a "Land Freeze" and halted State and Federal selections until an agreement was reached with Alaska Natives. As the State and Federal Government were attempting to build a pipeline over 1000 miles to transport crude oil they were incentivized to settle as quickly as possible.

While negotiations were tense at times, they did reach a final agreement that was signed on December 18, 1971. The Act created 12 in-State Regional Corporations, and over 250 Village Corporations each charge with providing for their people's economic social and cultural wellbeing in perpetuity. This agreement provided Alaska Native people with 44 million acres of land split Regional and village Corporations the main difference being Regional Corporations has title to subsurface estate and villages surface estate. In addition, a one-time cash payment of \$962.5 million. We owned our land fee simple title, a very different model than the reservation system that we had by then learned do much about.

Alaska Native people were able to retain close to 10 percent of their lands, selected in what many feel was a rushed 5-year period. These lands were selected from areas that the Federal

Government provided to us, that were not yet selected by the State and Federal Government. It is important to point out that the State has an indefinite timeline to select their lands, and that over 50 year later, we still have not received full title to the lands in our agreement.

## CONTAMINATED LANDS

There are over 1,100 known contaminated sites on land conveyed to Alaska Native Corporations (ANCs) and additional sites on land pending conveyance. These sites were contaminated under ownership and/or responsibility of the federal government and then transferred to Native ownership. In the 1980s Congress passed the Comprehensive Environmental Response Compensations and Liability Act (CERCLA) and in that Act, transferred the liability of that contamination to our people.

The Alaska Federation of Native immediately began advocating to Congress that we were being given contaminated lands, which prompted an investigation and report out from Congress. In 1998 the Department of the Interior issued a report to Congress, entitled Report to Congress Hazardous Substance Contamination 1998 .

ANVCA became involved when this report was brought to our attention in 2012 by one of our member Alaska Native Village Corporations. Since 2012, ANVCA has worked to educate Alaska's Federal delegation, the State Legislature, members of Congress, and others to keep the issue in the forefront. In 2014, Congress asked for an update to the 1998 report, to identify the status of each site, for example, if any remediation had been done, and recommendations going forward. In June of 2016 the update was released, 2016 Update Report to Congress\_ Hazardous Substance Contamination of Alaska Native Claim Settlement Act Lands in Alaska .

The 2016 report identified over 1100 sites that were transferred contaminated and listed them in various stage of "clean-up" and again recommended action items to remedy the problem and begin clean-up but also brought to light that very little action had been taken since 1998. Many of these sites were in a status identified as "orphan sites" and "Institutional control" the first meaning that there was no plan or program identifies to clean them up the second meaning they had decided it could not be cleaned and would essentially be off-limits. 90 percent of these abandoned waste sites are within two miles of a village, contaminating our drinking water and subsistence foods.

According to a recent legal filing from the State of Alaska, 17.6 million acres of land was transferred at least partially contaminated. This equals 40 % of the lands that Alaska Native received. The estimated clean-up costs range from between \$60 - \$100 billion. In addition, our people have been held back from possible revenue generating opportunities because of this

contamination, in one instance a valuable property was selected for a possible harbor port, and after decade of clean-up came to learn it was not possible to clean.

Contaminated sites contain a variety of toxic materials including:

- Arsenic
- Solvents
- PCBs
- Asbestos
- Mining Waste
- Chemicals
- Mercury
- Toxic Metals
- Unexploded Ordinances
- Petroleum & Oil waste

Few studies have been conducted on the health and safety impacts of the contamination on human health, however anecdotally villages report higher rates of cancer and other illnesses linked to hazardous substances like Parkinson's disease. Many of the rural contaminated sites are Villages which practice subsistence lifestyles there has been only limited research on the contaminants impacts to fish, berries, and wildlife in these areas.

We have heard stories of fish that glow in the dark, or salmon that appear to have grey squishy material that our Elder bury and hope not to see again. One Elder reported that he had been part of a study to determine if PCB exposure had caused his Parkinson's, but he was never provided with the results.

In 2017, CERCLA was amended by Congress to lift the legal liability for contamination that was caused by the Federal Government for ANCSA lands specifically, but we have seen little action to clean these sites since that time. While this was a huge step in the right direction, the result has left agencies and others pointing fingers at each other for liability and clean-up.

In 2022, the Biden Administration came to visit our State to hear from our people about the issue. The remedy provided was to fund another effort to gather data on the lands status and provide a plan for remediation and clean-up. While we are grateful for the opportunity to identify the remaining lands that perhaps were left unaccounted for prior to liability being lifted, we are wondering how a report of the issue with no follow-up action can be offered again as a remedy to the situation. Currently there is money appropriated for Alaska Clean-ups of \$11 million, when the sites require billions to remediate. While we were left out of recent legislation that created

a Tribal Superfund for clean-up funds that utilized a definition that left Alaska tribes and ANCSA corporations Ineligible.

The United States Constitution under the 5<sup>th</sup> amendment provides that private property cannot be taken for public use without just compensation. While our people signed our rights away, they did so with the promise of economic prosperity and self-determination. Instead, we have been largely unable to develop even simple projects and that equates to losses over a 50-year period that far outweigh the money and lands received. We have watched as EPA and other agencies have rewritten policies absolve themselves of responsibility to Alaska Native Corporation lands that were contaminated by the Federal Government.

To be clear, we do not view the receipt of contaminated lands as just compensation, likewise we do not believe continuing to write reports will result in the situation being resolved. Below are some of ANVCA membership developed solutions that we respectfully submit for your consideration to remedy the situation:

- Swap undesirable ANCSA lands with unencumbered federal property. See sample language. See language in appendix
- Prioritize the clean-up of ANCSA contaminated lands in existing FUDS program
- Complete ANCSA Contaminated site database - provide ANVCA, Alaska DEC, and ANTHC with needed resources
- Include ANC lands in EPA Tribal clean up superfund - or create \$1billion in Alaska specific clean-up
- Provide adequate funding for Brownfields program, NALEMP, FUDS, etc.
- Adopt mitigation clean-up credits and tax credits for clean-up activities on ANCSA lands. See sample language in appendix.
- Require a minimum of bi-annual agency reporting on the status of clean-up on ANCSA lands.
- Provide Native contractor preference for clean-up on Native land.

Thank you for the opportunity to testify before this committee on this issue, we are hopeful that a real remedy, and not just another report to put on the shelf can be developed by working together to correct this injustice. None of us at the table were part of the problem, it is not your fault, but we are asking you to be a part of the solution, surely the intent was not to provide contaminated sites that result in a negative value.

## APPENDIX

### OTHER MATERIALS WITH WEB LINKS

- [Report to Congress Hazardous Substance Contamination 1998](#)
- [2016 Update Report to Congress Hazardous Substance Contamination of Alaska Native Claim Settlement Act Lands in Alaska](#) .
- WATCH testimony from Afognak Board member Sarah Lukin to Senate Environment and Public Works Committee [HERE](#)

•

## LAND SWAP LANGUAGE

(a) Title 43, United States Code, is amended to insert section 1601(a), as follows:

“§ 1601(a) Further Congressional findings and purpose

“(a) FINDINGS. —The Congress finds that—

“(1) Access to a healthy environment free from contaminants is critical for the economic, social, and

cultural self-determination of Alaska Native communities.

“(2) Alaska Natives face continued obstacles in their access to healthy environments, resulting in

ongoing economic, social, and cultural instability.

“(3) In 1998, the U.S. Department of the Interior reported to Congress that the United States conveyed

numerous contaminated lands to Alaska Native Corporations pursuant to the Alaska Native Claims

Settlement Act for the settlement of aboriginal land claims. The findings of the Department of the

Interior’s 1998 Report to Congress: Hazardous Substance Contamination of Alaska Native Claims

Settlement Act Lands in Alaska are hereby recognized.

“(4) In 2016, the U.S. Department of the Interior reported to Congress that 920 contaminated land sites

were conveyed to Alaska Native Corporations under the Alaska Native Claims Settlement Act. At least

338 of those land sites required additional cleanup. The full number of currently contaminated lands

conveyed pursuant to Alaska Native Claims Settlement Act is unknown. The findings of the Department

of the Interior's 2016 Updated Report to Congress: Hazardous Substance Contamination of Alaska

Native Claims Settlement Act Lands in Alaska are hereby recognized.

"(5) It is not, and was never, the intent of Congress to convey contaminated lands, or lands with the risk

of contamination, to Alaska Native Corporations for the settlement of aboriginal land claims.

"(6) There is an immediate need to address the environmental and health risks to Alaska Natives presented by the United States' conveyance of contaminated lands, and lands at risk for contamination,

to Alaska Native Corporations. This should be done rapidly, with certainty, without litigation, and in

conformity with the real economic, social, and cultural needs of Alaska Natives.

"(7) Permitting Alaska Native Corporations to exchange lands conveyed pursuant to the Alaska Native

Claims Settlement Act, regardless of existing proof of contamination, for other, non-contaminated

federal lands for lands will promote the welfare Alaska Natives and their communities.

"(8) Alaskan Native Corporations have successfully assisted Alaska Natives by supporting the preservation of traditional Alaskan Native lifestyles, while providing for the economic needs of Alaskan

Natives. In support of Alaska Native self-determination, Alaska Native Corporations must be full partners in the implementation of this Chapter and in the exchange of lands conveyed pursuant to the

Alaska Native Claims Settlement Act."

Report and Recommendations for Identification of Land Swaps

(a) Title 43, United States Code, is amended to insert section 1629(i), as follows:

"§ 1629(i) Federal Land Swap Reports and Recommendations

“(a) As used in this section the term “contaminant” means a hazardous substance harmful to public health or

the environment, including friable asbestos.

“(b) Within 6 months of January 1, 2019, and after consultation with the Secretary of Agriculture, State of

Alaska, and appropriate Alaska Native Corporations and organizations, the Secretary shall submit to the

Committee on Resources of the House of Representatives and the Committee on Energy and Natural Resources

of the Senate, a report addressing issues presented by the presence of contaminants on lands conveyed or

prioritized for conveyance to such corporations pursuant to this chapter. Such report shall consist of—

“(1) existing information concerning the nature and types of contaminants present on such lands prior

to conveyance to Alaska Native Corporations.

“(2) existing information identifying to the extent practicable the existence and availability of potentially

responsible parties for the removal or remediation of the effects of such contaminants.

“(3) identification of existing remedies.

“(4) recommendations for any additional legislation that the Secretary concludes is necessary to remedy

the problem of contaminants on the lands; and

“(5) in addition to the identification of contaminants, identification of structures known to have asbestos present and recommendations to inform Native landowners on the containment of asbestos.

“(b) Within 6 months of January 1, 2019, and after consultation with the Secretary of Agriculture, State of

Alaska, and appropriate Alaska Native Corporations and organizations, the Secretary shall submit to the

Committee on Resources of the House of Representatives and the Committee on Energy and Natural Resources

of the Senate, a report recommending options for implementing an exchange of lands conveyed to Alaska

Native Corporations pursuant to the Alaska Native Claims Settlement Act, for available federal lands of

equivalent fair market value. Such report shall consist of—

“(1) identification of existing non-contaminated federal lands available for conveyance to Alaska Native

Corporations;

“(2) identification of lands conveyed to Alaska Native Corporations pursuant to the Alaska Native Claims

Settlement Act, and that the Alaska Native Corporation desires to exchange for available federal lands of

equivalent fair market value;

“(3) recommendations for legislation that the Secretary concludes will facilitate the exchange of lands

conveyed pursuant to the Alaska Native Claims Settlement Act for available, non-contaminated federal

lands.”

## MITIGATION BANKING FOR NATIVE ALASKAN BROWNFIELD SITES.

Section 104(k)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9604(k)(1)) (as amended by sections 8 and 9) is amended by inserting after paragraph (12) the following:

“(13) AUTHORIZATION OF MITIGATION BANKING FOR NATIVE ALASKAN BROWNFIELD SITES.—

“(A) PURPOSE.—

“The purpose of this subpart is to establish standards and criteria for the use of all types of compensatory mitigation, including on-site and off-site permittee-responsible mitigation, mitigation banks, and in-lieu fee mitigation, for the remediation of Native Alaskan brownfield sites, and to provide credits for such remediation that may be used for the issuance of permits by the U.S. Army Corps of Engineers (Corps) pursuant to section 404 of the Clean Water Act (33 U.S.C. 1344).”

(B) DEFINITIONS.—

“For the purposes of this subpart only, the following terms are defined:

Compensatory mitigation means the restoration (re-establishment or rehabilitation), establishment (creation), enhancement, and/or in certain circumstances preservation of Native Alaskan brownfield sites for the purposes of offsetting unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

Mitigation bank means a Native Alaskan brownfield site, or suite of Native Alaskan brownfield sites, where resources are remediated compensatory mitigation for impacts authorized by Department of the Army permits. In general, a mitigation bank sells compensatory mitigation credits to permittees whose obligation to provide compensatory mitigation is then transferred to the mitigation bank sponsor. The operation and use of a mitigation bank are governed by a mitigation banking instrument.

Native Alaskan brownfield site shall mean a brownfield site, as defined in this subchapter, owned or operated by Native Alaskan Regional Corporations and Native Alaskan Village Corporations, as those terms are defined in the Alaska Native Claims Settlement Act (43 U.S.C. 1601 and following) and the Metlakalta Indian community.

Credit means a unit of measure (e.g., a functional or areal measure or other suitable metric) representing the accrual or attainment of remedial functions at a compensatory mitigation site. The measure of remedial functions is based on the resources restored, established, enhanced, or preserved.

(C) MITIGATION AND MITIGATION BANKING REGULATIONS.—

“(1) To ensure opportunities for participation in Native Alaskan brownfield site mitigation banking, the Secretary of the Army, acting through the Chief of Engineers, shall issue regulations establishing performance standards and criteria for the use, consistent with section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344), of on-site, off-site, and in-lieu fee mitigation and mitigation banking of Native Alaskan brownfield sites as compensation for lost wetlands functions in permits issued by the Secretary of the Army under such section. To the maximum extent practicable, the regulatory standards and criteria shall maximize available credits and opportunities for mitigation, provide flexibility for regional variations in conditions, functions and values, and apply equivalent standards and criteria to each type of compensatory mitigation.

“(2) Final regulations shall be issued not later than two years after the date of the enactment of this Act.

“(3) Applicability. This subpart does not alter the circumstances under which compensatory mitigation is required.”

TAX CREDIT FOR NATIVE ALASKAN ENVIRONMENTAL REMEDIATION.

Subsection (h) of Section 198 of the Internal Revenue Code of 1986 is amended—

(1) by striking the period and inserting a comma followed by:

“except as to expenditures paid or incurred in connection with qualified contaminated sites owned or operated by Native Alaskan Regional Corporations and Native Alaskan Village Corporations, as those terms are defined in the Alaska Native Claims Settlement Act (43 U.S.C. 1601 and following) and the Metlakalta Indian community.”