

Committee on Natural Resources

Rob Bishop Chairman
Mark-Up Memorandum

July 24, 2017

To: All Natural Resources Committee Members

From: Majority Committee Staff
Subcommittee on Indian, Insular and Alaska Native Affairs (x6-9725)

Mark-Up: **H.R. 1418 (Rep. Don Young)**, To amend the Alaska Native Claims Settlement Act to provide that Alexander Creek, Alaska, is and shall be recognized as an eligible Native village under that Act, and for other purposes.
July 25-26, 2017, 1324 Longworth HOB

Summary of the Bill

H.R. 1418 would amend the Alaska Native Claims Settlement Act of 1971¹ (ANCSA) to recognize Alexander Creek, Alaska, as a Native Village. This allows Alexander Creek “Group Corporation” to organize as a larger “Village Corporation” with the potential for additional lands, subject to the outcome of negotiations with the Secretary of the Interior, as prescribed in the bill.

Background

The Alaska Native Claims Settlement Act of 1971 extinguished all claims of Native people based on aboriginal title to lands and waters in Alaska. Under the Act, fee title to 44 million acres of public lands in Alaska and nearly \$1 billion were conveyed and paid to Alaska Natives. Section 7 divided the state into twelve geographic regions, approximated by twelve regional Native associations, “composed as far as practicable of Natives having a common heritage and sharing common interests.” Section 11 listed approximately 200 Villages with 25 or more Native residents where they formed a majority of the population. The Regional Associations and Native Villages were authorized to form for-profit business corporations organized under the laws of Alaska to manage the settlement lands and funds. Fee title to the surface estate to the lands was divided among the Regional and Village Corporations, while the Regional Corporations obtained fee title to the subsurface estate of most Regional *and* Village Corporation lands.

The Act prescribed a host of conditions under which Native Corporations must operate. For example, settlement lands conveyed to the ANCSA Corporations are treated as private property subject to State regulation, but they are nontaxable until developed. While ANCSA Corporations may buy, sell, or trade their lands like any private landowner, shares issued by the Corporations are not publicly traded or sold. Importantly, section 7 of ANCSA requires that

¹ 43 U.S.C. §1601 et seq.

70% of revenues derived by a Regional Corporation from the development of timber and mineral resources on its settlement land be shared with the other Regional Corporations, which must in turn redistribute these benefits to Village Corporations in their regions and to at-large shareholders (at-large shareholders of a Regional Corporation do not own shares in a Village Corporation).

Depending on its population, each Alaska Native Village of 25 or more residents is entitled to the surface estate to a minimum of 69,120 acres and a maximum of 161,280 acres of public land for its Village Corporation. Relevant to Alexander Creek, ANCSA provides that a Village of fewer than 25 Native residents may form a "Group Corporation" entitled to a maximum of 7,680 acres.

Alexander Creek

Alexander Creek is located 27 miles northwest of Alaska's largest city of Anchorage. Though not specifically listed as a Native Village in ANCSA, Alexander Creek secured recognition as a Village under administrative procedures authorized under section 11 of that Act. Their recognition as a Village was challenged through administrative appeals and lawsuits, precipitated by (among other things) concerns that it would obtain the right to select public lands to which the State of Alaska and the Matanuska-Susitna Borough sought to select pursuant to other acts.

In 1974 the Department of the Interior Alaska Native Claims Appeals Board (ANCAB) resolved appeals challenging Alexander Creek's designation as a Village. The ANCAB decided there were only 22 Native people properly enrolled to Alexander Creek, three short of meeting the eligibility requirements for a Village. Alexander Creek contends that not all of its enrollees were properly counted because the Bureau of Indian Affairs (BIA) failed to notify residents of the administrative proceedings where they could have testified as to their status.

Alexander Creek filed a lawsuit that resulted in protracted litigation. The case eventually went to the U.S. Court of Appeals for the District of Columbia Circuit, which reversed the Department of the Interior's determination but remanded the case to a lower court for further proceedings. This led to negotiations that resulted in Alexander Creek organizing as a Group Corporation rather than a Village Corporation. Subsequent leadership of Alexander Creek petitioned Congress for Village status.

On March 20, 2012, the Subcommittee on Indian and Alaska Native Affairs held a hearing on H.R. 4194, and heard testimony from Stephanie Thompson, the President of Alexander Creek, and the Obama Administration. Ms. Thompson submitted materials in the record demonstrating that a number of Natives (who have since passed away) were not given a fair opportunity to testify before the BIA as to their membership in Alexander Creek. At the time, the Interior Department opposed the bill on the grounds that a final settlement over the Group's status was struck and that it should not be reopened.

Analysis of H.R. 1418

H.R. 1418 recognizes Alexander Creek as a Native Village, making it eligible to form a Village Corporation under ANCSA. The bill directs the Secretary of the Interior to open negotiations with Alexander Creek and to enter into an agreement within 13 months of enactment of the bill “to fairly and equitably settle aboriginal land claims and any other claims of Alexander Creek against the United States” in approximate parity with those of other Alaska Village Corporations.

The bill does not prescribe or guarantee any specific benefits. Further, H.R. 1418 requires Alexander Creek, upon being recognized as a Village, to notify its members that they shall cease receiving certain revenue-sharing payments available to them under section 7(m) of ANCSA. Such members, however, will be eligible for revenue-sharing payments established under section 7(j) of ANCSA. These revenue-sharing measures in ANCSA provide for the redistribution of 70% of revenues derived by all Alaska Native Regional Corporations from the development of timber and subsurface resources on their settlement lands.

Finally, the bill ensures that lands that Alexander Creek obtained as a Group Corporation shall not be diminished by the change in its status.

Cost

While the no score has been provided by the CBO, the committee anticipates the bill will not have an effect on the budget.

Administration Position

Unknown.

Effect on Current Law (Ramseyer)

Showing Current Law as Amended by H.R. 1418

[text to be added highlighted in yellow]

Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.)

* * * * *

SEC. 43. ALEXANDER CREEK VILLAGE RECOGNITION.

(a) Recognition of the Village of Alexander Creek- Subject to the limitations of this section and notwithstanding section 1432(d) of the Alaska National Interest Lands Conservation Act (Public Law 96-487) and any conveyance or agreement in furtherance thereof or thereto, to the contrary, Alexander Creek, located within

Township 15N, Range 7W, Seward Meridian, Alaska, is and shall be recognized as an eligible Native village under section 11(b)(3) of this Act.

(b) Definitions- For the purposes of this section, the following terms apply:

(1) The term “agency” includes--

(A) any instrumentality of the United States;

(B) any element of an agency; and

(C) any wholly owned or mixed-owned corporation of the United States

Government identified in chapter 91 of title 31, United States Code.

(2) The term “Alexander Creek” means Alexander Creek, Incorporated, an Alaska Native Group corporation organized pursuant to this Act prior to the enactment of this section, but subsequent to enactment of this section means Alexander Creek, Incorporated, an Alaska Native Village corporation recognized and organized pursuant to section (a).

(3) The term “Region” means Cook Inlet Region Incorporated, an Alaska Native Regional Corporation, which is the appropriate Regional Corporation for Alexander Creek under section 1613(h) of this Act.

(c) Organization of Alexander Creek- As soon as practicable after enactment of this section, Alexander Creek shall cause to be filed--

(1) any amendments to its corporate charter in the State of Alaska necessary to convert from a Native group to a Native Village corporation; and

(2) if necessary, any amendments to its corporate charter and governing business documents that fulfill the terms of the agreement authorized under this Act.

(d) Negotiations- Not later than 30 days after the date of the enactment of this section, the Secretary shall open negotiations with Alexander Creek and, not later than 13 months after the date of the enactment of this section, reach an agreement with Alexander Creek to fairly and equitably settle Alexander Creek's aboriginal land claims and any other claims of Alexander Creek against the United States. An agreement under this section shall be in approximate value parity with those of other Alaska Native Village Corporations, notwithstanding Alexander Creek's prior status as a Group Corporation. The Secretary shall effectuate such agreement under the authority in this section, other existing authorities, and in coordination with the Administrator pursuant to 40 U.S.C. 549 with respect to property to be transferred to Alexander Creek pursuant to such agreement. Notwithstanding paragraphs (2) and (3) of section 549(a) of title 40, United States Code, Alexander Creek is hereby considered both a `State' and a `State agency' under that section for the sole purpose of the Secretary effectuating an agreement under this section.

(e) Shareholder Participation- Alexander Creek shall notify each member of the Native village recognized under this section that, upon the effective date of this section, such members shall cease to receive benefits from the Region as at-large shareholders pursuant to section 7(m), and that all future resource payments from the Region shall be made to the Village Corporation pursuant to section 7(j). The Region

shall not be liable under any State, Federal, or local law, or under State or Federal common law, for damages arising out of or related to the cessation of payments to such individuals under section 7(m) pursuant to this section.

(f) Construction- Except as provided in this section with respect to Alexander Creek, nothing in this section shall be construed to modify or amend land conveyance entitlements or conveyance agreements between the Region and village corporations other than Alexander Creek in such region, nor between the Region and the Federal Government, nor between any such parties and the State of Alaska.

(g) Construction Regarding Current Alexander Creek Land- Nothing in this section shall be construed to reduce the land entitlement to which Alexander Creek became entitled as a Group Corporation, including the land selected by and conveyed to Alexander Creek at the time of enactment of this section.