

**TESTIMONY OF
LORETTA BULLARD, PRESIDENT OF KAWERAK, INC.
BEFORE THE
HOUSE COMMITTEE ON RESOURCES
REGARDING H.R. 4734
June 5, 2002**

Mr. Chairman, thank you for the opportunity to testify today on H.R. 4734, which would create a demonstration project for Alaska Native contracting of federal land management activities in Alaska.

My name is Loretta Bullard, and I am the President of Kawerak, Inc., which is a regional tribal consortium serving 20 Native villages in the Bering Straits region of Alaska, centered in Nome. I am also Chairperson of the Human Resources Committee of the Alaska Federation of Natives. On behalf of AFN, Kawerak, and our member tribes, I wish to express our strong support for H.R. 4734 and to thank Congressman Young for his efforts.

When enacted, H.R. 4734 will authorize the negotiation of up to 12 contracts, six per year over a two-year period, by which tribal organizations would administer some federal land management programs in Alaska, principally within national park units and national wildlife refuges. To qualify, the tribes or tribal organizations would have to demonstrate significant use or reliance on the land in question, have a history of clean audits, and to complete a planning process. The applications would be limited to lands units in the tribe or tribal organization's own area.

Tribal applicants could choose to target their applications to particular programs or activities of the federal agency, or opt to contract the full administration and management of the land unit, excluding only those things that have to be done by a federal official. The bill also authorizes the inclusion of support activities for the federal subsistence management program. This is referenced separately in the bill because federal subsistence management in Alaska is operated from Anchorage and is not necessarily linked to the administration of particular federal land units.

Although the bill does not provide for a specific "one contract per region" allocation of these contracts among the 12 Native regions in Alaska, it does require DOI to select applicants with an eye to statewide geographic representation. The bill makes provision for prioritizing applications if there are competing ones.

I am less familiar with Section 4 regarding the Koyukuk and Kanuti National Wildlife Refuges, and that my comments are directed to the other parts of the bill. It seems to me that Section 4 is essentially a stand-alone section, and might need some technical amendments to mesh more clearly with the other sections.

Except for Section 4, H.R. 4734 is modeled on Title III of PL 93-638, which first established the

demonstration project for tribal self-governance compacting of BIA and Indian Health Service programs. Essentially, H.R. 4734 would extend the 638 contracting and compacting mechanisms, on a pilot project basis, to Interior Department agencies outside of the BIA.

I would like to comment briefly on what the bill does *not* do. Like P.L. 93-638 itself, H.R. 4734 is a *contracting* bill that authorizes tribes and tribal organizations to perform some activities of the federal government through negotiated, government-to-government agreements. The bill does not change the underlying nature or purpose of the federal activities; it simply allows tribes to perform work within their own areas that the federal government would otherwise be doing. Except for the planning grants authorized by the bill, it will not cost the federal government more money. Tribal contractors would be stepping in to administer federal programs at the same funding level the agency would have if it were running the program.

It is important to stress that the bill would not change the organic laws and regulations governing national parks and refuges in Alaska. The wildlife refuges will still be part of the national refuge system, and the parks will still be parks. Nothing in this bill changes the purposes or mandates of the federal conservation units.

Nor does the bill alter the ANILCA subsistence preference. Since the promulgation of federal regulations is something only the federal government can do, the policy-making authority for federal subsistence management will not shift. Tribal organizations could only provide support services such as harvest data collection, scientific studies, and administrative support for the regional subsistence councils.

To put H.R. 4734 in its historic and geographic context, federal lands constitute about 60% of the land area in Alaska. While many people in the Lower 48 states may view all of Alaska's national parks and refuges as remote wildernesses, that perspective is not shared by Alaska Natives. Alaska's federal lands are the back yards of Native villages. In many places in Alaska, park and refuge lands completely surround Native communities and are the primary location for village subsistence hunting, fishing and gathering activity. Continuation of subsistence activity was a statutory purpose of the new conservation units created by ANILCA.

In this context, Alaska Native are not just another interest group. Our entire culture is inextricably linked to the land. For millennia our people have hunted, fished, and lived on lands that are now federally owned. Our stewardship of the land speaks for itself; if we had not taken care of the land, it would not have been worth putting into parks and refuges.

When ANILCA dramatically expanded the national park and refuge systems in 1980, Alaska Natives were very wary of the legislation. Many had opposed ANILCA, fearing that the land would be locked up, that we would have no say in how it was managed, and that opportunities for economic development would be lost. But ANILCA also did many things that Natives supported. It expedited the conveyance of Native allotment land. It provided that subsistence would be a purpose of the new park and refuge units, and it

plugged a gap in ANCSA by providing, however imperfectly, a priority for subsistence harvesting of fish and game in rural areas.

Among the protections built into ANILCA were sections 1306, 1307, and 1308. Specifically, Section 1306 gave a preference for using Native lands as the site for park and refuge facilities outside of the conservation units. Section 1307 grandfathered existing park concessionaires but prospectively gave preferences to Native corporations and local residents to provide revenue-producing visitor services. Section 1308 allowed the Interior Department to hire local people with "special knowledge" of natural or cultural resources, without regard to normal civil service rules.

Collectively, these were clearly intended to ensure that local people generally and Natives specifically would derive economic benefit from the new conservation system units, thus compensating somewhat for the more restricted status of the lands. As this committee well knows, putting so much land in national monuments, preserves, parks, refuges and wilderness areas greatly impacted rural Alaska communities. While some of ANILCA's impact has unquestionably been good, it has also had negative consequences. It certainly reduced opportunities for economic diversification. Even the most basic expansion of rural Alaska's ground transportation system is problematic when most any connecting route of any length would have to pass through a park or refuge unit.

Unfortunately, none of these sections of ANILCA has had much practical effect. Although some federal facilities are sited on Native corporation land, this likely would have happened anyway simply because Native corporations are the main private landowners in rural areas. The Section 1307 priority for Native corporation and local concessionaires has had limited impact. Hunting and fishing guides are exempted from Section 1307. In most places NPS and USFWS have not found it necessary to limit the number of other commercial operators. Most of park and refuge units don't have much in the way of visitor facilities, and visitor services such as air taxis or birding tour operators are not restricted. The June 2001 DOI report in response to PL 106-488 identified only three Alaska Native corporation concessionaires statewide benefiting from Section 1307, and these are at Glacier Bay and at Kantishna within Denali National Park & Preserve – not in western Alaska.

The local hire provision of 1308 received little attention at all until recent years, and contains several built-in limitations, some of which Congress probably did not foresee. It has only been applied in the locality of the conservation units, but most of the Interior Department jobs are actually in Anchorage. There are so many other priorities in the federal hiring system – for veterans, students, displaced career employees – that Section 1308 has not led to a workforce that reflects the local population.

One of the most ironic constraints is that DOI's diversity in hiring goals look to the number of Native Americans in the national population rather than in the local area. Thus, if a DOI agency in Alaska has 4% Natives it has met the diversity goal for Natives, even though Alaska Natives are about 16% of the statewide population and are a large majority in many of the rural communities near the federal conservation units.

The DOI agencies' normal hiring and retention system is geared toward people who transfer between locations nationally as their careers progress. People hired under Section 1308 are not regular civil service employees and cannot compete for jobs outside of their areas, which restricts career advancement. There is no incentive for supervisors to convert local hire employees to competitive civil service positions because the local hire positions, unlike competitive positions, do not count against the agency's FTE cap. .

Obviously, from our perspective a weakness of Section 1308 is that it is a "local hire" provision rather than Native hire. While there is nothing wrong in concept with local hire, people who are hired locally may not really *be* local from the perspective of long-time residents. The rural Alaska hub communities where park and refuge offices are located have a lot of transient residents who only stay for a few years at most, but who may qualify under Section 1308..

The Native community in Alaska was hopeful in 1994 that Title IV of PL 93-638 would cut through the limits of the ANILCA provisions and open the door to broader Native involvement in the Parks and Refuges. Title IV required the non-BIA Interior agencies to enter self-governance agreements for distinctively "Native" programs, and also authorized such agreements for other DOI programs when there is a significant geographic, historic or cultural connection between the tribe and the federal program in question. Title IV self-governance agreements would not only allow tribal organizations to actual run the federal program, but to apply a direct Native hire preference. Title IV seemed to fit Alaska very well, since so many of the parks and refuges in Alaska are close to Native villages. .

Unfortunately, the Interior Department has construed Title IV so narrowly that it is virtually never used outside of the BIA. Both the National Park Service and the U.S. Fish & Wildlife Service have concluded they have no Native programs, so they have no mandatory obligation to enter self-governance agreements. Not even the ANILCA subsistence program is considered "Native."

In regard to discretionary self-governance agreements based on a close geographic, historic or cultural nexus, DOI has exercised its discretion *not* to enter into self-governance agreements. When regulations were developed for Title IV under a negotiated rule-making process, DOI could have developed guidelines for when it *would* use self-governance agreements. Tribes nationally urged DOI to do so. But DOI refused, in favor of retaining absolute discretion. The U.S. Fish & Wildlife Service, which is the agency primarily responsible for federal subsistence management in Alaska, has *never* entered into a Title IV self-governance agreement anywhere in the United States. The other DOI agencies, excepting the BIA, have only entered a handful.

Common sense might suggest that even though Congress chose to leave DOI with discretion in regard to entering self-governance agreements based on geographic and cultural proximity, it did not expect DOI to completely ignore the Title IV authorization. Title IV itself required DOI to interpret laws and regulations so as to "facilitate the inclusion" of federal programs in self-governance agreements. Given the number of parks and refuges in Alaska, the number and location of tribes and tribal organizations in Alaska,

and the success of BIA self-governance agreements in Alaska, one would think that eight years after Title IV there would be a reasonable number of NPS and USFWS self-governance agreements in Alaska. There are not.

Congress took steps to look into these issues two years ago by enacting PL 106-488, which required DOI to submit a detailed report on the implementation of ANILCA Sections 1307 and 1308 and PL 93-638 contracting. This was to include a report on the legal and policy obstacles that act as a deterrent to hiring Alaska Natives or contracting with Alaska Natives. PL 106-488 also required NPS to conduct "pilot programs" to employ local residents in conjunction with its operation of the four Western Arctic National Parklands units. One of these units, the Bering Land Bridge National Preserve, is within Kawerak's region and the other three are to our north, in the Maniilaq/Northwest Arctic region. The NPS Western Alaska Parklands unit has offices in Nome and Kotzeure.

The reports that DOI has issued as a result of PL 106-488 clearly reveal that additional legislation is necessary. While we appreciate the work that NPS did in implementing the local hire pilot program, their November 2001 report raises as many questions as it asks. Essentially, the report shows that they had some success in increasing their hire rate for local people and Natives by undertaking a fairly diligent effort to do so, increasing their outreach, and developing recruitment plans for the positions they had opened. They had two consultation meetings, one in Kotzebue and one in Nome, with local and regional Native organizations. Kawerak co-sponsored the one in Nome. We believe these efforts were very positive, the kind of dialogue that should have been occurring all along. But the question remains, why did it take an Act of Congress to prompt these efforts? It was all under existing legal authority, and Congress did not provide any additional funds for the pilot program. To what extent will this effort continue or be expanded into other regions of Alaska, now that the pilot program is completed?

One serious substantive problem with DOI's reports in response to PL 106-488 is that they do not directly confront, explain, or even acknowledge NPS and USFWS's policy against entering funding agreements under Title IV of PL 93-638. Their reports were supposed to include their progress and plans for implementing 638 contracting as well as the ANILCA sections. Yet the reports we have seen – a June 2001 DOI progress report and the November 20, 2001 report on local hire pilot program – totally skirt the issue. The June 2001 report, on page 7, quotes from the ISDEAA provision regarding the contracting of Indian programs but leaves out, as if it didn't exist, the provision of Title IV which authorizes self-governance compacts based on a geographic or cultural nexus. The sections of the report dealing with USFW & NPS progress in regard to PL 93-638 are unresponsive to the question; instead they talk about cooperative agreements, Buy Indian Act contracts, etc.; everything except PL 93-638.

The November 2001 report on the pilot program in the Western Arctic does acknowledge, on pages 41-42, that NPS has discretionary authority to enter into funding agreements under Title IV of PL 93-638, and also that Native groups in the area do have a geographic and cultural connection to the Western Arctic

park units. The report also says that NPS would cooperate and potentially enter into an agreement for eligible programs. What the report does not state is that both Kawerak and our sister consortium in the Kotzebue region, Maniilaq, have attempted this in the past in regard to the Western Arctic park units and got nowhere. Kawerak spent an enormous amount of time, effort and money in 1995 and 1996 attempting to negotiate a Title IV agreement for some functions of the Bering Land Bridge Preserve, and had enormous difficulty even getting the budgetary information necessary to negotiate. We do not want to go down that road again based on a vague promise to negotiate.

Neither report acknowledges NPS or USFWS's policy bias against negotiating self-government agreements or makes any real commitment to use Title IV in the future. In fact, the June 2001 DOI report's concluding paragraph simply states that it will continue contracting on the same basis as it has in the past.

I believe the reports in response to PL 106-488 clearly show why additional legislation is needed. Even after the success of the pilot program, the Native hire rate in the Western Arctic Parklands is only 24%. The Selawik National Wildlife Refuge, also in the Northwest Arctic region, had 11% (1 out of 9 employees). In contrast, the Native population in the Northwest Arctic Borough is 83%, and in the Nome area 61%. The villages closest to park units are more than 90% Native. While some other state and federal agencies also have low rates, the report shows that local employers have much higher rates – the Northwest Arctic Borough government, 61%, the NW Arctic School District, 55%, Maniilaq, 68%. Kawerak's Native hire rate is about 80%. Statewide, Alaska Natives are 16% of the population.

The obstacles to Native hire identified in the pilot program report on pages 37-39 would be reduced or eliminated if Native organizations were able to operate the federal programs. Obviously, if PL 93-638 rules applied, we could use a Native hire preference. But regardless of Native hire, regional Native organizations such as Kawerak and Maniilaq are able to structure personnel systems to attract qualified employees in the socio-economic environment in which we work. We do not have to make a national personnel system fit local conditions. We have the flexibility to accommodate subsistence activities and to tailor job descriptions so that they match the job, without requiring excessive paper qualifications. We already operate training and educational programs, including college scholarships, and make use of on-the-job training. And although we would be subject to the same overall funding constraints as the federal agencies, we would not be locked into the federal wage ranges categories, which the report suggests is a major obstacle to local hire.

The Western Alaska Parklands unit reports that when they advertise higher range positions under local hire rules their typical response rate is between zero and two applicants. I can assure you that Kawerak does better than that for comparable positions.

Barriers of perception and local hostility toward the federal agencies would be reduced if Native organizations were more engaged in park and refuge management and operated some of the programs. I have previously testified before this committee about how historically park and refuge employees tended to

form separate enclaves and how the agencies were often viewed as alien intruders. While I think the relationship has improved over the years, and that NPS and USFWS have made progress in hiring locally and in entering some kinds of contracts and agreements with Native entities, we are still a long way from the kind of partnership we would like to see, and that should be desirable from all perspectives.

H.R. 4734 is a logical and needed next step in fulfilling the federal policies expressed in ANILCA and in Title IV of the Indian Self-Determination and Education Assistance Act. Tribal organizations in Alaska have been performing federal functions for years, and should be given the chance to show they can take a greater role in federal land management. Kawerak's BIA self-governance compact, for example, has been in effect since FY 1992. We were one of the original self-governance compactors under the Self-Governance Demonstration Project, authorized by Title III of PL 93-638. Our BIA programs include higher education scholarships, vocational training, child welfare, general assistance, Native allotment land management, a reindeer program, and various services to tribal governments. We also operate approximately 40 grants and contracts with other federal and state agencies. These include marine mammal and migratory bird funding from the U.S. Fish and Wildlife Service and the National Park Service.

I believe that any applicant under H.R. 4734 would take a reasonable approach; it would not be to any applicant's benefit to take on a contract of this nature, and fail. If Kawerak, for example, were to apply to assume some of the Bering Land Bridge operations, we would use the planning period and the negotiation process to determine what aspect of the unit's management would make sense for us to assume. This would involve analyzing the laws and regulations governing park administration, the available funding, the workload, the staffing, and transitional issues. We have a long history of operating programs in our area, and would make an informed and reasonable decision.

The Title IV funding mechanism, which would be authorized by this bill, has advantages over other kinds of contractual mechanisms used by the federal government. In our experience, it is much more flexible and involves less bureaucratic red tape than typical grants or contracts. Because self-governance agreements are negotiated on a government-to-government basis, they carry a sense of equality and respect that other federal funding mechanisms do not. They bring the parties together on an annual basis. NPS and USFWS ought to be using them now.

For many years Native organizations in Alaska have sought a closer relationship to the federal agencies that manage the lands in our areas. Our people are directly impacted by the activities of these agencies, and it only makes sense that we should have a meaningful role in the operation of the land units. H.R. 4734 is large step in the right direction. Thank you for the opportunity to testify in its support.