

April 20, 1973

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MEMORANDUM TO: Messrs. Willens, Lapin and Carter

Re: Marianas

The purpose of this memorandum is to review the public land policy in Alaska under the Treaty of Cession, 15 Stat. 539, the Alaska Organic Acts, as amended, the Alaska statehood Act of 1958, as amended, and the Alaska Native Claims Settlement Act of 1971, 85 Stat. 698 (43 U.S.C. § 1601 et seq.). A brief analysis of the compact between the United States and Alaska with respect to control over land in Alaska follows the discussion of the Acts cited above.

Treaty of Cession and The Alaska Organic Act

In accordance with the Treaty of Cession in 1887, the United States purchased Alaska from the U.S.S.R. for \$7,200,000 and from 1867 to 1884, Alaska was generally treated as a military district. In 1884, Congress passed the Alaska Organic Act which provided for the establishment of a civil government in Alaska and organized the area with a land district. Significantly, the Act contains specific provisions regarding the treatment of persons living in the district:

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...[T]he Indians or other persons in said district shall not be disturbed in the possession of any lands actually in their use or occupation or now claimed by them but the terms under which such persons may acquire title to such lands is reserved for future legislation by Congress. Organic Act of 1884, §8,

Subsequently, Congress enacted the Alaska Organic Act of 1912 which adopted in total the laws of Alaska existing at that time. Neither the Treaty of Cession nor the Alaska Organic Acts, however, contain any provisions regulatory^{ing} the disposition of public lands in Alaska.

The Alaska Statehood Act

Section five and six of the Alaska Statehood Act deals with the selection of ~~lands~~^{lands} in Alaska. See Exhibit A. Section five states that the State of Alaska will retain title to all real and personal property in Alaska except the real and personal property owned by the United States according to Section six.

Section 6(a) provides for the granting of lands from the United States to Alaska in order to help develop and expand communities. Most important, the process of selection must take place in 25 years after the date of admission, 1958. The State of Alaska may select land

(i) within national forests that are vacant and unappropriated, not exceeding 400,000 acres, and subject to the approval by the Secretary of Agriculture; and (ii) public lands that are vacant, unappropriated and unreserved, not exceeding 400,000 acres, that are adjacent to established communities or suitable for prospective community centers and recreational areas, and subject to the approval of the Secretary of the Interior.

Under Section 6(b) the State of Alaska, in addition to the grants cited above, is entitled to select 102,550,000 acres of land from the public lands of the United States in Alaska which are vacant, unappropriated and unreserved. The 25 year limitation on the process of selection also applies in this instance. One special exception is, however, allowed for an area of land for national defense purposes subject to the approval of the President or his designated representative.^{1/}

Section 6(g) provides, with the exception in subsection (a) noted above, that all lands selected by the State of Alaska must be in conformity with its laws and the regulations of the Secretary of the Interior. The selection must be made in "reasonably compact tracts, taking into account the situation and potential uses of the lands involved..."

^{1/} See Section 10 of the Alaska Statehood Act.

Each tract selected must contain 5,760 acres unless it is isolated from other tracts open to selection. When there has been a revocation of an order of land withdrawal, the revocation must provide for a minimum 90-day period whereby the State has a preferred right of selection of lands. In addition, while requiring all land selected by the State to be patented by the Secretary of the Interior, the State is allowed to make conditional leases and conditional sales of the selected land when such lands have received tentative approval by the Secretary of the Interior but prior to the issuance of the final patent.

Section 6(e) provides for the transfer to the State by the appropriate Federal agency of all real and personal property of the United States which is used for conservation and protection of the fisheries and wildlife of Alaska.

Section 6(f) grants 5% of the proceeds of public land in Alaska that is sold by the United States to the State for public schools support.

Section 6(l) states that any lease, permit, license, or contract issued under the Mineral Leasing Act^{1/}

^{1/} Section 6(i) deals with mineral deposits.

or the Alaska Coal Leasing Act will withdraw the lands from selection by the State if the lease permit license, or contract is in effect on the date of approval of the Act and an application to select such lands is filed with the Secretary of the Interior within five years after Alaska obtains Statehood.

The Alaska Native Claims Settlement Act of 1971

The Alaska Native claims Settlement Act of 1971 (hereinafter referred to as the "Act") provides for the conveyance of property title and monetary awards to the natives of Alaska in settlement of the aboriginal claims. Basically, the Act repealed the Public Land Order No. 4582, 34 Fed. Reg. 1025 (1969) (see Exhibit B), issued by former Secretary of the Interior Stewart Udall, which provides for a "land freeze" on all Federal lands in Alaska pending settlement of the native claims by Congress. Under Section 17(d)(1) (43 U.S.C. § 1616(d)(1)), the Secretary of the Interior was granted a 90-day withdrawal of all unreserved public lands in Alaska and was authorized to classify or reclassify such lands and to make them open to entry. Section 17(d)(2)(A) (43 U.S.C. § 1616(d)(2)(A)), grants the Secretary the power to withdraw from selection, from either the State or Regional Corporations, up to 80 million acres of unreserved public lands for the addition to

or creation of a National Park, Forest, Wildlife Refuge, and Wild and ~~S~~^Venic Rivers Systems. Section 17(d)(2)(B) requires that all land withdrawn must be within nine months of the date of enactment of this Act.

Other significant provisions of the Act concerning regional corporations and shareholders' rights which merit attention may be summarized as follows:

Section 7(a) - the Secretary of the Interior is required to divide the State of Alaska into 12 geographic regions "with each region composed as far as practicable of natives having a common heritage and sharing common interests."^{1/} (43 U.S.C. § 1606(a)).

Section 7(d) - each region must incorporate as a Regional Corporation to conduct business for profit. (43 U.S.C. § 1606^{d/}(~~g~~)).

Section 7(g) - the Regional Corporation is authorized to issue one hundred shares of common stock to each native enrolled in the region. (43 U.S.C. § 1606(g)).

^{1/} The term "[n]ative" means a citizen of the United States who is a person of one-fourth degree or more Alaska Indian (including Tsimshian Indians not enrolled in the Metlakla Indian Community) Eskimo, or Aleut blood a combination thereof. The term includes any Native as so defined either or both of whose adoptive parents are not Natives. It also includes, in the absence of proof of a minimum blood quantum, any citizen of the United States who is regarded as an Alaskan Native by the Native village or Native group of which he claims to be a member and whose father or mother is...regarded as Native by any village or group..." Alaska Native Claims Settlement Act, Section three. (43 U.S.C. § 1602).

Section 7(h)(1) - all rights will rest in the stockholder. An exception is made, however, for stock transfers concerning inchoate rights and any dividends or distributions made thereto which may not be sold, pledged, subjected to a lien or judgment execution or alienated for a period of 20 years. This exception does not apply to a court decree of separation, divorce or child support. (43 U.S.C. § 1606(h)(1)).

Section 7(h)(2) - stock ownership will be transferred according to the last will and testament of the deceased stockholder, except that (a) for a 20-year period the stock will carry voting rights only if the holder who inherits the stock is a native and (b), if the deceased stockholder fails to leave a will and has no heirs, his stock will escheat to the Regional Corporation. (43 U.S.C. § 1606(h)(2)).

The Compact Between Hawaii and the United States

Section four of the Alaska Statehood Act is a compact between Alaska and the United States. See Exhibit C. In essence, the compact is a disclaimer on the part of Alaska and its people of all rights and titles to any lands or other property not specifically granted to the State under Act. The disclaimer applied⁵ to the rights or titles held by any

Indians, Eskimos, or Aleuts, in Alaska including any rights or titles held by the United States in trust for the people.

Under Section four all land and other property not granted to the State, except for property held by Indians, Aleuts or Eskimos in fee without restrictions on alienation, is placed under the jurisdiction and control of the United States and is not taxable by the State.^{1/} In addition, this Section provides that no attempt will be made to deal with the legal merits of the indigenous rights of natives but instead leaves the question to be resolved by either future legislative action or judicial determination. It was not until 1971 that Congress, in passing the Alaska Native Claims Settlement Act, defined the nature of the title held by the Indians, Eskimos, and Aleuts by virtue of their use or occupancy of lands, and determined substantially what lands were in fact use or occupied.

^{1/} "[E]xcept to such extent as the Congress has prescribed or may hereafter prescribe..." Alaska Statehood Act, Section Four