

## **Shock and Awe: Understanding Early Perceptions of the Passage of ANCSA**

Writing in the October 2021 issue of *Alaska Magazine*, Willie Hensley noted that Alaska Native corporations are an integral part of Alaska's economy. Of the top forty companies in Alaska measured by revenue, twenty-four are Alaska Native corporations. Their shareholders, some 138,000, have received about \$3 billion in dividends since their inception. They provide \$100 million in over 54,000 education scholarships to those shareholders. Many of the corporations operate on a global scale through contracts with the federal government. They employ tens of thousands of people, Native and non-Native. As a result of the claims settlement, Alaska Natives, Hensley wrote, know more about the corporate world than most Americans, going to annual meetings, reading annual reports, selecting directors, installing management, reviewing and approving budgets, keeping a finger on the pulse of the economy. In the September 16, 2021, edition of the *Anchorage Daily News*, *Alaska Economic Report* publisher Tim Bradner wrote that one need only look around Anchorage at all the office towers with the names of their Native corporation owners proudly displayed to see how important those corporations are to the Alaska economy.

These and numerous other commentaries on the fiftieth anniversary of the settlement celebrate not just the achievements, but as well the acumen and general capability of Alaska's Native people, and not just their integration into Alaska's economy, but also their contributions to it. By implication, the comments also acclaim the full integration of Alaska Natives into the political and social life of the state.

Another implication of such comments is that Alaska society generally, and its non-Native political and social leaders particularly, welcome and similarly celebrate Alaska Native achievements and capability. It is instructive to remember that such was not always the case. This paper directs

attention to attitudes about Native capability before ANCSA and during the debates on the act which stand in stark contrast to today's notions, and thus recognizes the dramatic impact of the settlement not just on the role of Alaska Natives in Alaska, but on their legitimization in the view of many, many non-Native Alaskans.

To establish the pre-ANCSA climate, I begin with Congress's passage of the Tongass Timber Act in 1947. U.S. Forest Service Chief Forester for Alaska in the 1930s, '40s and '50s, B. Frank Heintzleman, territorial governor Ernest Gruening, and many others had worked for decades to attract timber and pulp companies to invest in development of the Tongass. In the view of these leaders, the passage of the Tlingit Haida Jurisdiction Act in 1935 and the subsequent filing in the U.S. Court of Claims in 1947 of the Tlingit Haida claim to all the land in Southeast Alaska greatly complicated that effort. In plain language, they could not imagine that Alaska Natives could be the partners and participants in Alaska's economic development and profile, and Alaska life, that they are today. So, they worked to head off any Native control of any land in the Alexander Archipelago, in Alaska's panhandle. Confronted with the reality that the Court, against all expectation, had the authority to recognize the Native land claim, with their Congressional allies Alaska leaders wrote a bill which hedged against that possibility. It authorized the Forest Service to sell fifty-year timber leases and set aside sites for pulp mills. It made no provision for Native land, but it did provide that the proceeds from the timber sales should be put into escrow, to be awarded to the Natives should the Court decide in their favor. Alaska Native Brotherhood and other Tlingit and Haida leaders testified against the bill, but Congress ignored their protests and passed it.

In the aftermath, Gruening wrote to Alaska Territorial Delegate Bob Bartlett that Alaska had dodged a bullet. Native land ownership, he said, would set back Alaska's development decades, discouraging any potential investment. Territorial legislators labeled the Native land claim immoral, and the legislature resolved against it. Local chambers of commerce decried the possibility of a

successful Native land claim. Again, in plain language, Gruening and others viewed Natives as incompetent, disloyal, and ironically, as potential competitors for the investment money.

Two decades later, these same attitudes toward Natives characterized much non-Native thinking about the potentially much more vast land claim being contemplated by the fledgling Alaska Federation of Natives, Mr. Hensley and other Native leaders. Mr. Hensley titled his *Alaska Magazine* article “From Struggle to Strength;” the sub-head on the piece reads “How Alaska Natives fought – and won – the land claims battle.” Against what, and/or whom, did Alaska Natives fight, and why did they have to fight? Mr. Hensley wrote that Alaska politicians and Congress planned to take Alaska Native lands, take them with no compensation and then lease or sell them. At the same time, many urban Alaskan politicians, he noted, were annoyed about Alaska Natives having their own tribal governments over which the State had no control. The state, including Governor Walter Hickel, did not want Natives to have the land because the statehood act authorized the state to select more than 104 million acres of land for state ownership. In the mid-1960s the state was firming up its desired selections. Much of the land the state wanted was land to which Alaska Natives had claim, based on a disclaimer in the statehood act of Alaska’s right to any Native claimed land. This became clear to some Alaska leaders when the Public Land Law Review Commission held hearings in Alaska in 1966. The Native claims generated a conflict, a conundrum, which Interior Secretary Stewart Udall placed on hold when he halted conveyances of title to the state so that the Native claims issue could be addressed. The state adamantly, but unsuccessfully, sought in the courts to eliminate the secretary’s land freeze.

Discovery of the Prudhoe Bay oil deposit in 1967-68 broke the impasse between Native and state land claims. As Bradner noted in his *Daily News* column, historian Jack Roderick recorded that Ed Patton, the first president of Alyeska Pipeline Service Company, told the Anchorage Chamber of Commerce, a message intended for all Alaskans, that without a Native claims settlement, there

would be no oil pipeline, and no oil revenue for Alaska. But what would be the nature of a claims settlement? What would its provisions be?

Faced with the necessity of a claims settlement, Hickel formed a Native Land Claims Task Force comprised of Natives and non-Natives; Mr. Hensley chaired the task force. It proposed that Alaska Natives gain title to forty million acres of Alaska land, that they be paid in compensation for relinquishment of title to the remaining 235 million acres of Alaska \$500,000,000 from the federal treasury and another \$500,000,000 paid from a royalty on the development of mineral resources on state land, which meant the Prudhoe Bay oil project. Governor Hickel accepted the land grant, lands which would mostly be those historically utilized by Natives, as documented in a federal field committee report, *Alaska Natives and the Land*, published in 1968. But he steadfastly opposed the royalty payment from revenue slated to go to the state as taxes and fees on the Prudhoe Bay endeavor.

Other Alaskans joined Hickel in opposing the royalty payments, but not all accepted the land grant, which many scoffed at as unacceptable, some on principle, others on the very practical grounds of the money. On analysis, that opposition was based on the same grounds as Ernest Gruening's opposition to any land grant to Tlingit and Haida people in the Tongass Timber Act, viz., a conviction of the incompetence and disloyalty of Alaska Natives, and ironically, their competition for the money.

Emil Notti was the first president of the Alaska Federation of Natives, formed in 1967, which took on the formidable task of countering the opposition to the settlement proposed by the task force. Secretary Udall's land freeze was predicated on the idea that Congress would have to solve the claims conundrum. So, it was mainly Congress that the AFN was going to have to convince. In a LitSite Alaska interview in 2001, Mr. Notti discussed the atmosphere in 1968, '69 and '70. We had a lot of opposition, he said; very few people agreed with us. A lot of people in the non-

Native community were afraid of land claims. It took a great deal of effort to convince Congress and the administration. We worked with state government trying to get them to support our position; we worked with federal agencies. Most did not agree with us. In a 2016 talk in Fairbanks he elaborated. We took heat, he said, criticism, negative editorials, nasty phone calls in the middle of the night. The Alaska State Chamber of Commerce mocked us at an annual meeting. People who were interested in rural development from a non-Native perspective, particularly miners -- people who had dreams of homesteading -- were worried that all these [proposed] rights would cut off entry to mining. There was a strong lobby, and they were influential in persuading businessmen and the more conservative business community to be against this act and to be against any form of state participation. Both the Alaska Sportsmans Association and the Alaska Miners Association worked hard in opposition.

Both Mr. Hensley and Mr. Notti have recounted their and other Native leaders' role in building national support for the settlement. They appeared on numerous television programs, such as *Good Morning America* and *Johnny Carson*, they spoke before countless groups such as the *National Council of Churches* and the *National Congress of American Indians* and wrote editorials for papers such as the *New York Times* and the *Washington Post*. A huge assist came from former U.S. Supreme Court Justice Arthur Goldberg and former U.S. Attorney General Ramsey Clark, both of whom appeared with Mr. Notti when he appeared before a Senate committee.

Funding that effort was expensive. As AFN president Mr. Notti secured a loan from the Tyonek Indian village and another from the Yakima Indian tribe in Washington State, as well as contributions from several other Washington and Oregon Indian groups. At one point Mr. Notti, expressing his frustration in speaking to a group in Seattle, mused that perhaps the best solution would be the creation of a fifty-first state for Native Alaskans.

When the settlement act finally passed Congress in December 1971, many Alaskans experienced an epiphany. The 40-million acre land entitlement was real, and along with it the nearly one billion dollars in capitalization of the Native corporations created by the act, half of which would indeed come from a royalty on mineral development on state lands. This was the shock and awe of my title. With the reality of the act facing everyone, unhappiness with the prospect of such a settlement was no longer relevant. The business at hand was to accommodate, at least, and to cooperate and nurture at best. There is a separate paper to be written on the breadth and nature of that reaction, one which I have not yet written, but the introduction to which you are hearing now.

I am not the one to say how successful the integration of Alaska Natives into Alaska society, into the Alaska economy, has been. Mr. Hensley was quite positive in his article in *Alaska Magazine*. There is little doubt that Alaska Natives are now seen in a dramatically different light than they were fifty years ago. Some have suggested that given the fact, as Mr. Hensley wrote, that back then Alaskan Natives were still primarily living as they had for thousands of years, catching fish, walrus and seals, ducks and geese, belugas and whales, caribou and fur bearing animals, that Native women were still making winter gear essential for the Native way of life in the icy wilderness, the negative view of Alaska Natives was warranted. Most villages had no electricity, people had to haul water from streams or wells, and some still lived in homes made of sod and moved into tents in the summertime. The point I want to make here is that because of those circumstances, many Alaska leaders did not believe Natives were capable of forming and leading corporations, of participating fully in self-government, of competently acquitting themselves of the challenges, opportunities and responsibilities necessary to manage their lives. This was a prejudice based on appearances, a prejudice which belied analysis. The Alaska Native Brotherhood had been more than competently representing Alaska Natives for many decades by the 1960s. Natives across Alaska had adapted as needed when given the opportunity to do so. As a noted Stanford University study in 1935 found,

Alaska Natives have all the intellectual and emotional capacity of human beings anywhere else, if such validation were needed.

As Mr. Hensley implicitly pointed out, the achievements of Alaska Natives in the context of the claims settlement belies any notion of Native incapacity. Roy Huhndorf, who was president of Cook Inlet Regional Corporation from 1975 to 1996, as well as variously AFN co-chair, chair of the state Chamber of Commerce and a member of the University of Alaska Board of Regents, noted at one point in his career that nothing has legitimized Alaska Native people for non-Natives more than the passage of and Alaska Natives' successful execution of the provisions of the Alaska Native Claims Settlement Act. In this, as I have tried to suggest, he spoke volumes. So, the negative view of Alaska Native capability was a failure of imagination. It was also a manifestation of an easy prejudice.

One of the things history measures is change. The legitimization of Alaska Natives in the minds of many non-Native Alaskans wrought by the claims settlement is a change we rightfully, and I hope gratefully celebrate fifty years on.

Thank you.

Thank you