



*Alaskans who traveled to Washington, D.C., for congressional hearings on the Alaska Native Claims Settlement Act, which was signed into law by President Richard Nixon in December 1971. Standing from left are George Gardner, Roger Connor, Emil Notti, Flore Lekano, Cliff Groh, Barry Jackson, congressional secretary Thoda Forslund and Morris Thompson. Seated are Alaska state Rep. Willie Hensley, Alaska U.S. Rep. Howard Pollock and Laura Bergt. (ADN archive; Anchorage Times photo)*

## A Reflection on ANCSA at 50

BY **VAN NESS FELDMAN'S NATIVE AFFAIRS PRACTICE GROUP**

On December 18, 2021, the Alaska Native community will mark the 50th anniversary of the Alaska Native Claims Settlement Act of 1971 (ANCSA), a law in which the United States Congress “settled” the Indigenous land claims of the Alaska Native people.

Of course, the story of ANCSA starts well before 1971. Few Americans today know the history of the United States in Alaska, let alone the history of Indigenous Alaska.

In 1863, the Russian Navy’s fleets arrived in New York and San Francisco harbors and stayed for the entire winter, not as enemies, but as friends of the United States. It was a demonstration of unity between the two nations in the middle of America’s Civil War. Britain and France were both openly negotiating with the Confederate States. Two “iron-clad” ships—the most powerful warships of the day—were rumored to be under construction in Liverpool for the Confederate Navy. The arrival of the Russian Navy helped bolster the Union and its forces at a difficult time.

The friendship between Russia and America led to the purchase of Alaska by the United States. Russia had claimed dominion over all of what is now Alaska for more than 100 years. But the Russians had a tenuous hold on the territory in the 1860s, and it became clear that Russia did not have the financial resources needed to support Russian settlements or to stand up a military presence to defend the territory. There were never more than 800 Russians posted in Alaska, a territory two and a half times the size of Texas. In 1867, Russia sold Alaska for \$7.2 million—less than two cents an acre—to the United States.

The purchase of Alaska ultimately yielded enormous economic and geopolitical benefits for the United States. But lost in the “purchase” of Alaska and the expansion of the United States were the rights and the fate of Alaska’s Indigenous peoples.

In the early years, the United States sent its Navy to control the new territory. In 1869, after disputes with the Tlingits in southeastern Alaska, the Navy shelled the villages of Kake and Wrangell. In 1882, the Navy shelled and burned the village of Angoon. Alaska Natives would not be granted U.S. citizenship—never mind the right to vote—until 1924. During World War II, Aleuts from the Aleutian and Pribilof Islands were removed and interned in camps, where they endured significant hardship. After World War II, the Native Village of Kaktovik was bulldozed into the ocean to make way for a new military installation. In the 1950s, Iñupiat and Athabascan individuals were unknowingly subjected to iodine 131 experimentation. Unfortunately, there are many more examples of this type of treatment of the Alaska Native people.

In 1912, the Alaska Native Brotherhood and the Alaska Native Sisterhood were organized to fight for long-overdue civil rights for Alaska Natives. And, in the 1930s, the Tlingits and Haidas of southeastern Alaska took the initial fight for Alaska Native land rights to Congress.

In 1958, Congress enacted the Alaska Statehood Act, which authorized Alaska to select 102 million acres of vacant, unappropriated, and unreserved federal lands from the 365-million acres that comprised the new state. Some of the State’s early selections were lands on the North Slope of Alaska, an area considered highly prospective for oil and gas.

In 1966, the Alaska Federation of Natives was formed to fight for the land claims of the Alaska Native people. In that same year, U.S. Secretary of the Interior Stewart Udall froze the selection of lands in Alaska by the State until Alaska Native land claims could be resolved. When Humble Oil discovered oil on the North Slope in 1968, pressure built in Washington, D.C. to resolve the Alaska Native land claims quickly.

In the Alaska Organic Act of 1884, which established Alaska as a district nearly seventeen years after Russia ceded the territory to the United States, Congress specified that Alaska Natives “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.” The Second Organic Act in 1912 similarly did not specifically address Alaska Native land claims, again continuing to leave them for future Congressional action. While the State’s selection of lands under the Statehood Act created significant tension and conflict with regard to Alaska Native land claims, it was not until the new petroleum discoveries—and the consequent need to construct an 800-mile oil pipeline to move the North Slope’s vast oil resources to market—that Congress finally devoted serious attention to the issue of Alaska Native land claims.

In 1966, one of our firm’s founders, Bill Van Ness, was hired by U.S. Senator Henry M. “Scoop” Jackson (D-WA) to serve as special counsel to the Senate Committee on Interior and Insular Affairs. As Chairman of the Committee, Senator Jackson devoted himself to pursuing a fair settlement for the Alaska Native community, and the fight for Alaska Native land claims became a full-time job for Bill Van Ness. The job appealed to Bill’s deep sense of justice. He understood that Congress knew little about the Alaska Native peoples, and he insisted that a federal study be completed to inform efforts to settle the land claims. Bill developed close relationships with Alaska Native leaders as he worked with Senator Jackson and Alaska’s Congressional delegation to develop a legislative framework for the settlement.

When it passed in 1971, ANCSA marked a deliberate departure by Congress from an Indian policy that had been based on Tribal government, reservations, and federal oversight. It reflected the work of Congress during a period of transition from a national policy of termination and assimilation of Native peoples to one of self-determination. In this regard, ANCSA was viewed by many in Congress at the time as a “grand experiment.” Members of Congress sought to create a system that allowed Alaska Native people to maintain their traditional cultural ties to the land while also providing the Alaska Native community with the means to engage and survive in the capitalist economic system of the United States.

ANCSA provided for the creation of more than 200 Alaska Native corporations (ANCs) that would serve the long-term interests of the Alaska Native people. Congress divided Alaska into twelve regions based on common language and customs and directed that each region form a Regional Corporation and that each Alaska Native village form a Village Corporation. As part of the ANCSA settlement, ANCs were to be conveyed approximately 44 million acres of land, or approximately twelve percent of the state. Each Alaska Native Village Corporation was entitled to select certain lands underlying or adjacent to its village, while each Regional Corporation generally received title to the subsurface of such Village Corporation lands and, in some cases, was entitled to select additional surface and subsurface lands within its region.

Any Alaska Native individual who was alive when ANCSA passed was enrolled by the Bureau of Indian Affairs as a shareholder both of their Regional Corporation and of their respective Village Corporation. Stock ownership was restricted so that it could only be issued to Alaska Natives.

To empower ANCs to promote the interests of their Alaska Native shareholders, Congress—in ANCSA and subsequent acts—granted ANCs certain rights, duties, and preferences. For example, Congress directed Regional Corporations to share 70 percent of revenues generated from timber and subsurface natural resources with all other Regional and Village ANCs, exempted ANCs from certain employment restrictions to protect shareholder hiring, enacted laws protecting undeveloped ANCSA lands from taxation and involuntary alienation, and required federal agencies to consult with ANCs “on the same basis as” federally-recognized Tribes. ANCSA expressly authorized and confirmed the authority of ANCs to provide benefits to promote the health, education, and welfare of their Alaska Native shareholders or descendants and their family members.

The enactment of ANCSA and the creation of ANCs was not without controversy or error. Similar to the Indian Reorganization Act of 1934, the enactment of ANCSA had the effect of displacing Indigenous systems of governance and commerce by superimposing a Western corporate structure that was foreign to Indigenous Alaska, just as it was to other regions subjected to Western colonization. ANCSA preserved some of the land and resources of Alaska for the Alaska Native people, but it also provided significant advantage and certainty for the federal government and the state of Alaska with respect to the ownership and disposition of land and resources in the State. Congress did not acknowledge or address the role of Tribal governments in Alaska, focusing solely on the roles, structures, and authority of the ANCs. ANCSA, as enacted, also provided for the free alienation of stock by Alaska Native shareholders starting 20 years after enactment, a policy analogous to the United States’ allotment era policies. As a consequence, the free alienation of stock put ANCs in jeopardy of being taken over by non-Native investors and corporations starting in 1991. But ANCSA was not frozen in time in 1971.

In 1988, Congress enacted the “1991 amendments”—so-called because the legislation averted ANCSA’s automatic provision for the alienation of stock starting in 1991. These amendments establish that stock in an ANC cannot be alienated without a vote of the Alaska Native stockholders of that ANC.

The 1991 amendments contained many other improvements to the original legislation as well, including, authorizing shareholders to vote to let their corporations issue new classes of stock to Alaska Natives born after December 18, 1971, to Alaska Natives who missed their chance to enroll, and to Alaska Native elders.

The legislative history of ANCSA tells the story of the push-and-pull of U.S. politics that led to the passage of legislation that was as momentous as any previous effort of the federal government to address its crimes against Indigenous peoples. The formation of ANCSA involved broader and deeper consultation with Alaska Native leaders than any other component of federal policy since the time of treaties. And yet it was just as imperfect and incomplete as so many legislative projects defined by political compromise and, in this case, marred by the lack of Indigenous representation in government. Indeed, one of the most fundamental rights of the Alaska Native peoples—the right to maintain a way of life defined in part by subsistence—was extinguished by the legislation and remains a priority to redress. Congress has amended ANCSA many times and, we suspect, will do so many times again.

Today, we celebrate ANCSA’s successes and welcome the ongoing conversation about how best to improve on its legacy. ANCSA provided a legal mechanism to ensure that 44 million acres of Alaska would remain in Native ownership and that those lands, and the resources on and under them, would be available for use by Alaska Natives for the benefit of the Alaska Native people. Many ANCs today are economic and political powerhouses that have the capacity to support the education and advancement of Alaska Native youth and the empowerment of the Alaska Native community economically and politically. We would be hard-pressed to find any other political jurisdiction in the world like Alaska, in which 18 of the top 20 businesses are Indigenous-owned.

As a practice group, we reflect this year on ANCSA’s 50-year history with appreciation for all of the people who have invested, through public service and personal commitment, to fulfilling its promise. We are proud and grateful that serving the Alaska Native community is part of the heritage of our law firm, and we are honored to continue this important work.

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*When Bill Van Ness started Van Ness Feldman with three other Capitol Hill attorneys, he sought to foster a community of professionals committed to an enterprise that would be greater than any one individual, a culture of collaboration that would produce innovative legal and policy solutions for those in need of assistance, a deep respect for the public servants with whom we work, and a recognition that our work ultimately supports the rule of law, justice and good government.*

*Several members of our practice group have worked for Members of Congress, including three members of Alaska’s Congressional delegation. Our colleague and former chairman of the firm, Rick Agnew, worked for Congressman Don Young (R-AK) from 1985-1991, serving as his Chief Counsel and Staff Director to the House Committee on Interior and Insular Affairs and working with the Congressman and with advocates for the Alaska Native community—including Bill Van Ness, Tom Roberts, and Alan Mintz at Van Ness Feldman—to advance the “1991 amendments.”*

*Throughout our organization’s history, Van Ness Feldman has served Native American communities across the United States—from the northern tip of Alaska to the southern tip of Florida. We are honored to count Native Americans among our partners, colleagues, and clients. We advocate on behalf of Native governments and businesses and work with non-Native stakeholders and partners to advance economic development and opportunity throughout Indian Country.*



Bill Van Ness (center) being sworn in as a member of the Washington State Bar by U.S. Supreme Court Justice William O. Douglas (r.); Senator Henry Jackson (l), Washington, D.C., September 1966 Courtesy Bill Van Ness