STATEMENT of JOHN BERRY
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DEPARTMENT OF THE INTERIOR
on H.R. 4345
THE ALASKA NATIVE CLAIMS TECHNICAL AMENDMENTS ACT OF 2000
HOUSE RESOURCES COMMITTEE
June 14, 2000

Mr. Chairman and members of the Committee, I want to thank you for the opportunity to provide our comments on H.R. 4345, the Alaska Native Claims Technical Amendments Act of 2000. As you know, we have worked in the past with the Committee and the Congress, with Alaska Native groups, the State, and other stakeholders to achieve consensus on amendments to ANCSA to address technical changes and special concerns. Recent examples include the passage this year of H.R. 3090, which was signed by the President on May 2, 2000 (Public Law 106-194), and passage in the 105th Congress of H.R. 2000. We continue to believe that ANCSA and ANILCA taken together form a sound basis for land management in Alaska and are not in need of reform, and we have testified that most problems can be resolved administratively, but we wish to continue to work with you, with Alaska Native groups, and other parties to consider appropriate amendments where they may assist in implementation and management or solve a problem.

As you know, all but one of the provisions of H.R. 4345 were contained in the earlier bill, H.R. 3013. The Department testified on that bill and stated that while there were provisions that we could accept, several provisions gave us serious concern, and the Secretary would recommend veto of H.R. 3013 if it passed as written. Subsequently, as you know, provisions of that bill on which the interested parties could reach consensus were extracted and made into a separate bill, H.R. 3090, which represented a great deal of bipartisan effort among interested parties, particularly the House Resources Committee, the Department of the Interior, the State, and other stakeholders, in crafting a bill with which all parties agreed. A consensus bill was reached and passed.

Unfortunately, H.R. 4345 simply collects the remaining, unacceptable provisions of HR 3013, the ones to which we objected and that were the basis of the veto recommendation, and puts them in a new bill. Those provisions have not been changed or improved. The only new provision, section 6, has no significant impact on the Department.

Consequently, we are strongly opposed to H.R. 4345 and if it were passed in its current form, the Secretary would recommend that it be vetoed.

I would like to discuss our concerns with H.R. 4345.

Section 2 (Formerly section 3 of H.R. 3013), **Relation to Civil Rights Act of 1964**

The Administration has serious concerns about this section and believes the exception is much more far reaching than is warranted. Section 2 amends the Civil Rights Act of 1964 (CRA) by expanding the Title VII exemption to include businesses which do $20,000 or more business a year with Native Corporations. It provides a complete exemption from the definition of "employer" in Title VII of the CRA.

While we support the concept of providing incentives for contracting with Native owned businesses, and of allowing Native owned business to pursue their economic development free of federal restrictions as provided under the Civil Rights Act, this change goes far beyond that goal. This amendment provides an exception to Alaska Native corporations not even provided to tribes and would not ensure that a contractor would in fact be a Native company; it would include any company that a Native Corporation contracts with for over $20,000 per year. This section proposes to completely remove these corporations and business organizations from the definition of employer under the Civil Rights Act. As a matter of Administration policy, we cannot support an expansion of the exemption in the Civil Rights Act of 1964 to include contractors of Native Corporations.

While subject to this new provision, such corporations and business associations would be completely free of any federal restraints against discrimination for race, color, creed, sex, national origin, etc. One example of the impact of this could be the following: acting under the Defense Department Appropriations Act for FY 2000, a subsidiary of Chugach Alaska Corporation (CAC) successfully obtained a contract for providing all civilian services at one Air Force Base in Florida and is negotiating a similar contract for an Air Force Base in New Mexico. Under this amendment, any private contractor with the CAC affiliate is completely free of any restraints under the Civil Rights Act.

If the purpose of the amendment is to gain authority for the ANCSA Corporations to preferentially hire their own members, then the language should say that.

The Administration strongly opposes section 2.

Section 3 (Formerly section 5 of H.R. 3013) **Alaska Native Veterans**

This section on Alaska Native veterans would greatly expand the eligibility for qualifying Alaska Native veterans of the Vietnam war to apply for allotments under the new section 41 of ANCSA, 43 U.S.C. 1629 (g), established in the last Congress by section 432 of Public Law 105-276, entitled "Open Season for Certain Alaska Native Veterans for Allotments." This provision reopens the compromise reached at the end of the 105th Congress after several years of negotiation and effort among the DOI agencies, the Congress and Alaska Natives.

Section 3 of the bill extends the eligibility period during which qualifying veterans must have served from the enacted period of 3 years, January, 1969, to December, 1971, to include the Vietnam war from August, 1964, to May, 1975.

This change completely undermines the philosophy and rationale for the amendment, and in so doing raises serious problems of management, fairness, and environmental effects. The 1998 Vietnam veterans provision as passed was intended to offer an opportunity to those Alaska Native Vietnam Veterans who, because of their military service, "missed the opportunity to apply for their Native allotments" during the period prior to the 1971 repeal of the 1906 Allotment Act. This rationale appears in House Report 104-73 and Senate Report 104-119 on H.R. 402, section 106, in the 104th Congress, which required the Interior Department report on Alaska Native veterans, since submitted to Congress, and which led to the 1998 amendment to ANCSA. The 3-year period represents the critical time when most Natives applied for an allotment because the anticipated repeal of the 1906 Allotment Act was widely advertised by the Department and several organizations across Alaska, and Alaska Natives were encouraged to apply.

Section 3 converts the program from an effort to correct an inequity of missed opportunity to, in effect, a special land bonus for Alaska Native Vietnam veterans. It cannot be reasonably argued that one who completed his or her service before the 1969 date missed his or her opportunity to apply by reason of service. Moreover, no one was eligible to apply for an allotment after the Act was repealed in December of 1971, so no one whose service began after that time missed an opportunity because of service. Yet H.R. 4345 extends the eligibility period to the entire Vietnam war including nearly four years past the repeal date of the 1906 Act.

As a bonus program, there is no more reason to provide this bonus for this class of Alaska Natives than any other Alaska Natives, or other Native Americans, nor is there any more reason to provide this bonus to Alaska Native veterans than to any other class of veterans whether they be from California, New York, Florida, or anywhere else.

Moreover, there was considerable concern in the Department to opening Conservation System Units (CSU's) in Alaska to new allotments. The Department originally wanted to limit new allotments to public domain lands outside of refuges and parks. This position was compromised in the negotiations for the 1998 Act. HR 4345 would significantly increase the number of applicants eligible to obtain allotments on refuge and park lands.

[illegible]

[illegible]

[illegible]

[illegible]

The time frames for settlement of the allotments under this bill effectively jump this class of applicants ahead of any other Alaska Native applicants who are still awaiting settlement, decades later, of their allotments under the original 1906 Act, not to mention many hundreds more of those Alaska Natives still awaiting completion of their ANCSA settlements, and all other applicants, including the State of Alaska.

[redacted] The mandate to issue a deed within 18 months of the end of the application period is totally unworkable, and unfair to other land title applicants.

If this proposal were enacted, the first 18 months is the filing period. The next 18 months is left for the Secretary to issue a deed and 12 months of this second 18-month period afforded the State to file protests and if valid, cause a case to be closed. That leaves the 6-month balance of time for the Secretary to complete the following tasks: adjudicate the protests for validity, conduct field examinations and survey (regardless of the time of year and not providing sufficient time to contract surveys under Public Law 93-638), review and approve survey plats, note the surveys to the public land records and issue appealable administrative decisions to provide due process to the applicants and others, and finally to issue a land patent.

[redacted] *Allowing credit for use and occupancy when the lands were not open violates all previous tenets of law for occupancy of public lands.*

For the 1998 Act, there was considerable debate over providing the opportunity for heirs of deceased veterans to apply. Allowing heirs to apply raised a broad range of technical, legal, and management issues, as well as issues of precedent. *No other Federal land grant program has allowed heirs to apply*, including the 1906 Allotment Act. The compromise provision in the 1998 Act allowed an application by a personal representative of a deceased veteran who died for

reasons directly related to the war. H.R. 4345 allows an application by the representative of any deceased Alaska Native veteran regardless of when or how he died, thus considerably increasing the class of heirs and the complexity of identifying eligible heirs and processing applications. In drafting the regulations for Public Law 105-276, we discovered an inordinate number of problems crated by allowing heirs to file an initial claim. That Act was the first time in the history of the United States government that an heir was permitted to initiate a land claim. The wholesale allowance of hundreds of additional heirs to initiate new claims will create a staggering workload that will slow down the processing of all land claims. Unfortunately, HR 4345 attempts to speed up the process so that there is no time to sort out claims of possible competing heirs, secure missing records, correct mistakes, negotiate the location of alternative parcels, etc. This schedule undoubtedly will cause much litigation and substantial expense.We strongly believe that as to Alaska Native veterans of the Vietnam war we should continue to rely on the 1998 Congressionally developed and passed compromise amendment. The Administration maintains its strong opposition to the provisions of section 3.

There are some minor technical corrections to section 432 of Public Law 105-276 that would address minor ambiguities and gaps in that Act. The Department will be happy to meet and discuss these technical issues.

Section 4 (Formerly section 6 of H.R. 3013) **Applicability of National Wildlife Refuge Restrictions**

In ANCSA, Congress provided for protection of fish and wildlife resources in authorizing the conveyance of the surface of lands in old refuges. Congress provided restrictive covenants in Section 22(g) of ANCSA to be included in title documents when refuge lands were conveyed to Native Corporations. These corporations took title to these lands subject to Section 22(g) of ANCSA. The first provisions of Section 22(g) provides for a right of first refusal for the United States if the Native Village Corporation sells the land. Once waived by an action of the United States the right of first refusal is extinguished. The bill does not change this provision.
H.R. 4345 would repeal the second restrictive covenant of Section 22(g). This second covenant says that such lands remain subject to the laws and regulations governing use and development of such Refuge. The Fish and Wildlife Service has not been zealous in preventing use and development of Native Corporation lands within refuges; rather, corporation proposals have been evaluated on a case by case basis to determine whether or not the proposed use is compatible

with the purposes for which the refuge was reserved. Section 22(g) was a legislative compromise and should be retained to protect fish and wildlife resources in areas withdrawn as units of the National Wildlife Refuge System prior to ANCSA. We are strongly opposed to section 4.

Section 5 (Formerly section 8 of H.R.3013) **Clarification of Liability for Contamination**

There is serious concern by the Administration regarding this section, which would provide an exemption from the provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, "and any other provision of law," for any person, acquiring land under ANCSA, for any liability as owner of that land by reason of contamination on that land at the time of acquisition, unless that person was "directly responsible for such contamination." This issue was addressed in the Report on Hazardous Substance Contamination of Alaska Native Claims Act Lands recently submitted by the Department to the Congress and this Committee pursuant to section 103 of Public Law 104-42. The question of a possible exemption for ANCSA landowners of transferred Federal lands was discussed among the interested Federal agencies at the highest levels, and it was decided that no exemption would be recommended. The Administration remains strongly opposed to piecemeal exemptions from the Federal environmental laws. However, as we advised in that report, the EPA policy of June, 1997, "Policy Toward Landowners and Transferees of Federal Facilities," would be applicable to ANCSA landowners.The policy addresses EPA's intent to exercise their enforcement discretion not to initiate enforcement actions against landowners and transferees of federal lands for contamination existing as of the date of the conveyance of the property. EPA will not take enforcement action against a person or entity who did not cause or contribute to the condition. EPA is also aware that even preliminary assessment and evaluation can be burdensome and expensive to a landowner, and will not seek to impose these costs against ANCSA landowners relative to contamination or potential contamination that was on their property at the time of conveyance.

Section 6. **Levies on Settlement Trust Interests**

Since settlement trusts are not administered by the Department and do not bear directly on Interior programs, the Department has no comment on this section.

For all of the above reasons, the Administration is strongly opposed to H.R. 4345, and the Secretary would recommend that the bill be vetoed if it is passed in its current form. Again, thank you for the opportunity to testify**.**