State and Tribal Perspectives on ANCSA Contaminated Lands

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Roadmap

- Alaska Brownfields Programs
- Alaska / ANCSA History
- ANCSA Contaminated Lands
- The BLM Report
- State Perspectives
- Tribal Perspectives
- Next Steps
The Great Land

- Area: 570,641 square miles ~ 365,210,240 acres
- AK Native/American Indian: 123,154 (17%)
- 229 Federally recognized Tribes
“We’ve always lived on the fish and wildlife around us. But it’s not only for our physical needs – it’s spiritual and sacred to us. ‘Subsistence’ has a different meaning than cultural and traditional use.”

William L. Iggiagruk Hensely
The Alaska Purchase

- 1867 - United States purchases the territory of Alaska for $7.2 million = .02 an acre!
- 1915 - TCC protest AK Railroad
- 1929 - ANB resolution to sue US government for taking southeast tribal lands
- 1935 - Tlingit & Haida Tribe recognized as a Tribe (IRA), suit pursued
- 1959 - case won, monetary compensation provided
Alaska Statehood - 1959
“In the face of Federal guarantee that the Alaska Natives shall not be disturbed in the use and occupation of lands, I could not in good conscience allow title to pass into others’ hands . . . Moreover, to permit others to acquire title to the lands the Natives are using and occupying would create an adversary against whom the Natives would not have the means of protecting themselves . . .” – Interior Secretary Udall
A Catalyst – Prudhoe Bay, 1968
The Perceived Answer

• December 18, 1971: ANCSA signed into law by President Nixon
Alaska Native Claims Settlement Act (ANCSA)

- The largest land settlement in U.S. history
- Attempt to resolve long-standing aboriginal land claim issues & stimulate economic development
- Choice- Reservations or Corporations
- ANCSA eliminated aboriginal claims to land in exchange for 44 million acres of land and $962 million
- Extinguished Natives' claims to any other traditional land-related rights, including aboriginal hunting and fishing rights.
• 13 Regional Corporations
• 224 (+/-) Village Corporations
ANCSA - What does this all mean?

1867 1959 1966 1968 1971

Udall Land Freeze
ANCSA Contaminated Lands

White Alice Communication Site
Northeast Cape St. Lawrence Island

Naval Arctic Research Lab Barrow
1998 BLM Report

- ~37.3 million acres conveyed
- ~650 contaminated sites transferred
- 383 contaminated sites in a federal program
- Unclear how many other sites of concern
- Reluctance to report due to liability concern
1998 Recommendations

1. Establish a forum of ANCSA land owners and Federal, State, local, and Tribal agencies for exchanging information, discussing issues, and setting priorities.

2. Compile a coordinated, comprehensive inventory of contaminated sites with input from all parties.

3. Apply EPA policies to ANCSA landowners, not to impose landowner liability to Federal transferees for contamination existing at the time of conveyance, where the landowner has not contributed to the contamination.

4. Analyze the data collected and report to Congress on sites not covered in existing programs and recommend whether further Federal programs or actions are needed.

5. Modify policies, where needed, to address contaminants and structures that may affect public health and safety on ANCSA lands.

6. Continue to develop, under the leadership of the EPA and any other relevant agencies, a process to train and enable local residents to better participate in clean-up efforts.
AND THEN WHAT?
Tribal Perspectives – #WARRIORUP

- Led by Alaska Native Village Corporation Association, formed in 1998
  - ANVCA is the only organization dedicated to furthering the collective interests of Alaska Native Village Corporations through sharing best practices, advocating for their political interests, and providing opportunities to connect with other Village Corporations.
  - Mission - ANVCA promotes the success of our Village Corporations and protection of our Native lands.
2016 BLM Report

- Follow up to the 1998 *Report to Congress of Hazardous Substance Contamination of Alaska Native Claims Settlement Act Lands in Alaska*

- **Purpose:**
  - Comprehensive inventory of contaminated sites conveyed through ANCSA
  - Updated status on the six recommendations listed in 1988 report; and
  - A detailed plan on how the DOI intends to complete cleanup of each contaminated site
2016 BLM Report

- 920 contaminated sites
- 328 cleanup complete
- 242 institutional controls
- 338 still required cleanup
  - 94 orphaned sites
  - 104 may be added
- Other sites?
Who Is Responsible?

Contaminated Sites - Conveyed & Active PRP as Determined by ADEC - 338 sites
September 9, 2015

- DoD, 162
- Cities, Boroughs, 24
- Private, Commercial, Non-profit, 42
- State, 27
- Federal Other (USDOI - NPS, NOAA, Health, USPS), 7
- Unknown, 26
- ANCSA, 20
- FAA, 16
- Non-ANCSA Native Entity, 14

Orphan Site List - 94 Sites
PRP - ADEC (September 9, 2015)

- US, 4
- Private, 7
- DoD, 4
- Muni, School, Borough, 11
- Unknown, 19
- Native Entity - Non-ANCSA, 8
- ANCSA Corporation, 41
St. Lawrence Island

- Northeast Cape
  - $120 million
  - FUDS
- Gambell
  - $7 million
  - FUDS/NALEMP

- Landowners
  - Sivuqaq Native Corporation
  - Savoonga Native Corporation
White Mountain

- 1000 oil drums near old BIA school
- 1999 Preliminary assessment
  - 540 ppm DRO 4-acre site
- Community and IGAP have done some cleanup
ADEC’s Mission

Conserve, improve, and protect Alaska’s natural resources and environment and control water, land, and air pollution, in order to enhance the health, safety, and welfare of the people of the state and their overall economic and social well being.

Alaska Brownfields
State Perspectives- 2016 BLM Recommendations

1. The ADEC should finalize the comprehensive inventory and implement a remedial action process.
   DEC are working to develop a more comprehensive inventory of sites to track sites and progress.

2. Establish a formal contaminated lands working group.
   Denali Commission is in the beginning stages of forming a working group.

3. Initiate site clean-up process.
   Brownfields, Site Assessment, FUDS, NALEMP, and....?
Considerations

- Responsibility for cleanup of Contaminated Lands

- Liability and protections under State of Alaska/CERCLA
Liability Defenses

• To obtain a liability defense...
  • upon discovery of contamination, must report and begin operations to contain and cleanup; so these are partial defenses as to past cleanup costs/damages
“It was clearly not the intension of ANCSA to extinguish Native claims by conveying contaminated property to recipients.”

– Congressman Don Young

“To have received the contaminated lands at all was an injustice, but to be left with the liability to clean up the waste left after years of abuse by various government agencies is simply unacceptable.”

– Hallie Bissett, Executive Director of the Alaska Native Village Corporation Association
Next Steps


- Senate bill amendment relieves Alaska native tribes of cleanup liability at former federal sites
- Propose to increase monetary level of Brownfields Competitive Grants

BUILD Act still needs a floor vote.
Next Steps

• Inventory
• Outreach and education
• Pilot project
• CERCLA liability protections for Alaska Native Corporations who received contaminated sites under ANCSA.
• Funding – who’s going to clean it up?
Thank you!

Quyana!