

106TH CONGRESS
1ST SESSION

H. R. 3090

To amend the Alaska Native Claims Settlement Act to restore certain lands to the Elim Native Corporation, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 10, 1999

Received

NOVEMBER 19, 1999

Read twice and referred to the Committee on Energy and Natural Resources

AN ACT

To amend the Alaska Native Claims Settlement Act to restore certain lands to the Elim Native Corporation, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

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3 **SECTION. 1. ELIM NATIVE CORPORATION LAND RESTORA-**
4 **TION.**

5 Section 19 of the Alaska Native Claims Settlement
6 Act (43 U.S.C. 1618) is amended by adding at the end
7 the following new subsection:

8 “(c)(1) FINDINGS.—The Congress finds that—

9 “(A) approximately 350,000 acres of land were
10 withdrawn by Executive orders in 1917 for the use
11 of the United States Bureau of Education and of
12 the Natives of Indigenous Alaskan race;

13 “(B) these lands comprised the Norton Bay
14 Reservation (later referred to as Norton Bay Native
15 Reserve) and were set aside for the benefit of the
16 Native inhabitants of the Eskimo Village of Elim,
17 Alaska;

18 “(C) in 1929, 50,000 acres of land were deleted
19 from the Norton Bay Reservation by Executive
20 order.

21 “(D) the lands were deleted from the Reserva-
22 tion for the benefit of others;

23 “(E) the deleted lands were not available to the
24 Native inhabitants of Elim under subsection (b) of
25 this section at the time of passage of this Act;

1 “(F) the deletion of these lands has been and
2 continues to be a source of deep concern to the in-
3 digenous people of Elim; and

4 “(G) until this matter is dealt with, it will con-
5 tinue to be a source of great frustration and sense
6 of loss among the shareholders of the Elim Native
7 Corporation and their descendants.

8 “(2) WITHDRAWAL.—The lands depicted and des-
9 ignated ‘Withdrawal Area’ on the map dated October 19,
10 1999, along with their legal descriptions, on file with the
11 Bureau of Land Management, and entitled ‘Land With-
12 drawal Elim Native Corporation’, are hereby withdrawn,
13 subject to valid existing rights, from all forms of appro-
14 priation or disposition under the public land laws, includ-
15 ing the mining and mineral leasing laws, for a period of
16 2 years from the date of the enactment of this subsection,
17 for selection by the Elim Native Corporation (hereinafter
18 referred to as ‘Elim’).

19 “(3) AUTHORITY TO SELECT AND CONVEY.—Elim is
20 authorized to select in accordance with the rules set out
21 in this paragraph, 50,000 acres of land (hereinafter re-
22 ferred to as ‘Conveyance Lands’) within the boundary of
23 the Withdrawal Area described in paragraph (2). The Sec-
24 retary is authorized and directed to convey to Elim in fee
25 the surface and subsurface estates to 50,000 acres of valid

1 selections in the Withdrawal Area, subject to the cov-
2 enants, reservations, terms and conditions and other pro-
3 visions of this subsection.

4 “(A) Elim shall have 2 years from the date of
5 the enactment of this subsection in which to file its
6 selection of no more than 60,000 acres of land from
7 the area described in paragraph (2). The selection
8 application shall be filed with the Bureau of Land
9 Management, Alaska State Office, shall describe a
10 single tract adjacent to United States Survey No.
11 2548, Alaska, and shall be reasonably compact, con-
12 tiguous, and in whole sections except when separated
13 by unavailable land or when the remaining entitle-
14 ment is less than a whole section. Elim shall
15 prioritize its selections made pursuant to this sub-
16 section at the time such selections are filed, and
17 such prioritization shall be irrevocable. Any lands se-
18 lected shall remain withdrawn until conveyed or full
19 entitlement has been achieved.

20 “(B) The selection filed by Elim pursuant to
21 this subsection shall be subject to valid existing
22 rights and may not supercede prior selections of the
23 State of Alaska, any Native corporation, or valid en-
24 tries of any private individual unless such selection

1 or entry is relinquished, rejected, or abandoned prior
2 to conveyance to Elim.

3 “(C) Upon receipt of the Conveyance Lands,
4 Elim shall have all legal rights and privileges as
5 landowner, subject only to the covenants, reserva-
6 tions, terms and conditions specified in this sub-
7 section.

8 “(D) Selection by Elim of lands under this sub-
9 section and final conveyance of those lands to Elim
10 shall constitute full satisfaction of any claim of enti-
11 tlement of Elim with respect to its land entitlement.

12 “(4) COVENANTS, RESERVATIONS, TERMS, AND CON-
13 DITIONS.—The covenants, reservations, terms and condi-
14 tions set forth in this paragraph and in paragraphs (5)
15 and (6) with respect to the Conveyance Lands shall run
16 with the land and shall be incorporated into the interim
17 conveyance, if any, and patent conveying the lands to
18 Elim.

19 “(A) Consistent with paragraph (3)(C) and
20 subject to the applicable covenants, reservations,
21 terms, and conditions contained in this paragraph
22 and paragraphs (5) and (6), Elim shall have all
23 rights to the timber resources of the Conveyance
24 Lands for any use including, but not limited to, con-
25 struction of homes, cabins, for firewood and other

1 domestic uses on any Elim lands: *Provided*, That
2 cutting and removal of Merchantable Timber from
3 the Conveyance Lands for sale shall not be per-
4 mitted: *Provided further*, That Elim shall not con-
5 struct roads and related infrastructure for the sup-
6 port of such cutting and removal of timber for sale
7 or permit others to do so. 'Merchantable Timber'
8 means timber that can be harvested and marketed
9 by a prudent operator.

10 “(B) Public Land Order 5563 of December 16,
11 1975, which made hot or medicinal springs available
12 to other Native Corporations for selection and con-
13 veyance, is hereby modified to the extent necessary
14 to permit the selection by Elim of the lands here-
15 tofore encompassed in any withdrawal of hot or me-
16 dicinal springs and is withdrawn pursuant to this
17 subsection. The Secretary is authorized and directed
18 to convey such selections of hot or medicinal springs
19 (hereinafter referred to as 'hot springs') subject to
20 applicable covenants, reservations, terms and condi-
21 tions contained in paragraphs (5) and (6).

22 “(C) Should Elim select and have conveyed to
23 it lands encompassing portions of the Tubutulik
24 River or Clear Creek, or both, Elim shall not permit
25 surface occupancy or knowingly permit any other ac-

1 tivity on those portions of land lying within the bed
2 of or within 300 feet of the ordinary high waterline
3 of either or both of these water courses for purposes
4 associated with mineral or other development or ac-
5 tivity if they would cause or are likely to cause ero-
6 sion or siltation of either water course to an extent
7 that would significantly adversely impact water qual-
8 ity or fish habitat.

9 “(5) RIGHTS RETAINED BY THE UNITED STATES.—

10 With respect to conveyances authorized in paragraph (3),
11 the following rights are retained by the United States:

12 “(A) To enter upon the conveyance lands, after
13 providing reasonable advance notice in writing to
14 Elim and after providing Elim with an opportunity
15 to have a representative present upon such entry, in
16 order to achieve the purpose and enforce the terms
17 of this paragraph and paragraphs (4) and (6).

18 “(B) To have, in addition to such rights held by
19 Elim, all rights and remedies available against per-
20 sons, jointly or severally, who cut or remove Mer-
21 chantable Timber for sale.

22 “(C) In cooperation with Elim, the right, but
23 not the obligation, to reforest in the event previously
24 existing Merchantable Timber is destroyed by fire,
25 wind, insects, disease, or other similar manmade or

1 natural occurrence (excluding manmade occurrences
2 resulting from the exercise by Elim of its lawful
3 rights to use the Conveyance Lands).

4 “(D) The right of ingress and egress over ease-
5 ments under section 17(b) for the public to visit, for
6 noncommercial purposes, hot springs located on the
7 Conveyance Lands and to use any part of the hot
8 springs that is not commercially developed.

9 “(E) The right to enter upon the lands con-
10 taining hot springs for the purpose of conducting
11 scientific research on such hot springs and to use
12 the results of such research without compensation to
13 Elim. Elim shall have an equal right to conduct re-
14 search on the hot springs and to use the results of
15 such research without compensation to the United
16 States.

17 “(F) A covenant that commercial development
18 of the hot springs by Elim or its successors, assigns,
19 or grantees shall include the right to develop only a
20 maximum of 15 percent of the hot springs and any
21 land within $\frac{1}{4}$ mile of the hot springs. Such com-
22 mercial development shall not alter the natural hy-
23 drologic or thermal system associated with the hot
24 springs. Not less than 85 percent of the lands within

1 ¼ mile of the hot springs shall be left in their nat-
2 ural state.

3 “(G) The right to exercise prosecutorial discre-
4 tion in the enforcement of any covenant, reservation,
5 term or condition shall not waive the right to enforce
6 any covenant, reservation, term or condition.

7 “(6) GENERAL.—

8 “(A) MEMORANDUM OF UNDERSTANDING.—
9 The Secretary and Elim shall, acting in good faith,
10 enter into a Memorandum of Understanding (herein-
11 after referred to as the ‘MOU’) to implement the
12 provisions of this subsection. The MOU shall include
13 among its provisions reasonable measures to protect
14 plants and animals in the hot springs on the Con-
15 veyance Lands and on the land within ¼ mile of the
16 hot springs. The parties shall agree to meet periodi-
17 cally to review the matters contained in the MOU
18 and to exercise their right to amend, replace, or ex-
19 tend the MOU. Such reviews shall include the au-
20 thority to relocate any of the easements set forth in
21 subparagraph (D) if the parties deem it advisable.

22 “(B) INCORPORATION OF TERMS.—Elim shall
23 incorporate the covenants, reservations, terms and
24 conditions, in this subsection in any deed or other
25 legal instrument by which it divests itself of any in-

1 terest in all or a portion of the Conveyance Lands,
2 including without limitation, a leasehold interest.

3 “(C) SECTION 17(b) EASEMENTS.—The Bureau
4 of Land Management, in consultation with Elim,
5 shall reserve in the conveyance to Elim easements to
6 the United States pursuant to subsection 17(b) that
7 are not in conflict with other easements specified in
8 this paragraph.

9 “(D) OTHER EASEMENTS.—The Bureau of
10 Land Management, in consultation with Elim, shall
11 reserve easements which shall include the right of
12 the public to enter upon and travel along the
13 Tubutulik River and Clear Creek within the Convey-
14 ance Lands. Such easements shall also include ease-
15 ments for trails confined to foot travel along, and
16 which may be established along each bank of, the
17 Tubutulik River and Clear Creek. Such trails shall
18 be 25 feet wide and upland of the ordinary high wa-
19 terline of the water courses. The trails may deviate
20 from the banks as necessary to go around man-made
21 or natural obstructions or to portage around haz-
22 ardous stretches of water. The easements shall also
23 include one-acre sites along the water courses at rea-
24 sonable intervals, selected in consultation with Elim,
25 which may be used to launch or take out water craft

1 from the water courses and to camp in non-perma-
2 nent structures for a period not to exceed 24 hours
3 without the consent of Elim.

4 “(E) INHOLDERS.—The owners of lands held
5 within the exterior boundaries of lands conveyed to
6 Elim shall have all rights of ingress and egress to
7 be vested in the inholder and the inholder’s agents,
8 employees, co-venturers, licensees, subsequent grant-
9 ees, or invitees, and such easements shall be re-
10 served in the conveyance to Elim. The inholder may
11 not exercise the right of ingress and egress in a
12 manner that may result in substantial damage to the
13 surface of the lands or make any permanent im-
14 provements on Conveyance Lands without the prior
15 consent of Elim.

16 “(F) IDITAROD TRAIL.—The Bureau of Land
17 Management may reserve an easement for the
18 Iditarod National Historic Trail in the conveyance to
19 Elim.

20 “(7) IMPLEMENTATION.—There are authorized to be
21 appropriated such sums as may be necessary to implement
22 this subsection.”.

23 **SEC. 2. COMMON STOCK TO ADOPTED-OUT DESCENDANTS.**

24 Section 7(h)(1)(C)(iii) of the Alaska Native Claims
25 Settlement Act (43 U.S.C. 1606(h)(1)(C)(iii)) is amended

1 by inserting before the period at the end the following:
2 “, notwithstanding an adoption, relinquishment, or termi-
3 nation of parental rights that may have altered or severed
4 the legal relationship between the gift donor and recipi-
5 ent”.

6 **SEC. 3. DEFINITION OF SETTLEMENT TRUST.**

7 Section 3(t)(2) of the Alaska Native Claims Settle-
8 ment Act (43 U.S.C. 1602(t)(2)) is amended by striking
9 “sole” and all that follows through “Stock” and inserting
10 “benefit of shareholders, Natives, and descendants of Na-
11 tives,”.

Passed the House of Representatives November 9,
1999.

Attest:

JEFF TRANDAH,

Clerk.