KARLUK AND LARSEN BAY: LAND ISSUES EXPLAINED

Koniag Shareholders sometimes hear or read references to Karluk and Larsen Bay lands. In hopes of providing our Shareholders with useful history and straightforward, factual information, Koniag has prepared several articles in consecutive newsletters.

Part 1, published in the April newsletter, was an overview of ANCSA and the merger of ANCSA corporations in our region. Part 2, below, reviews how lands originally selected by Karluk and Larsen Bay figured into the proposed land exchanges and conservation easement. Part 3 will explain some of the outcomes of the 1980 merger related to the tribal councils in Karluk and Larsen Bay.

VILLAGE LAND SELECTIONS

When people talk about Karluk and Larsen Bay lands, they are referring to lands selected by the village corporations under the Alaska Native Claims Settlement Act (ANCSA). The lands were transferred to Koniag as the result of its merger with the village corporations in 1980. Thus, Koniag owns land that had been selected by the village corporations for Karluk and Larsen Bay.

Most village corporations selected land for its subsistence value or land with known or expected economic value, such as timber or mineral resources, fisheries and tourism. Each village corporation made its own selections, but there were limitations.

One of these limits proved particularly relevant to land selections in the Koniag region. Village corporations within or next to a national refuge could select no more than approximately 69,000 acres (three townships) of refuge land. The remaining land due to them had to be selected from other areas designated by the government. These remaining lands are called "deficiency lands."

Subsurface rights were also affected by the refuge. Normally, a regional corporation would receive the subsurface estate of village corporation lands. But ANCSA provided that subsurface rights to lands selected in a refuge are not available for selection. Thus the subsurface rights had to come from other lands designated by the federal government.

In the Koniag region, much of the land was not available for selection because it was within the Kodiak National Wildlife Refuge. Because of this, Koniag and most of the region's village corporations had to make their selections from the deficiency lands on the Alaska Peninsula across from Kodiak Island – surface rights for the village corporations and the subsurface rights for Koniag.

The lands around the Karluk and Sturgeon rivers were selected by the village corporations for Larsen Bay and Karluk and became Koniag lands as a result of the merger. Because of the limit on the amount of refuge lands that could be selected, Karluk and Larsen Bay also received deficiency lands on the Alaska Peninsula.

Another sweeping federal law, the 1980 Alaska National Interest Lands Conservation Act (ANILCA) included adjustments to ANCSA. Koniag lobbied hard for one of these provisions.

That provision allowed Koniag and the village corporations in the region to trade their deficiency lands for nearly 280,000 acres of land on Afognak Island, much of which had valuable timber on it.

In 1982, Koniag and its village corporation partners formed the Afognak Joint Venture (AJV) to hold title to lands conveyed on Afognak Island. The AJV finally received title to the land in 1988, and timber operations began in 1989. Over the course of nine years, AJV harvests returned more than $8 million in revenues to Koniag, some of which was shared with the other regions, as required under Section 7(i) of ANCSA.

The U.S. Fish and Wildlife Service had targeted lands for conservation. At the top of its "most wanted" list were the former refuge lands selected by Karluk and Larsen Bay around the Karluk and Sturgeon rivers. As a result, these lands played a critical role in the Arctic National Wildlife Refuge (ANWR) land exchanges and the conservation easement terminated last year by Koniag.

ANWR LAND EXCHANGES

In the mid- to late 1980s, the U.S. Department of Interior, under President Ronald Reagan, was trying to persuade Congress to open the coastal plain of ANWR to oil and gas exploration and development. Assistant Secretary of the Interior, Bill Horn, hoped to gain support from environmental groups by acquiring Native corporation lands in wildlife refuges.

Native corporations – including Koniag, Old Harbor, Akhiok-Kaguyak, CIRI and a number of Calista villages – agreed to trade some of their former refuge lands for oil and gas rights on the coastal plain of ANWR. The exchanges depended on congressional approval and Congress opening the ANWR coastal plain to exploration and development.

Koniag had approximately 112,600 acres of former refuge lands. In negotiations with the Interior Department, the agreed value of the land was $77.4 million. The proposed land exchanges provided that the subsistence rights for village residents and shareholders on the former refuge lands would be continued.

Because the exchange was a major transaction, Koniag submitted it to its Shareholders for approval. The Shareholders approved the exchange by more than two-thirds of all outstanding shares. Koniag also submitted to Shareholders a proposition that, if the exchange went through, Koniag would seek federal legislation for permission – upon approval of its Shareholders – to transfer 34,186 acres of land to the Karluk tribal organization and 17,676 acres to Larsen Bay.

Congressional approval was required because a corporation cannot just give its assets to only some of its shareholders. The federal legislation was also needed to avoid adverse tax consequences to the shareholders.

The ANWR land exchanges fell apart for several reasons, not the least of which was the Exxon Valdez Oil Spill of 1989. The proposed land transfer to Karluk and Larsen Bay died as well since it depended on the ANWR land exchange.

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EVOS LAND SALE AND CONSERVATION EASMENT

Although the ANWR land exchange never materialized, the oil spill produced a different type of opportunity for Koniag. Exxon had paid $900 million to the state and federal governments in its civil settlement of spill damages. The Exxon Valdez Oil Spill Trustee Council was formed to decide how to use the money for restoration of the spill-impacted area. As part of that effort, the Trustee Council funded the purchase of lands and conservation easements to protect habitat.

The U.S. Fish and Wildlife Service was eager to have the council fund acquisition of the Koniag lands in the refuge in order to return critical habitat areas to the way they were before ANCSA. After several years of negotiations with the Fish and Wildlife Service, in 1995, Koniag agreed to sell 59,000 acres of its refuge lands for $26.5 million. These lands were among those that had been proposed for the ANWR exchange. But they excluded the heart of the refuge – the Karluk River and Lake watershed and the Sturgeon River watershed.

The Fish and Wildlife Service especially wanted the remaining 56,000 acres in the Karluk River and Sturgeon River areas. However, Koniag and the Fish and Wildlife Service could not agree on the value of the lands. They settled, instead, on a seven-year, non-development easement, under which Koniag was paid $2 million to not develop or lease that land while their talks continued.

Koniag agreed to the non-development easement because managing lands in the Karluk River and Sturgeon River areas was difficult and expensive due to their high recreational attraction. At the time, Koniag did not have the resources to adequately manage and protect the land. Inadequate management would have put the land and resources at risk of trespass, abuse and overuse.

In a separate agreement finalized in November 1998, the Trustee Council funded the purchase of 41,000 acres of land and timber from the Afognak Joint Venture to be included in the Fish and Wildlife Refuge on Afognak Island and for the development of state parks in the area. The $70.5 million sale price was paid in three installments and was shared among AJV members in proportion to their AJV ownership interest.

A new non-development easement on the Karluk River and Sturgeon River areas was negotiated and signed in 2002. As part of the agreement, subsistence access to the lands would not be disturbed. The new agreement effectively had an initial term of 10 years. After 10 years, Koniag had three options. It could extend the easement for another 10 years, sell the land (which the Fish and Wildlife Service was still hoping for), or terminate the easement and resume managing its lands. At the end of the initial term and an interim one-year extension of the agreement, Koniag elected to end the easement agreement.

In terminating the agreement, Koniag gave up about $700,000 a year in annual payments. But it regained control of its lands and took over all responsibility for land management, including permit systems for public, commercial and agency users. Koniag had been managing permits for commercial use during the easement, but the U.S. Fish and Wildlife Service handled individual-use permits from the public. Koniag realized that it was the best manager of its own lands.

See the February 2014 issue of the Shareholder News for more information about that decision. ■

CHANGES TO KONIAG BYLAWS

The Bylaws of Koniag represent the rules and standards by which the Board governs the Corporation. Changes and updates to the Bylaws are overseen by the Board of Directors' Compensation and Governance Committee (formerly known as the "Corporate Policy Committee.") The work plan for this Committee calls for a review of the Bylaws on a bi-annual basis. This effort began in the fall of 2013 and continued through April 2014, when final changes were reviewed and approved by the Board of Directors. The changes address the following issues: (1) clarifying Board authority in the event of an officer vacancy; (2) resignation of a Director; (3) clarifying and improving the oversight responsibilities of the Governance and Compensation Committee; (4) adding language to address the split positions of the CEO and the President.

The Bylaws provide that changes must be provided to Shareholders. The language approved by the Board on April 26, 2014, is below:

Article III, Section 3.1.2 - Qualifications

Old Language	New Language (in orange)
"No employee of the Corporation or of a subsidiary of the Corporation, in which the Corporation owns a substantial interest, may be elected to the position of, or serve as a Director of the Corporation. Should any person who is subject to this provision refuse to observe the provisions of this section after thirty day written notice from the President as to existence of the violation of this section, then such individual shall be deemed to have resigned his/her position as Director of the Corporation and such vacancy shall be filled as provided in these Bylaws."	"No employee of the Corporation or of a subsidiary of the Corporation, in which the Corporation owns a substantial interest, may be elected to the position of, or serve as a Director of the Corporation. Should any person who is subject to this provision refuse to observe the provisions of this section after thirty day written notice from the President as to existence of the violation of this section, then such individual shall be deemed to have resigned his/her position as Director of the Corporation and such vacancy shall be filled as provided in these Bylaws. Notwithstanding any other provision in these Bylaws, the Board has the right and authority to fill an officer vacancy on an interim basis, including through the appointment of one of its members."