

## KEYNOTE ADDRESS

# ALASKA NATIVE PEOPLES AND THE ENVIRONMENT

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Uvlaalluataq. Repeat after me: “oov-lah-lo-tuck.” Wonderful, you have all said “good morning” in Iñupiatun. I recall the first time I decided to introduce myself in Iñupiatun. I was a college student interning with the Alaska Federation of Natives (AFN). AFN sent me and a colleague to New York City to represent the Federation at the United Nations Permanent Forum on the Rights of Indigenous Peoples (Permanent Forum). At the time, I was volunteering at Nikaitchuat Iḷisaḡviat, the Native Village of Kotzebue’s Iñupiatun immersion school founded twenty-five years ago under the guidance of Aḡnik and Tarruq Schaeffer. My hope at the UN was to address the Permanent Forum regarding the urgency of protecting indigenous languages. During my lifetime, I felt a pain and shame around our language but also a yearning for it, which was directly tied to our Elders’ experiences as youth with policies against speaking our language and people in positions of authority committing acts of violence against them when they did. After our family moved from Kotzebue, a predominantly Iñupiat community, to Anchorage when I was in elementary school, my siblings and I experienced racism speaking with an accent influenced by the sounds and cadence of Iñupiatun. We were picked on for a part of who we were. There was no dearth of slurs directed toward us.

So, while sipping tea at Aana Aḡnik and Taata Tarruq’s kitchen table before the big UN convening, I nervously asked them, “Should I introduce myself in our language at the UN if I have the chance?” I knew the answer would be yes, but I needed their support. Aana Aḡnik answered with a potent grandmotherly power in her quiet voice: “They

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need to hear it.” They needed to hear our ancestors’ voices. They needed to know we were still here. They needed to know we still carry the responsibility to share the words of our people and our world even in the face of mockery and racial slurs. They needed to know violence did not kill our spirits. So, I did what Aana Agnik and Taata Tarruq encouraged me to do and introduced myself in public in our language for the first time at age 20 at the United Nations in New York City. That’s how strong U.S. law and policy is in our lives. It is so strong it changes the words we say when we wake up in the morning. It changes the way we tell our children we love them.

This symposium is about Alaska and the environment, and anytime in Alaska we are discussing the environment we are also discussing Native peoples because we are intricately interwoven. In my remarks, I am going to provide a brief overview of evolving federal Indian policy as it relates to Alaska Native peoples and will highlight elements of the contemporary Alaska Native world in the context of the current policy of self-determination. I look forward to the panel discussions and appreciate the papers being published in association with this event. One aspect of Sandrik and Matsumoto’s paper that spoke to me was their discussion of the absence of people from historic mainstream environmental law, stating “the environmental laws of the 1970s and 1980s tended to assume that the ‘environment’ was a wild, unspoiled place that people could visit to create and experience nature.” They contrasted that approach with that of a founder of the environmental justice movement of the 1990s and beyond, Dr. Robert Bullard, who stated: “the environment is everything: where we live, work, play, go to school, as well as the physical and natural world. And so we can’t separate the physical environment from the cultural environment.”<sup>1</sup>

There is a certain absurdity to the fact that the federal agency dedicated to managing national parklands and fish and wildlife—the Department of the Interior—is the same agency that houses the Bureau of Indian Affairs, which is charged with overseeing that the federal trust and government-to-government responsibilities are carried out with Tribes and indigenous peoples in the U.S. Until 1849, the federal War Department was responsible for handling indigenous matters, which exemplifies the shifting nature of federal Indian policy and U.S.-indigenous relations.

We are currently in the “self-determination era” of federal Indian policy, which is a significant change from the fairly recent War

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1. Errol Schweizer, *Environmental Justice: An Interview with Dr. Robert Bullard*, EARTH FIRST! J. (July 1999), <https://www.ejnet.org/ej/bullard.html> [<https://perma.cc/FPT7-EV3U>].

Department times. We transitioned into the self-determination era around the birth of my oldest sibling; that is how new it is. The move to self-determination came on the heels of the end of the “assimilation era” our Elders were raised in. In the assimilation era, Alaska Native peoples experienced significant trauma, such as children being forcibly removed from their homes and sent to boarding schools to be “civilized,” which involved nonconsensual cutting of hair and physical violence when they spoke our indigenous languages. The atrocities that resulted from this failed federal policy and its negative impacts on our people are still very much present, and the healing and resurrection among our people is a testament to strength of spirit.

The assimilation era was followed by a brief “ah-ha” moment in which the federal government recognized Tribes pursuant to the Indian Reorganization Act. But, that was followed by the passage of the 1953 Termination Act that had the goal of ending the federal trust relationship with Tribes, ending treaties and establishing harmful programs like relocating Native people from their Tribal communities to urban areas where they were to get jobs, blend in with the dominant society, and disappear. That approach did not work—there is a power so strong within our people and Tribes that you cannot just terminate them. And, times change.

As a result of hard work alongside the civil rights movement in the 1960s, we moved to the era of self-determination and self-governance where we are today. Yet, there remain people who are working hard to revive termination policies, such as those seeking to challenge the Indian Child Welfare Act as being unconstitutional<sup>2</sup> and, in doing so, hope to invalidate law centered around Tribes and Native peoples.

So, what does the era of self-determination look like in Alaska today? There are about 120,000 Alaska Native people here. We are close to twenty percent of Alaska’s population. There are 229 federally recognized Tribes and multiple consortia Tribes established to carry out health, social, housing, and other governmental programs on their behalf. There are twelve land-based Alaska Native regional corporations and over 200 village corporations formed under the landmark Alaska Native Claims Settlement Act (“ANCSA”).<sup>3</sup> There are other types of entities our people formed to creatively develop and use tools available to us to serve our people.

Each region has similarities and also differences. We have a beautiful, diverse world of language, culture, and ways of being

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2. See *Haaland v. Brackeen*, 994 F.3d 249 (5th Cir. 2021) (en banc).

3. Alaska Native Claims Settlement Act of 1971 (ANCSA), Pub. L. No. 92-203, 85 Stat. 688 (codified as amended at 43 U.S.C. §§ 1601-1629 (2012)).

throughout the Alaska Native world. My family has roots in Northwest Alaska, where Iñupiat have lived since time immemorial. Northwest Alaska is home to eleven villages with a total population of about 8,000. Our region is approximately 38,000 square miles—comparable in size to the state of Indiana. The Inuit peoples' homeland spans throughout Russia, Alaska, Canada, and Greenland. Familial and social relationships of the past and present link Inuit communities across the Arctic.

It comes as a surprise to some that the first outsiders to live in Northwest Alaska did not permanently settle there until 1897. While this may seem like a long time ago, it was recent; for perspective, I grew up eating chocolate chip cookies baked by my great-grandmother who was born just two years after outsiders came to Northwest Alaska. Our way of life has changed very rapidly. Elders today often outwardly appear like typical Americans, wearing name brand clothes and shoes, for example. You would never guess they may have grown up in sod homes on the tundra, speaking our language, carrying out their lives in a world very different from today's. It was a hard life, but our people were free.

When the new state of Alaska was formed in 1959 and commenced selecting its land entitlements, visionaries in our community knew that it was a "now or never" moment to secure Alaska Native land rights. In our region, our village leadership formed a coalition in the 1960s, the Northwest Alaska Native Association, to advocate for our land rights. They, and advocates they joined forces with throughout Alaska via the newly formed Alaska Federation of Natives, knew that to continue as indigenous peoples, we needed to retain our homelands, we needed "a place to be."

ANCSA's passage in 1971 was bittersweet. Following its passage, people celebrated the securing of our land, but also mourned the fact that we would not gain title to almost ninety percent of our homelands. Additionally, the new law left out any protections for Alaska Native subsistence hunting and fishing. But importantly, the Conference Committee report that accompanied ANCSA mandated the Secretary of Interior and State of Alaska protect the Alaska Native subsistence way of life.<sup>4</sup>

Once ANCSA passed, our leaders rolled up their sleeves and got to

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4. H.R. REP. NO. 92-746, at 4 (1971), *reprinted in* 1971 U.S.C.C.A.N. 2247, 2250 ("The Senate amendment to the House bill provided for protection of the Native peoples' interest in and use of subsistence resources on the public lands. The conference committee, after careful consideration, believes that all Native interests in subsistence resource lands can and will be protected by the Secretary through exercise of his existing withdrawal authority . . . . The conference committee expects both the Secretary and the State to take any action necessary to protect the subsistence needs of the Natives.").

work. In our region, they formed NANA Regional Corporation, Inc. (NANA) to hold title to our 2.2 million acre land entitlement and receive the settlement amount due to our region. It was never the goal during land claims discussions for us to form corporations so that we could become everyday capitalists. Instead, ANCSA called for formation of corporations to provide social, cultural, and educational benefits to their indigenous shareholders.

Across Alaska, Native peoples have accomplished much with the opportunities provided by ANCSA. Today, through the hard work of many over the decades, NANA is a \$2 billion corporation owned by more than 15,000 Iñupiat shareholders.<sup>5</sup> It is governed by a 23-member Board predominantly residing in our villages, and operates a dynamic and diverse portfolio within the federal and natural resources sectors. In 2022, we celebrated the 50th anniversary of NANA's formation, and there was a great deal to celebrate.

Our early leaders strategically selected the land NANA would gain title to through ANCSA primarily for its subsistence value. NANA's corporate land policy is that subsistence is the highest and best use of our lands. Our leaders also selected land that had the potential for economic development. They understood our people would need cash to thrive in this contemporary world. We would need cash to pay for gasoline for transportation to hunting grounds, to heat homes, and to buy groceries and supplies, which cost far more in Northwest Alaska than almost anywhere else.

One of NANA's key land selections relating to economic development was the area that became the Red Dog Mine. In 1982, NANA and Cominco, a Canadian mining company and the predecessor to the current operator, Teck, entered into an agreement for the operation of the mine. This cutting-edge agreement included protections for the environment and subsistence, assurances of jobs for NANA shareholders, requirements for collaborative management, local benefits, and royalties to NANA to meet its social, cultural, and educational mission.

The Red Dog Mine is one of the most productive zinc mines in the world, accounting for about five percent of global zinc production, eighty percent of U.S. zinc production, and twenty-four percent of Alaska's total annual export. Red Dog is the largest employer in Northwest Alaska. Almost 800 of its 1,500 workers are NANA shareholders. In addition to its economic success, Red Dog has a record of environmental accomplishments, especially as it relates to protecting the subsistence way of life. A Subsistence Committee oversees operations and implementation

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5. *About Us*, NANA, <https://www.nana.com/about-us/> (last visited Jan. 24, 2023).

of policies to protect subsistence traditions. For example, policies address not disturbing wildlife and protocols for what to do in the event wildlife is present. There is a relatively short shipping season at the mine's port, during which there is daily monitoring for the presence of important marine-based subsistence assets such as beluga whales. Decisions are made regarding shipping to ensure protection of subsistence opportunities and the environment.

Early on in the development of Red Dog, our leadership formed a borough government to ensure there would be a local mechanism to capture the tax benefits from the mine in order to provide government services like public safety and education throughout the region. This has come to pass with Red Dog paying \$269 million in payment in lieu of taxes and \$49 million for the Village Improvement Fund, which supports village priorities including several water and sanitation plants, solar power facilities, and other infrastructure. The support is not limited to just Northwest Alaska. NANA has distributed over \$1.6 billion to other Alaska Native corporations under ANCSA's Section 7(i) resource revenue sharing provision. The 7(i) funds are a meaningful boost to Alaska Native corporations statewide in their operations and fulfillment of responsibilities to their own shareholders. Finally, Red Dog has paid \$1.3 billion to the State, the Alaska Industrial Development and Export Authority, and the Borough since mining began.

Because of NANA's success in managing its lands, including at Red Dog, and its work in the natural resources and federal sectors, it had the opportunity to invest in its people significantly in 2022. The NANA Board authorized \$4.4 million to address the high cost of living in our region by funding fuel subsidies and programs, including a Tribal hunter support program to ensure Elders received nourishing subsistence foods. This decision came as a result of the cost of home heating fuel increasing as much as seventy-seven percent in some villages since the prior year, and gas increasing by up to sixty-six percent. Additionally, a NANA home heating fuel study showed over one-third of homes went without heat last winter and forty-five percent had frozen water and sewer systems as a result of heat loss—all during a pandemic when sanitation has been more important than ever. The Board authorized \$1 million of additional funding for Village Economic Investment (VEI) grants in each of the eleven regional villages for a total of \$34 million since 2009 to fund infrastructure, economic viability, affordable energy, and to strengthen each village's ability to become self-sustaining. NANA contributed \$1.5 million to the Northwest Arctic Borough School District to enable it to provide preschool in public schools, and consistently funds the Robert

Aqqaluk Newlin, Sr. Memorial Trust, an ANCSA settlement trust,<sup>6</sup> that provides scholarships to shareholders and spearheads work to maintain the vibrancy of Iñupiatun and our culture.

This investment in our people is the living, breathing intent of ANCSA. However, as we face challenges and the uncertainties of the future—including Red Dog’s planned end of mine life in 2031, climate change, lack of transportation infrastructure and public safety, crippling inflation, the home heating crisis, \$14 per gallon gas, and other disparities—the world can feel pretty bleak. It can feel as though we are invisible at times. Alaska ranks fourth in the nation for the highest number of cases of Missing and Murdered Indigenous Women and Girls, and Anchorage is listed as having the third highest number nationally.<sup>7</sup> People were literally here and then were not. A similar disproportionality exists with COVID-19 deaths. The Centers for Disease Control found Alaska Native people died from COVID-19 at three times the rate of white Alaskans.<sup>8</sup> We are a community that is in mourning and facing severe challenges.

Disparities in representation extend to the legal profession. Ninety-four percent of attorneys in Alaska are white and only six percent are people of color. In comparison, thirty-five percent of Alaska’s population is people of color. The Alaska Bar Association formed a Diversity Commission,<sup>9</sup> of which I am a member, to look at this disparity. The Commission recognizes that creating a more diverse and inclusive legal community will help the lawyers of Alaska more effectively serve the needs of the Alaskan community at large, including Alaska Native people and organizations.

In the face of these challenges and disparities, I will boldly say we are also in a time of transition and hope. To mark some exciting developments in this time of rebuilding: in 2022, the State of Alaska recognized Tribes in statute for the first time, an important step in cultivating successful relationships built on acknowledgement and respect.<sup>10</sup> And, new laws were passed authorizing State-Tribal

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6. See 43 U.S.C. § 1629e.

7. *Missing and Murdered Indigenous Women & Girls*, URB. INDIAN HEALTH INST., <https://www.uihi.org/missing-and-murdered-indigenous-women-girls/2/> (last visited Jan. 31, 2023).

8. Lowrie A. Ward et al., *COVID-19 Cases, Hospitalizations, and Deaths Among American Indian or Alaska Native Persons – Alaska, 2020–2021*, 71 MORBIDITY & MORTALITY WKLY. REP. 730, 730 (2022), <https://www.cdc.gov/mmwr/volumes/71/wr/pdfs/mm7122a2-H.pdf>.

9. RESOLUTION OF THE BOARD OF GOVERNORS ON THE ALASKA BAR DIVERSITY INITIATIVE, ALASKA BAR ASS’N 1 (2021), <https://alaskabar.org/wp-content/uploads/Diversity-Commission-Item-5-BOG-mtg.pdf>.

10. See Iris Samuels, ‘A Historic Milestone’: Alaska Formally Recognizes Native

compacting for education<sup>11</sup> and certification of language immersion teachers to reduce roadblocks to hiring qualified Alaska Native and foreign language teachers.<sup>12</sup> Alaskans elected the first Native person to ever serve in the U.S. House of Representatives—Mary Peltola, who is Yu'puk, and Hän Gwich'in and Oglala Lakota activist and model Quannah Chasinghorse took the global fashion scene by storm. Native people were involved in all aspects of certain mainstream media productions, including Alaska Daily, Molly of Denali, and The Great North. These are just a few examples of trailblazing people who indigenous children can see aspects of themselves and their communities reflected in, offering them something to aspire to.

Again, I thank you for including me in this symposium and for taking the time to delve into these issues of importance. As symposium participants discuss various aspects of Alaska and the environment, I invite the group to consider that Alaska Native peoples remain here, intertwined with our homelands, working toward a future for our children and descendants in which they have every option to be happy and healthy, rooted in who we are as Native peoples. In the words of Aana Mary Schaeffer, a Kotzebue Elder, culture bearer, language warrior, and esteemed grandmother: “We should always remember that what our ancestors passed onto us will continue to flourish for the generations to come.” This morning and every morning, the first word my kids heard was: Uvlaalluataq.

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*Tribes*, ANCHORAGE DAILY NEWS (July 30, 2022), <https://www.adn.com/politics/alaska-legislature/2022/07/28/a-historic-milestone-alaska-formally-recognizes-native-tribes/> (discussing the passage of H.R. 123, 32d Leg., 2d Sess. (Alaska 2022)).

11. S. Journal, 32d Leg., 2d Sess. 3044–45 (Alaska 2022) (noting the Governor’s signing of S. 34, 32d Leg., 2d Sess. (Alaska 2022)).

12. H.R. Journal, 32d Leg., 2d Sess. 3218 (Alaska 2022) (noting the passage of H.R. 19, 32d Leg., 2d Sess. (Alaska 2022)).