

Call Number: 02-00-35 Side A

A Conference on the Future of Alaska- Mallot

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Date of creation of summary: 3/13/2013

Notes: Original on 7 inch reel. Master copy on CD.

Tom Fink says he's not sure how to start because he wasn't sure of the format. Fink says he generally supports Governor Miller's position and that the differences between Governor Miller's position and the Federation of Natives aren't as big as they appear, but there is one huge gap. About a month ago, the Fairbanks News-Miner printed a comparison of all the proposals of the Federal Field Committee, the Department of the Interior, the Alaska Federation of Natives, and the governors. There are more points of uniformity between the governors and the AFN [Alaska Federation of Natives] position than there are points of disunity. The governor essentially is for the \$500 million dollars. The governor is for the land that's traditionally been the Native village land and he's for the statewide corporation plus the 12 regional corporations. Fink thinks those are the primary points of agreements. The point of disagreement is the 2% overwriting royalty [not sure what this is]. Tom Fink says he hears the primary reason for the 2% royalty is to make sure that the \$500 million will be paid. If that's the real reason for the royalty, then Tom Fink says he does not object to it. Tom Fink says they "we're" talking about \$500 million plus the royalty in perpetuity. Tom Fink says we have to go back to the question of legal rights. Tom Fink says there are no legal aboriginal claims today, they do not exist. On the other hand, Tom Fink says, it's been the traditional stance of the U.S. government to set up and establish certain legal rights. What gets established will be a matter of congressional policy. Tom Fink says Alaska has to look at what the United States government has done previously with Native American land claims and look at the needs of Alaska to come up with some sort of solution. The AFN position a year and a half ago was a reasonable position, but since injecting the 2% royalty they've been out of line with the majority of the people. Tom Fink says him and Byron [Mallot] have been discussing whether or not there is a legal right. If there is a legal right then, Tom Fink says his argument is shot down. Tom Fink says it's equally clear that the Alaska Natives don't have a legal right to the royalty. Tom Fink says there are several reasons why the Natives have not gone to court. One is that they want an amicable settlement without going to court. Tom Fink says the second reason is that they [the Natives] know that they would be removed from the courts on the motion to dismiss. Tom Fink says there might be wounds and scars that might be permanent scars and there is a difference of opinion. Tom Fink says he doesn't think there is anything wrong with a difference of opinion, which is the American system. Tom Fink says he doesn't think racial overtones exist at 4:55. Tom Fink stops at 5:20 of the recording and says he presumes the crowd mainly wants questions. There is a long silence until 6:15 of the recording.

A woman begins speaking and says she thinks there will be more continuity if "You three spoke first and then they spoke." [Unclear who she is speaking about].

William Hensley steps up and says "I understand Tom's finished." [The crowd laughs.] Mr. Hensley says he also understands that Tom believes there is no legal basis for our [Alaska Native] claims. Mr. Hensley says he would like to know why the Congress is dealing with the issue if it's simply based on a moral base. Mr. Hensley says he has not seen congress deal with the African American problem in terms of their demand of \$500 million dollar payment for slavery. Mr. Hensley says the fact of the matter is that the United States has reserved the right to deal with this kind of issue. The issue as Hensley sees it is that Alaska is the final great land issue that the United States faces in the westward movement. The takeover of the land from the American Indian and we have now reached Alaska [unclear]. Hensley says we are faced with the question of "What kind of government policy, federal policy, are we going to have in this particular instance?" Mr. Hensley says he is sure the crowd is familiar with the American Indian history with the United States government. Part of this history is that the tribes in the lower 48 were treated as foreign countries with whom they had to sign treaties with the United States. Hensley says from the very beginning of American jurisprudence there are cases of law where Native ownership in the Alaska Native case, was strong in the opinion of men like John Marshall and as strong as the fee simple ownership of the white people. Since that time, the annunciation of these decision back in the 1830's, naturally the states wouldn't agree with these decisions. The states have fought any decision to grant lands to Indians even if they were held in trust to the United States. Hensley discusses the case of the Cherokees. According to Hensley, the Cherokees did everything humanly possible to build a system of government. The attempts failed according to the U.S. government and the Cherokees were moved west to Oklahoma by President Jackson. In terms of Alaska, Mr. Hensley agrees with Tom that there is not intent to lament any racial backlash, as a matter of fact, Hensley thinks it shouldn't even be a topic of discussion. Mr. Hensley says the Anchorage Times has given the Alaska Natives unfair coverage since the beginning of the issue. Since the first time they met, the Anchorage Times came out with an editorial designed to split Alaska Natives from the beginning. The editorial reads "Natives Split on Land Claims." That was before any of the Alaska Native got together to meet. Mr. Hensley says the Alaska Natives have had to learn as they go. The Alaska Natives have had some local attorneys. They have the Indian Court of Claims Commission happening in Washington D.C. By the time the federation was created in 1966 and there was an issue, there were very few people who realized the implications of the conflict. Mr. Hensley says he could see what was coming because of his study and that fact of the matter is there was a built-in conflict in the statehood act when the Constitutional Convention dealt with the issue, they knew there was a problem of ownership. They left it up to the Statehood Act to resolve the issue, but it didn't, the statehood act simply postponed the conflict. On one hand they were saying the state can have 104 million acres, on the other hand they were saying the Native people would not be disturbed in their use and occupation of land. The problem was there was no description of what use and occupancy was. There was a definition of occupancy in the cases that have been decided in the court of claims and the Indian Claims Commission and the Supreme Court that describes occupancy as "Any area of land that is used by a Native group in their livelihood." Hensley says with that logic, in theory, all of Alaska is owned by the Native people based of prior cases. In this particular case of Alaska, the United States has retained full jurisdiction over the settlement of the lands. The state is trying to say by right, they should have this 104 acres unencumbered in any way by the Native Claims Act. As a matter of fact, the state accepted the fact and disclaimed all rights entitled that Alaska Natives are using to occupy the land. Mr. Hensley says an issue is trying to be resolved. He thinks the U.S. would agree

that the Senate and this Congress will give a settlement. The Indian lands throughout the state have been taken. Mr. Hensley says we have a chance to do an equitable thing. Naturally, the people in the villages are dedicated to the land. When the house committee was up in Nome, one of the old Eskimos got up and said "Why are you coming to us and asking us why we should have our land?" As far as the elder Eskimo was concerned, the Alaska Natives still owned this land. Until the Alaska Natives get a bill from Congress agreeing to the cession of these lands, it will still be essentially Native country except for the lands lost through acts of Congress or other ways. Hensley says Alaska Natives want to avoid the reservation system, but the fact is reservations imply control by the BIA and the Secretary of the Interior. Hensley says if Alaska Natives really wanted to get away from the state, Alaska Natives would be pushing for reservations. Hensley said they would like to see 200 Tyonek in Alaska (not clear what this means) which are unreachable by state, but the fact is Alaska Natives are willing to make a change in this old system. Alaska Natives feel the villages are due land. Congress has made settlements with tribal groups, but the Congress looks at Alaska as one single issue. They could have filed the claims based on different tribes, but Alaska Natives knew they were all in the same boat and had to get a settlement. Mr. Hensley says Senator Ernest Gruening is the one who got him interested in the land issue because Hensley returned from George Washington University in 1966 and Gruening said in the papers that the Native people should get paid for their land and Native Alaskans should move on for what's good for Alaska. Mr. Hensley said it is the same line that Gruening thought he knew what the best was for the Native people. Hensley says we know there are many Native people who are not going to adjust to mainstream American life. Mr. Hensley believes we shouldn't force that on anyone. Hensley says there will be many, many casualties. Only a certain amount of Native people will be able to jump into the 20th century without many effects. There are psychological effects and other ways (effects). Hensley says they feel if they can get a suitable amount of land that can be controlled and protected along with a financial settlement, status of villages can be improved. In Hensley's opinion, the state is doing itself great harm by not offering to participate in a settlement. Hensley says it was Ed Boyko] who proposed state involvement and participation. When Mr. Hensley and others went to Washington, after they had the confrontation with Governor Walter Hickel, Mr. Hensley wanted to say "Look what the state is doing to help a settlement. Look what it's putting into a settlement." By the time the settlement came out, it was pretty much tied to a lifting of a freeze on a portion of Alaska. Mr. Hensley says he thinks the great thing about the state act was the fact that the state recognizes that Alaska Natives had a right to seek a settlement of the land issue. Hickel felt that if the suggestion of getting state participation didn't work that they'd resubmit the legislation. Mr. Hensley says congressmen feel that Alaska has gotten a tremendous deal irrespective of the land claims issue before us there is a danger to the special provisions of the statehood act (not clear). The man thinks Ted Stevens and Mike [no last name but probably Sen. Mike Gravel] have seen it from the beginning that the state should participate or face the prospects of losing its favorable treatment in the statehood act. Hensley was in Noatak not too long ago and he couldn't see at that point why anyone in the state would object to allowing them a 30 mile radius around their community because the people in Noatak use the land extensively. He says that the church got a better deal than the Native in Alaska because one 10x10 building could get 100 acres within a square mile if they could prove they were in existence before 1900. Walter Hickel came to the conclusion that 40 million acres is within the ballpark. The man [Hensley] says he and others spent 3 hours with him in Washington before a committee session and discussed the

40 million provisions and Hickel didn't fight it. 500 million acres was suitable because it wasn't coming out of his pocket or the state's pocket. The 2% idea has been around for some time. It's certainly not any of the eastern lawyers' recommendation. For Naval Petroleum Reserve Number 4 and other mineral resources, Hensley says what they did was simply lump them together and say why not 2% right off the top. Hensley feels his proposals are fair. The settlement has an effect on all of the people of Alaska. If you took a vote in the villages, Hensley doesn't think you'd find a bunch of villages interested in millions of dollars. They'd say if the land is preserved for the use, they'd settle for that. Hensley concludes by saying debates like this are useful. He also says the legislature's position is not the governor's position.

At 29:18 a man says "at this time we'd like to give the privilege to Mr. [Byron] Mallot if he has anything to add."

Mr. Mallot steps up and thanks the crowd. He says he spent 7 months in Washington D.C. as a staff member on the hill. One of the things that he saw happen was during one of the hearings that was held on land claims in August, Governor Miller stated in unequivocal terms to Senator Lee Metcalf of Montana and this is part of the public record, that he did not oppose a revenue sharing proposal and that he would entertain and support a revenue sharing package. The only reason he had to say he was against the 2% was from legal advice from his attorney general. Mr. Mallot says Senator Lee Metcalf at one time was a member of the Supreme Court in the State of Montana and at one time also said bah humbug at the state precluding (unclear) from any revenue sharing package. In essence, the governor in the state of Alaska [Miller] said he does support a revenue sharing package. Mallot would like to say that Fink mentioned earlier that within the scope of legality at this time that Native people do not have recourse to the courts. Mallot says its basing a very encompassing remark on a very small basis in law or a very small technicality as far as law is concerned because it is a fact that in order to properly bring a land claims case of this kind before the Court of Claims or any court in the United States which is in essence to sue the Federal Government, you have to have permission of the federal government to be sued. For the Alaska Federation of Natives to go to court, they'd have to go Congress and ask for a jurisdictional act which would allow them to bring suit against the United States. Mallot says Mr. Fink thought that if such as act would be requested, it would not be granted because the Congress would turn a request down. Mallot says he thinks if any Native group went to congress and said they do want a jurisdictional act so that we can bring suit that this would be rapidly allowed. Many Natives and non-natives pressed hard not to take the court route because of the experience of having to wait 35-40 years from when a suit was filed to when it was rendered. Mallot says the word "rendered" is used very loosely. Mallot says having been a member of the Native Lands Claims Task Force appointed by Hickel to draft the first lands claim bill, he'd like to make a point of a recent request of the Alaska Federation of Natives to have a 2 % royalty as part of its legislative package. Mallot can recall very distinctly sitting down in Juneau in the governor's [Miller] office, a high ranking undersecretary of the Interior present, and the Native [unclear who this is, AFN?] coming forward saying we have claims that cover some 300 million acres in the state of Alaska, "What do you think about that?" Mallot says they were not very sure of exactly what they were about. The precedence was very limited; they didn't have the broad base of knowledge to be firm in the kinds of things they are trying to ask for. At one point he recalls

many Natives, especially those who spent all their time in the rural area, they said the least they could ask for is 180,000,000 acres. Mallot says they have come down from 300 million acres and getting responses from the governor's office and the department of the interior that "No, Congress won't buy that." Mallot says a member of the interior department who was up here would go to Washington D.C. weekly almost on a weekly basis and come back after having whispered in Stu Udall's ear a number of things and come back with tablets from the Mount saying Congress won't buy that. Finally Alaska Natives got down to 40 million acres and Congress finally said maybe they could buy 40 million acres. In the back of the minds of all the Natives who had fought and been involved for such a long time and seen the kinds of claims they felt were there right come down from that amount to 40 million [meaning unclear], this is something that has simmered in the back of the mind of Native people. Mallot says Alaska Natives may think sometimes we need to ask for a little bit more than what we believe is ours to compensate for the negotiated compromises that Alaska Natives have had to suffer. The 2% royalty is part of this process. 2% is not something grabbed out of the air; it is something that has been thrown around for a long time. Mallot takes offense to people saying that 2% royalty is something that has been grabbed out of air. Mr. Mallot says that is not the case and leaves the microphone at 37:37.

A woman [Edna, no last name mentioned] approaches the microphone and says the man sitting at the far end of the Alaska Federation of Natives table is Adam John.

Adam John approaches the microphone and says "Thank you, Edna."

Mr. John said he would like to make it clear first that he is not speaking for the AFN. He says if he does speak for anyone it is only for the Native Council of Anchorage. He also says he is not by profession a public speaker and most of the things he does is write. Mr. John begins reading off of a paper he writes. In the paper Mr. John says that there are two important facts about the Native position on land claims that need to be understood. First the land claimed is the Natives' in law and justice. Second, the transaction now taking place in Congress is a forced sale of land. The land is Alaska Natives' in fact. This is proven by an unbroken line of cases that establish the legal rights of aboriginal people to use, occupy, and enjoy the land they inhabit. The courts have said that no party can interfere with that right. The only condition on the Alaska Natives' right, if you agree that the Teton [Black Hills, South Dakota] case vs. the United States in 1955, which held that Indian Law or any other cases regarding Indians is invalid, is that Congress and congress alone can extinguish their right without paying them compensation as a requirement of the 5th amendment. What congress is doing is extinguishing the Alaska Native right to the land. Mr. John says he should add that the state of Alaska and non-native person have no technical right to interfere and comment on the transaction. The state claims no obligation to participate in the settlement therefore nor should the state oppose the settlement. This is not, however, how things are going, says Mr. John. The state two-facedly insists upon having no obligations, but does insist on a voice in saying how much the compensation will be. The joining of Alaska Native legal rights, moral claims, and political rights makes it clear that Alaska Natives have every right to agree upon the best terms possible. Mr. John says their [Alaska Native] position is a moderate one. He says Alaska Natives ask for fee title of 40 million acres of land. He says that amount of land is negligible because the people currently use 5 times that amount of land.

Mr. John says Alaska Natives are asking for a settlement of \$500 million dollars, or about \$1.50 an acre. Given the mineral, oil, and gas potential in most Alaska land, he says that amount seems pitifully small. He says they would prefer to set the sale price after the true value of the land was known. He says they are asking for a share of the future resources taken out of Alaska through the 2% overriding royalty. This proposal is based upon a number of considerations. Mr. John says the proposal will assist them in taking a good portion of the settlement out of the uncertainties of the appropriation process. Mr. John says that some people are saying the 2% provision is too much money, that it might bring the Alaska Natives some \$100 billion dollars. He says the Anchorage Daily News correctly pointed out that the state will get more and the oil companies will get more than both together. Mr. John quotes the Anchorage Daily News. He says the larger issue is one of justice, fairness, and equity for Native people of Alaska. He says the provisions of the AFN bill are moderate enough and certainly by some standards grossly inadequate. At 44:25 of the recording he says thank you and ends the speech.

Edna [No last name] says "Thank you Mr. John" and then asks if anyone would like to refute anything said or have anything to add. She then introduces Dr. Miller who begins speaking at 44:50.

Dr. Keith Harvey Miller [Lieutenant governor under Walter Hickel] says like Mr. John, he is neither a public speaker nor a journalist. He says there are the same problems with the legality of the claims. He says he would like to quote the beginning of the bill that was introduced by Mr. Gravel in the declaration of policy. "Congress hereby recognizes the claims of the Natives and Native villages based upon aboriginal occupancy and use of lands within the state of Alaska." Dr. Miller says this section was not in the original Bill 1830, the Federal Fuel Commission Bill. That original bill stated that congress recognized a need for a settlement. He says in order for the Native claims situation to become a legal claim this would have to be passed by the total congress of the United States and that's why this was written into the bill. So again we come into the gray areas of the claims says Dr. Miller. He says this is why we have a government, because one people may think one thing and another may think another. Dr. Miller says that the AFN have expressed their request and claims based on the feeling that they have title to all of Alaska. The governor [Miller] feels that their [the Alaska Native] claim is excessive. Dr. Miller says he takes the position of the governor because Dr. Miller feels the governor's position is "more fair" to all of the people. Dr. Miller says if the Native position is true, then Congress should ask for a rebate from the Russians. A township is 6 miles by 6 miles, greater in size than the city limits of Anchorage [which is 1/2 of a township]. The governor's position is that each Native village should be the size of up to two townships, with the exception of the southeastern situation of the Haida Tlingit. That would be about 46,480 acres according to a statement. The governor feels the problems arise from the purchase of Alaska 102 years ago in which title was taken by the United States from the Russians. The governor feels that since this situation does exist, the 500 million dollar settlement should come from the federal government since it was a federal purchase and ownership was established through federal patents up until the time Alaska became a state. Dr. Miller says he wants to point out one thing about the 90% 10% oil royalty situation. He says we [not sure who he means] are being threatened by some people that we'll lose our advantageous position 90% on oil royalties and the federal government get 37.5% of the states. Dr. Miller says in states where they don't have this 90% grant that Alaska does, they are granted 37.5% of oil money from federal lands. The differential between that 53.5% is put into a reclamation

project. In Alaska there are no reclamation projects. So in the Statehood Act this was recognized by giving Alaska 90% instead of 37.5% so that money could be put into reclamation projects by Alaska because there were not federal projects. Dr. Miller says that's all he has to add at this point and maybe somebody else would like to say something else. Dr. Miller ends his discussion at 49:57.

Edna says that for people who don't know Dr. Miller [and Mr. Marlon [?]], they along with William Zeickel spearheaded petitions in support of Governor Miller. Edna says that the floor will be open for questions and answers at 50:20.

A woman asks if the Organic Act of 1884 acknowledges the aboriginal title. One of the discussion panelists [unclear who but most likely Dr. Miller] says he is not familiar with that act. She says that the act definitely specifies that the United States will not move any Natives from Alaska land that is being used and occupied. 50:00-50:06 is inaudible. The woman says the Act does recognize aboriginal title. The man says he is not familiar with the wording. She says the act does not claim half of the land for the United States. She asks about the wording of Section 4 of the Statehood Act. The man says Tom Fink has the Act right here. Tom Fink begins speaking at 51:45

Tom Fink says he believes the Statehood Act in all of the court cases state that Alaska has no interest in whatever the Natives have a right to. The Statehood Act specifically says "We're not agreeing they have the right to anything." The state says that if the Natives do have a right to something, the state will relinquish the rights to it. He says he went back and he read the Russian treaty when we bought [Alaska]. He says it's the same type of the thing. He says he will not read the language of the treaty. Fink says all the court decisions have been very clear. Fink says whatever Congress says that is the law. You can't prove outside of what Congress says. Up to this point congress has not said. She asks if Congress was responsible for the Organic Act of 1883. Fink says he doesn't have that in front of him. Fink says he has the treaty, the Statehood Act, and a few other acts with him. Fink says he has read that whatever we are holding whatever in limbo until we make time to get around it. Fink says congress should have decided this long, long ago. The woman says the Organic Act recognizes aboriginal rights and many court cases have also recognized them. Fink says the court cases have recognized it once congress has recognized the right. She says she also wanted to ask about the Indian Claims Commission. Fink says the Indian Claims Commission was set up for a specific law that has already been expired. She says it has been renewed by [inaudible]. Fink says he agrees with her. Fink says Byron Mallot mentioned that Fink indicated that it would be very hard to get Congress to pass an act to allow the Native to Sioux. Fink says he thinks the Natives will settle it or there will be the jurisdiction to go to court. Fink says what he said was that of this time such an act is not enforced and there is no one in court to sue for Native land claims today. The woman in the crowd says she thought Fink was overlooking the Tlingit-Haida case. Fink says that case was filed during a period of time where there was a jurisdictional act, as Byron has referred. The case is no longer in existence according to Mr. Fink.

55:17 William Hensley begins speaking and says the Indian Claims Commission still exists and as far as he's concerned it has been renewed each five year period since they enacted that piece of legislation. Hensley says there are several Native villages have filed suit before the Indian Claims Commission, the Unalakleet is one. The fact of the matter is that to a certain point, Tom [Fink] is right. It used to be that

Indians had to go and get a special act to go to court to sue the United States. This process was lengthy so in order to take care of dozens of tribes that had been jipped or paid a small amount of money for their land, [no first name] Jackson was one of the architects of the Indian Claims Commission Act. As far as Hensley knows, Jackson is unhappy with it because it's a slow process. The Indians have to wait a long time and spend a lot of money to get the cases to court. At least in the theory of the law, you have to have a taking, a specific extinguishment of this Native title and we haven't had that. In many ways, Hensley believes there is a very strong case because in reality the land is untaken from the point of view of the law and the Alaska Natives have every right for use and occupancy of the land. And by right, the congress should have been offering the protection they offered in 1884. Hensley believes they said somewhat to the effect that the Alaska Natives should not be worried about being disturbed in their use and occupancy of the land or any lands claimed by Alaska Natives. That is was the 1884 Act says. Hensley says that the government has allowed the taking to occur. During the entire period of the gold rush, Alaska Natives were not considered citizens until a Blanket Act was passed in 1924. The Territorial Commission had set up a method for which Alaska Natives could become citizens by practically becoming Christians and learning how to read and write. During the great gold rush, there was no way for Alaska Natives to protect themselves because Alaska Natives weren't citizens. There has been a policy, a protection, and from recent events Alaska Natives need that protection. Hensley thinks that the method they [AFN] are offering to solve the problem is the best one created. The system would work in the modern world. In terms of the arguments about taxation provisions, if Alaska Natives really didn't want to lose the land, Alaska Natives would accept reservations because then the government couldn't get at it. The fact of the matter is that Alaska Natives want the land in fee. Alaska Natives want the people to be able to control it, lease it, sell it, subdivide it, whatever they feel like. Hensley says they don't want to lose the land because of borough taxes or state taxes. Hensley says Alaska Natives will go a certain point and pay taxes on the income that Alaska Natives get on the land, if its profitable land.

A woman asks a question at 1:00:00 into the recording. "If the nation splits, would you then feel that every nation in Alaska..." [The remainder of the question is inaudible]. Hensley says release and occupancy is sort of a word of art at least in terms of regarding Indian land claims. The use and occupancy of say a farmer and Native hunter and trapper is completely different. Hensley says naturally those who think Alaska Natives are getting too much land think of the land in terms of a city or farmer. That's not the way Alaska Natives live, although the Native Allotment Act provided 160 acres; this is simply a concept that was applied to Indians when the government was trying to civilize them back in the 1880's. It didn't work for them; it wasn't until 1965 that they allowed Alaska Natives four 40 acre section for fishing and hunting. Unfortunately there was no one to administer the act so very few people got the lands. Studies that have been done in the past have determined that it takes a family literally thousands of acres to live. In one of the hearings he gave, Hensley says he gave a description of how his family of 10 used the land. They had at least 3 different camping locations a year. Presently, the villages in the west and interior are still subsistence villages, living on the fruit of fish and game. Hensley says it's hard to say because different villages use the land in different ways. Trappers use miles of trap lines. A village like Manokotak may travel 30 miles to hunt and fish. Hensley says they are not asking for that amount of land for every village. The use and occupancy varies from village to village. Practically everyone in Manokotak moves out of Manokotak and moves down to Shageluk which is

probably 30 or 40 miles. The woman says the reason she asks these questions is she figures “[inaudible]...and not get involved... [inaudible]...and can you tell me...” the recording stops.