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IN THE  
Supreme Court of the United States  
October Term, 1978

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BEFORE THE SPECIAL MASTER

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UNITED STATES OF AMERICA,  
*Plaintiff,*

v.

STATE OF ALASKA,  
*Defendant,*

v.

INUPIAT COMMUNITY OF THE ARCTIC SLOPE,  
a federally recognized Indian tribe,  
and UKPEAGVIK INUPIAT CORPORATION,  
a native village corporation,  
*Petitioner-Intervenors.*

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MOTION FOR LEAVE TO INTERVENE  
AND COMPLAINT IN INTERVENTION

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IN THE  
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October Term, 1978

BEFORE THE SPECIAL MASTER

UNITED STATES OF AMERICA,  
*Plaintiff,*

v.

STATE OF ALASKA,  
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v.

INUPIAT COMMUNITY OF THE ARCTIC  
SLOPE, a federally recognized Indian  
tribe, and UKPEAGVIK INUPIAT COR-  
PORATION, a native village corporation,  
*Petitioner-Intervenors.*

No. 84  
ORIGINAL  
MOTION OF  
THE INUPIAT  
COMMUNITY  
OF THE  
ARCTIC  
SLOPE AND  
THE UKPEA-  
GVIK INUPIAT  
CORPORA-  
TION FOR  
LEAVE TO  
INTERVENE

I.

STATUS OF PETITIONER-INTERVENORS

The Inupiat Community of the Arctic Slope (ICAS), organized under the Indian Reorganization Act of June 18, 1934, 48 Stat. 984, 25 U.S. Code §§ 461, *et seq.*, is a duly recognized Indian tribe comprised of the Inupiat Eskimos of the Arctic Slope. It is governed by a constitution and by-laws approved by the Secretary of the Interior on June 28, 1971.

The Ukpeagvik Inupiat Corporation (UIC) is a native village corporation incorporated under the laws of the State of Alaska pursuant to the Alaska Native Claims Settlement Act of December 18, 1971, 85 Stat. 688, 43 U.S. Code §§

1601 *et seq.* (ANCSA), with its headquarters at Barrow in the Alaska District. UIC is authorized by its Articles of Incorporation, adopted April 30, 1973, to engage in all activities necessary to protect and preserve the well-being of the native residents of Barrow.\*

Individually and collectively, Petitioner-Intervenors respectfully move the Supreme Court and the Special Master for leave to intervene in the above-captioned lawsuit.

## II.

### HISTORY OF THE LITIGATION

In 1979, the Supreme Court exercised its original jurisdiction under Article III, Section 2 of the United States Constitution to entertain this suit, which relates to the location of the northern boundary of Alaska. After preliminary pleadings were filed, the Court referred the case to Special Master Keith Mann. In May, 1980, the United States and the State of Alaska submitted to the Special Master a Joint Statement of Questions Presented and Contentions of the Parties. A hearing was held before the Special Master on July 28 and 29, 1980, at which time testimony was taken on several issues not directly relevant to the interests of Petitioner-Intervenors at this time, namely the boundaries of the Arctic Wildlife Range, and the National Petroleum Reserve-Alaska.

On January 19, 1981, ICAS and UIC filed a lawsuit together with individual Inupiat allottees in Federal District Court in Anchorage against the United States, the Secretary

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\*Disclosure required by Supreme Court Rule 28.1: UIC has no parent company. It has a number of wholly owned subsidiaries and a 50% interest in Hiberg-Barrow Ventures, Ltd., a joint venture with a Canadian company.



of the Interior, the Director of the Bureau of Land Management, the Governor of the State of Alaska, the Commissioner of the Alaska Department of Natural Resources, and various oil companies who are lessees of, or apparent high bidders for, oil and gas development rights in offshore tracts in the Beaufort and Chukchi Seas. (*ICAS and UIC et al. v. United States et al.*, U.S.D.C. Alaska Civil No. A81-019.) The plaintiffs in *ICAS and UIC et al. v. United States et al.* specifically seek a declaration from the District Court that they possess unextinguished title, ownership, dominion and sovereign jurisdiction over the Beaufort and Chukchi Seas beyond the three-mile limit to at least a distance of 65 miles. This contention is based on the fact that ANCSA only purported to extinguish aboriginal rights and title *in Alaska, i.e.*, within the three-mile limit. To further secure their rights, the plaintiffs in *ICAS and UIC et al. v. United States et al.* seek an injunction against the defendants therein from submitting, accepting, authorizing or acting pursuant to any further bids or present or future leases relating to areas over which plaintiffs have jurisdiction. A copy of the complaint in *ICAS and UIC et al. v. United States et al.* is attached as an exhibit and incorporated herein by reference.

While the interests asserted and the prayer for relief requested in *ICAS and UIC et al. v. United States et al.* are similar in some respects to the rights which Petitioner-Intervenors assert herein, it is necessary, appropriate and in the interests of justice that the Supreme Court and the Special Master take them into account in the context of this lawsuit. The findings of the Supreme Court and the Special Master may have a direct bearing upon whether the Inupiat people have title or sovereign jurisdiction over portions of the offshore leasing area in the Beaufort Sea. Petitioner-In-

tervenors are particularly concerned with the issues of the status of Dinkum Sands, and the applicability of the boundary theories designated as "inland waters" and "straight baselines" in the Joint Statement of Questions Presented. The resolution of these issues will determine the status of offshore tracts in the heart of the leasing area, and may largely determine the future existence and cultural survival of the Inupiat people. The defendants in *ICAS and UIC et al. v. United States et al.* have already alleged that the claims of Petitioner-Intervenors in areas determined to belong to the State of Alaska are barred by *res judicata*.

Hearings on the issues of "inland waters" and "straight baselines" are expected to take place during the summer of 1981 and possibly 1982. If this motion is granted there will be sufficient time for Petitioner-Intervenors to prepare testimony and assist in the orderly presentation of evidence on these issues.

### III.

#### ARGUMENT

##### **A. Intervention is Justified Because Issues Critical to the Inupiat People Are at Stake and Neither Party Adequately Represents Them.**

The Inupiat Eskimos of the Arctic Slope have continuously occupied the North Slope, including offshore areas of the Beaufort Sea beyond the three-mile limit, since time immemorial. Moreover, they have continuously asserted exclusive rights, title, ownership, dominion and sovereign jurisdiction over this area. The Inupiat people have never been conquered, either by Russia prior to 1867, or by the United States, and have never entered into a treaty with



either power by which their original sovereignty has been limited.

The passage of ANCSA in 1971 did not purport to extinguish title, sovereignty or occupation or subsistence rights in areas outside of the exterior boundary of the State of Alaska, three miles offshore. The Inupiat people's rights, title, ownership, dominion and sovereign jurisdiction in such areas have never otherwise been expressly relinquished, extinguished or abandoned and remain intact. They continue to use such areas for whaling, fishing, hunting and traveling.

On March 10, 1978, the United States Department of the Interior and the State of Alaska announced their intention to conduct a joint lease sale and issued a joint call for nomination of 236 submerged federal, state and disputed tracts in the Beaufort Sea. In 1979, the United States instituted this action for a declaration of exclusive sovereignty as against the defendant State of Alaska regarding portions of the subsoil and seabed underlying the waters adjacent to Alaska in the area of the Beaufort Sea, and to enjoin the defendant and those claiming under it from interfering with such rights. In spite of the unresolved jurisdictional dispute between the two governments, the United States and the State of Alaska decided to go forward with their joint venture.

The claims of both the United States and the State of Alaska are adverse to and incompatible with Inupiat ownership and sovereign jurisdiction in the case area. If any portion of the lawsuit were to be resolved in favor of the State of Alaska, Alaska's territorial boundaries could be extended over a larger area, thus expanding the reach of ANCSA and reducing the area of retained Inupiat rights and sovereignty. A decision favoring the United States' claim of exclusive

sovereignty and dominion over the disputed areas would likewise be inconsistent with Inupiat ownership and sovereignty rights. Inupiat rights will be violated no matter who prevails in this litigation, unless the Inupiat are permitted to assert their rights on their own. Furthermore, since the decision in this case will have a direct legal and practical effect upon the nature and extent of Inupiat rights, Petitioner-Intervenors submit that as a matter of judicial economy, all questions of rights to the area should be considered concurrently. A fair and orderly adjudication can only be achieved if the Special Master and the Supreme Court have before them all existing and pending interests which are ripe for adjudication.

**B. The United States' Conflict of Interest Requires Independent Participation by the Petitioner-Intervenors to Prevent Further Irreparable Harm.**

The United States has a clear conflict of interest in this litigation. It is promoting its own governmental and proprietary interests by claiming ownership of offshore tracts beyond the three-mile limit. On the other hand, it has the duty as trustee for native peoples to assert rights on their behalf in the same area. The two obligations are clearly inconsistent.

Moreover, the possibility of collusion between the present parties to the lawsuit raises serious questions. The Beaufort oil and gas lease sale was a joint venture co-sponsored by the governments of the United States and the State of Alaska. This lawsuit is itself the product of an agreement between these parties. There is a distinct possibility that the parties will compromise or settle this litigation to further their joint interest in development.

The Petitioner-Intervenors, on the other hand, are on record as being vigorously opposed to the venture because it will significantly interfere with their very subsistence, in addition to their rights of title and sovereignty in the area. Petitioner-Intervenors therefore require independent participation in the adjudication of their rights in this action, since their interest is, in these critical respects, adverse to the United States government. Under Rule 24(a) of the Federal Rules of Civil Procedure, Petitioner-Intervenors have a right to intervene where adequate representation of both interests by the same party is impossible. The right of Indians to be represented independently to protect their interests in a conflict of interest situation was recently confirmed in *Mexico v. Aamodt*, 537 F.2d 1102 (10th Cir. 1976), cert. denied 429 U.S. 112. Petitioner-Intervenors must be permitted to appear independently to prevent further irreparable harm to the Inupiat people.

**C. Intervention Herein is Independent of Other Proceedings and is Not Untimely.**

On January 19, 1981, the attached Complaint was filed by the ICAS, UIC and individual native allottees in the United States District Court for the District of Alaska at Anchorage. Petitioners respectfully submit that while the issues in that lawsuit are similar to the issues Petitioner-Intervenors seek to address herein, the pendency of the complaint in *ICAS and UIC et al. v. United States et al.* does not preclude the submission to and consideration by the Supreme Court and the Special Master of pleadings and testimony herein. This Motion stands on its own merits. For the Supreme Court and the Special Master to make an informed decision in this case, it is necessary that all existing and pending interests be pre-

sented at one time. A fair and orderly adjudication thus requires consideration of Petitioner-Intervenors' sovereign rights.

Nor is intervention by petitioners untimely. Petitioner-Intervenors' interest in this lawsuit has only recently become ripe for review. The ripeness issue was largely determined by the status of the injunction issued by Federal Judge Aubrey Robinson on January 22, 1980, in *North Slope Borough v. Andrus*, 486 F. Supp. 332 (D.D.C. 1980). The injunction against the acceptance of bids and the issuance of leases was lifted by the Court of Appeals for the D.C. Circuit on July 8, 1980. No opinion was issued by the Court of Appeals until October 10, 1980. Because the Inupiat people and their representatives have never authorized, ratified or consented to the Joint Federal/State OCS sale in the Beaufort Sea, they responded to the Court of Appeals' opinion by preparing their own lawsuit, and moving to intervene in this action.

Second, Petitioner-Intervenors submit that the earliest date set for trial of the critical issues involved herein is the summer of 1981. Critical issues include the status of Dinkum Sands, and the applicability of the boundary theories affecting tracts in the heart of the area slated for development. Intervention at this stage in the lawsuit would enable Petitioner-Intervenors to participate and assist in the resolution of those issues which have the greatest impact upon them.

Finally, Petitioner-Intervenors first attempted to persuade the United States to fulfill its trust responsibility and represent their interest without recourse to litigation. Petitioner-Intervenor UIC submitted a petition to the Secretary of the Interior requesting that the United States recognize Inupiat rights of ownership, dominion and sovereignty over those

areas in the Beaufort Sea beyond the three-mile territorial boundary of Alaska, and that it refuse to grant oil and gas leases in that area. The Secretary did not comply with UIC's request.

The United States government's failure to fulfill its trust responsibilities forced Petitioner-Intervenors to sue to bring about a halt to oil and gas development in the Beaufort and Chukchi Seas and to move for intervention herein.

#### IV.

#### CONCLUSION

Petitioner-Intervenors claim an interest relating to the property or transaction which is the subject of *United States v. Alaska* and are so situated that the disposition of the action will as a practical matter impair or impede their ability to protect that interest. Petitioner-Intervenors' interest is not adequately represented by existing parties. They are thus eligible to intervene as a matter of right under FRCP 24(a). Furthermore, the claim of the Petitioner-Intervenors and the main action have questions of law and fact in common. Petitioner-Intervenors are therefore eligible for permissive intervention under FRCP 24(b).

WHEREFORE, individually and collectively, the Inupiat Community of the Arctic Slope and Ukpeagvik Inupiat Corporation respectfully request that the Supreme Court and the Special Master grant their motion for leave to intervene.

Dated May 12, 1981.

Respectfully submitted,  
 ZIONTZ, PIRTLE, MORISSET,  
 ERNSTOFF & CHESTNUT  
 MASON D. MORISSET  
*Counsel for Petitioner-  
 Intervenors*

Of Counsel  
 RICHARD M. BERLEY

IN THE SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM, 1978  
BEFORE THE SPECIAL MASTER

UNITED STATES OF AMERICA,  
*Plaintiff,*

v.

STATE OF ALASKA,  
*Defendant*

v.

INUPIAT COMMUNITY OF THE ARCTIC  
SLOPE, a federally recognized Indian  
tribe, and UKPEAGVIK INUPIAT  
CORPORATION, a native village  
corporation,  
*Petitioner-Intervenors.*

No. 84  
ORIGINAL

COMPLAINT  
IN INTER-  
VENTION

Inupiat Community of the Arctic Slope (ICAS) and Ukpeagvik Inupiat Corporation (UIC), Petitioner-Intervenors, allege for their cause of action as follows:

### I. JURISDICTION

1. The Court has jurisdiction over the subject matter of this lawsuit under Article III, Section 2, Clause 2, of the Constitution of the United States and 28 U.S.C. 1251(b) (2).

2. The Court has jurisdiction to consider Petitioner-Intervenors' Complaint in Intervention pursuant to FRCP 24(a)(2), 24(b)(2), and Rule 9 of the Supreme Court Rules. Independent grounds for federal jurisdiction regarding the claims herein asserted by Petitioner-Intervenors include 28 U.S.C. § 1331 (federal question), 28 U.S.C. §§ 1343(a)(3) and (4) (civil rights), 28 U.S.C. §§ 1346(b) and 2671 *et seq.* (Federal Tort Claims Act), 28 U.S.C. § 1361 (mandamus), 28 U.S.C. § 1362 (suits by Indian

tribes), 28 U.S.C. §§ 2201-02 (declaratory judgments) and 43 U.S.C. § 1349(b)(1) (cases and controversies under the Outer Continental Shelf Lands Act).

## II. PARTIES

3. The Inupiat Community of the Arctic Slope (ICAS), organized under the Indian Reorganization Act of June 18, 1934, 48 Stat. 984, 25 U.S.C. §§ 461 *et seq.*, is a duly recognized Indian tribe comprising the Inupiat Eskimos of the Arctic Slope. It is governed by a constitution and bylaws approved by the Secretary of the Interior on June 28, 1971.

4. The Ukpeagvik Inupiat Corporation (UIC), is a native village corporation incorporated under the laws of the State of Alaska pursuant to the Alaska Native Claims Settlement Act of December 18, 1971, 85 Stat. 688, 43 U.S.C. §§ 1601 *et seq.* (ANCSA), with its headquarters at Barrow in the Alaska District. UIC is authorized by its articles of incorporation, adopted April 30, 1973, to engage in all activities necessary to protect and preserve the well-being of the native residents of Barrow.\*

## III. TRIBAL SOVEREIGNTY

5. Since time immemorial and at all times herein material, the Inupiat Eskimos have occupied the Arctic Slope of Alaska and the adjacent areas of the Beaufort and Chukchi Seas. They continue to assert exclusive rights, title, ownership, dominion and sovereign jurisdiction over the entire North Slope region, including areas beyond the three-mile limit to at least a distance of 65 miles.

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\*Disclosure required by Supreme Court Rule 28.1: UIC has no parent company. It has a number of wholly owned subsidiaries and a 50% interest in Hiberger-Barrow Ventures, Ltd., a joint venture with a Canadian company.



6. The Inupiat people have never been conquered, either by Russia prior to 1867, or by the United States, and have never relinquished, abandoned or surrendered any of their rights, title, ownership, dominion or sovereign jurisdiction through treaty with the United States or any other power, nor has the exclusive sovereignty of the Inupiat people been expressly extinguished or diminished by act of Congress.

7. The Inupiat people have the inherent right to exist as a sovereign Indian tribe, the inherent authority to make their own laws and be ruled by them, and the inherent right to freedom to exercise their traditional religion, which includes but is not limited to access to traditional sites. The sovereignty of Petitioner-Intervenor ICAS in particular is sponsored, recognized and protected by the Indian Reorganization Act of 1934, 48 Stat. 984, 25 U.S.C. §§ 461 *et seq.*, the Indian Civil Rights Act of 1968, 25 U.S.C. §§ 1301 *et seq.*, the Indian Self-Determination and Education Assistance Act of 1975, 25 U.S.C. §§ 450(a)- 450(n), the American Indian Religious Freedom Act of 1978, 42 U.S.C. § 1996, and the policies embodied therein. All of the above rights, powers and privileges are jeopardized by the actions of the parties to this action.

#### **IV. INUPIAT PROPERTY RIGHTS**

8. ANCSA did not purport to extinguish Inupiat possessory, use or hunting or fishing rights, aboriginal or otherwise, beyond the three-mile exterior boundary of the State of Alaska, or Inupiat dominion or sovereign jurisdiction in those areas.

9. No other treaty or law of the United States purports to deprive the Inupiat people of their retained rights, title, ownership, dominion or sovereign jurisdiction over the water

column and the surface ice and waters used and occupied by them beyond the three-mile limit. The Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. §§ 1331 *et seq.*, does not explicitly extinguish Inupiat rights, title, ownership, dominion or sovereign jurisdiction over the subsoil and seabed underlying the waters adjacent to Alaska in the area of the Beaufort Sea, and to the oil, gas and mineral resources contained therein. To the extent it could be so construed, it is unconstitutional as applied and of no force or effect.

## **V. BEAUFORT OIL AND GAS SALE**

10. On March 10, 1978, the United States of America and the State of Alaska announced their intention to conduct a joint lease sale of oil and gas development rights in offshore tracts in the Beaufort Sea. Two hundred thirty-six tracts were designated federal, state or disputed. The lease sale was consummated despite the jurisdictional dispute between the United States and Alaska relating to certain tracts, with the understanding that this lawsuit would be brought before the Supreme Court to resolve the issue. The lease sale and agreed lawsuit ignore and are incompatible with Inupiat rights, title and sovereignty in the area. Furthermore, the development activities already underway by lessee oil companies, including blasting and drilling, pose a significant threat to the Inupiat peoples' very subsistence.

## **VI. THE UNITED STATES OF AMERICA**

11. The United States of America claims that under OCSLA it has a right, title or interest in the seabed and subsoil area along the coast of Alaska from the outer limits of inland waters to the edge of the Continental Shelf, including the right to explore and exploit the natural resources of the area. The United States' claim does not take into

account the title and jurisdiction over the area retained by the Inupiat people. The United States' claim is thus adverse to UIC and ICAS.

12. The United States' claim of exclusive jurisdiction in offshore areas in derogation of Inupiat rights is particularly inappropriate. The United States owes a solemn and legally enforceable trust obligation to the Inupiat people. The federal government, and particularly the officers of the Department of the Interior, are required to consider and resolve questions of native rights, title, ownership, dominion and sovereign jurisdiction prior to taking actions adverse to them. The terms of the trust responsibility also require the trustee to honor unextinguished native rights, title, ownership, dominion and sovereign jurisdiction, and impose a duty upon executive officials to protect the same against infringement by third parties. The United States has failed to carry out its trust responsibility.

13. For the above reasons, the United States has been named as a defendant in *ICAS and UIC et al. v. United States et al.* (U.S.D.C. Alaska Civil No. A81-019), filed on January 19, 1981.

## VII. STATE OF ALASKA

14. The State of Alaska claims some right, title or interest in the seabed and subsoil area within its boundaries under the Submerged Lands Act of 1953, 43 U.S.C. §§ 1301 *et seq.* The State of Alaska asserts that its boundaries include the seabed area of the Continental Shelf underlying a significant portion of the Beaufort Sea under a variety of theories set forth in the Joint Statement of Questions Presented. The State's claim, if accepted, would expand the boundaries of Alaska and would increase the scope of ANCSA. It is thus adverse to and disputed by ICAS and UIC.

15. For the above reasons, the State of Alaska has been named as a defendant by Petitioner-Intervenors here in *ICAS and UIC et al. v. United States et al.* (U.S.D.C. Alaska Civil No. A81-019), filed on January 19, 1981.

WHEREFORE, individually and collectively, UIC and ICAS respectfully request that the Court:

16. Declare that Petitioner-Intervenors possess good and lawful right, title, ownership, dominion and sovereign jurisdiction over the Beaufort and Chukchi Seas beyond the three-mile limit, to at least a distance of 65 miles, the precise distance to be determined at trial, including the surface ice, the water column, the seabed and all oil, gas and other minerals contained therein.

17. Declare that neither the State of Alaska nor the United States has any right or title in the tracts designated "disputed" or "federal" in the Joint Federal/State Oil and Gas Lease Sale.

18. Declare that the value of all oil, gas and minerals unlawfully removed, or which may in the future be unlawfully removed, is held in a constructive trust for Petitioner-Intervenors.

19. Enjoin the United States of America and the State of Alaska from interfering with Petitioner-Intervenors' use and enjoyment of their rights, title, ownership, dominion and sovereign jurisdiction, aboriginal or otherwise.

20. Enjoin the United States of America and the State of Alaska from submitting or accepting further bids, issuing further leases, or authorizing further development activities relating to Outer Continental Shelf lands where the development activities will intrude upon Petitioner-Intervenors' unextinguished rights, title, ownership, dominion or sovereign jurisdiction, aboriginal or otherwise.

21. Order the Secretary of the Interior to exercise his trust responsibility toward the Inupiat people by recognizing Inupiat title and jurisdiction in the areas to be determined in this lawsuit.

22. Declare that to the extent OCSLA is inconsistent with unextinguished Inupiat rights, title, ownership, dominion and sovereign jurisdiction, it is unconstitutional as applied, and of no force or effect.

23. Award Petitioner-Intervenors' their costs and attorneys' fees in this action under the Equal Access to Justice Act of 1980, 28 U.S.C. § 2412, and other applicable principles of law.

24. Provide such other relief as may be just or equitable.

Dated May 12, 1981.

Respectfully Submitted,

ZIONTZ, PIRTLE, MORISSET,  
ERNSTOFF & CHESTNUT

MASON D. MORISSET

Of Counsel

RICHARD M. BERLEY

APPENDIX A

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA AT ANCHORAGE

THE INUPIAT COMMUNITY OF THE  
ARCTIC SLOPE, a federally recognized  
Indian Tribe; UKPEAGVIK INUPIAT  
CORPORATION, a native village  
corporation; WALTON I. AHMAOGAK and  
ANDREW OENGA, individual Inupiat  
Allottees,

*Plaintiffs,*

v.

THE UNITED STATES OF AMERICA;  
CECIL D. ANDRUS, Secretary of the  
Interior; FRANK GREGG, Director of the  
Bureau of Land Management; JAY  
HAMMOND, Governor of the State of  
Alaska; ROBERT E. LERESCHE,  
Commissioner of the Alaska Department  
of Natural Resources; AMOCO  
PRODUCTION CO.; ATLANTIC RICHFIELD  
COMPANY; B. P. ALASKA EXPLORATION,  
INC.; CHEVRON; CITIES SERVICE OIL CO.;  
CONOCO, INC.; EXXON CORPORATION;  
GULF OIL CORP.; HAMILTON BROS. OIL  
CO.; KONIAG, INC.; MURPHY OIL; NANA  
REGIONAL CORP.; PHILLIPS PETROLEUM  
CORPORATION; ROWAN DRILLING  
COMPANY; SEALASKA CORP.; SHELL OIL  
CO.; SOHIO NATURAL RESOURCES; TEXAS  
GULF; UNION OIL COMPANY,

*Defendants.*

CIVIL  
ACTION  
No. A81-019

COMPLAINT  
FOR  
DAMAGES,  
INJUNCTION,  
MANDAMUS  
AND  
DECLARA-  
TORY  
JUDGMENT

FOR A FIRST CAUSE OF ACTION, plaintiffs aver:

I. JURISDICTION

1. This action arises under the Constitution and laws of the United States. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1331 (federal question), 28 U.S.C. §§1343 (a) (3) and (4) (civil rights), 28 U.S.C. §§ 1346

(b) and 2671 *et seq.* (Federal Tort Claims Act), 28 U.S.C. § 1361 (mandamus), 28 U.S.C. § 1362 (suits by Indian tribes), 28 U.S.C. §§ 2201-2202 (declaratory judgments) and 43 U.S.C. § 1349(b)(1) (cases and controversies under the Outer Continental Shelf Lands Act). The amount in controversy exceeds \$10,000.

## II. PARTIES

### A. Plaintiffs

2. The plaintiff INUPIAT COMMUNITY OF THE ARCTIC SLOPE (ICAS) is a sovereign Indian Tribe recognized by the United States government. It comprises the Inupiat residing within the Arctic Slope region in the District of Alaska. Plaintiff ICAS is the successor in interest to the rights, title, ownership, dominion and sovereign jurisdiction, aboriginal or otherwise, of the Inupiat people. It is governed by a constitution and bylaws approved by the Secretary of the Interior on June 28, 1971. It is suing on its own behalf and on behalf of its members.

3. The plaintiff UKPEAGVIK INUPIAT CORPORATION (UIC) is a native village corporation incorporated under the laws of the State of Alaska pursuant to the Alaska Native Claims Settlement Act (ANCSA), 85 Stat. 688, 43 U.S.C. §§ 1601-27, with its headquarters at Barrow in the District of Alaska. The plaintiff UIC is authorized by its Articles of Incorporation, adopted April 30, 1973, to engage in all activities necessary to protect and preserve the well-being of the native residents of Barrow. It is suing on its own behalf and on behalf of its stockholders.

4. Plaintiffs WALTON I. AHMAOGAK and ANDREW OENGA are individual native allottees residing on the North Slope of Alaska. They bring this action on their own behalf and, pursuant to F.R.C.P. Rule 23(b)(2), on behalf of the class of all Inupiat residing on the North Slope who have or may have property rights, use and occupancy rights, or hunting and fishing rights beyond the boundaries of the State of Alaska, whose rights have been intruded upon or interfered with by defendants.

### B. Defendants

5. *Federal Defendants.* Defendant CECIL B. ANDRUS is the Secretary of the Interior of defendant THE UNITED



STATES OF AMERICA, and exercises responsibility over the United States Bureau of Land Management. Defendant FRANK GREGG is the Director of the Bureau of Land Management and exercises responsibility over the outer continental shelf oil and gas development program.

6. *State Defendants.* Defendant JAY HAMMOND is the Governor of the State of Alaska. Defendant ROBERT LERESCHE is Commissioner of the Alaska Department of Natural Resources. Defendant Leresche is purportedly authorized to enter into agreements with the United States relating to the Federal/State Joint Beaufort Sea OCS Sale originally scheduled for December 11, 1979. The State of Alaska is presently party to a lawsuit against the United States regarding the location of the State's offshore boundary, and whether certain offshore outer continental shelf lands involved in the Joint Sale belong to the federal or state government.

7. *Private Defendants.* The remaining defendants are apparent high bidders for or lessees of oil and gas development rights in offshore tracts designated "federal" or "disputed" in the Beaufort Sea Joint Federal/State OCS Sale originally scheduled for December 11, 1979.

### III. FACTS

8. The Arctic Slope of Alaska and appurtenant areas of the Beaufort and Chukchi Seas have been continuously occupied by the Inupiat Eskimos of the Arctic Slope since time immemorial. The Inupiats are subsistence hunters who range broadly on the Arctic Slope, including marine areas, in search of bowhead and beluga whales, seals, fish, caribou, walrus, polar bears, and other wildlife. Inupiat occupancy of the entire area, including offshore areas, has been continuous, intensive and, until the events alleged herein, exclusive.

9. The Inupiat people of the Arctic Slope have never been conquered, either by Russia prior to 1867, or by the United States, and have never entered into a treaty with either power. The Inupiat people retain intact all attributes of their original rights, title, ownership, dominion and sovereign jurisdiction which have not been expressly relinquished, extinguished or abandoned.

10. The Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. §§ 1601-27, purported to extinguish aboriginal claims and title in Alaska. It does not affect rights, title, ownership, dominion or sovereign jurisdiction in areas more than three miles offshore, which are not within the exterior boundaries of the State of Alaska.

11. The zone of continuous and exclusive Inupiat occupancy in the Beaufort and Chukchi Seas, and concomitantly the zone of exclusive Inupiat right, title, ownership, dominion and sovereign jurisdiction, extends at least sixty-five miles offshore. The precise dimensions of this zone will be proven at trial.

12. Aside from the Inupiat people, no other entities claim title or sovereignty over the surface ice or water column over three miles offshore from the North Slope of Alaska, with the exception of certain federal claims of right in special-purpose zones, such as the 200-mile fishery management zone under the Fishery Conservation and Management Act of 1976, 16 U.S.C. §§ 1801-1882, and the 12-mile contiguous zone under the Convention on the Territorial Sea and the Contiguous Zone, 15 U.S.T. 1606. The federal zones do not purport to oust, and are not inconsistent with, Inupiat right, title, ownership, dominion or sovereign jurisdiction over the surface ice and water column more than three miles offshore from the North Slope of Alaska. The Inupiat people also claim exclusive rights, title, ownership, dominion and sovereign jurisdiction over the seabed of the Outer Continental Shelf more than three miles offshore, and the oil, gas and minerals contained therein. These rights have not been extinguished by the Outer Continental Shelf Lands Act of 1953, 43 U.S.C. §§ 1333 *et seq.* (OCSLA).

13. On March 10, 1978, the United States Department of the Interior and the State of Alaska announced their intention to conduct a joint lease sale and issued a joint call for nominations of 236 submerged federal, state and disputed tracts in the Beaufort Sea. The alleged right to control disputed tracts is expected to be resolved, as between the United States and Alaska, in *United States v. Alaska*, No. 84 Original, before the United States Supreme Court. In July of 1978, 186 of the 236 tracts were selected for

further study. Oil and gas activities on the 186 federal, state and disputed tracts were the subject of a draft Environmental Impact Statement issued by the Department of the Interior in April of 1979, and a final Environmental Impact Statement (EIS) issued in August of 1979.

14. The EIS contains admissions that the noise, oil spillage, traffic and human activity associated with oil and gas development on the Outer Continental Shelf may have a significant deleterious impact upon marine areas more than three miles offshore. Development activities are interfering with or will interfere with Inupiat subsistence activities, and are inconsistent with Inupiat rights, title, ownership, dominion and sovereign jurisdiction in those areas.

15. Partly as a consequence of this interference, District Judge Aubrey Robinson, Jr. enjoined the Secretary of the Interior from accepting any of the bids submitted for federally-managed tracts in the Beaufort Sea on January 22, 1980. On February 1, 1980, the injunction was extended to state-managed disputed tracts within three miles of Dinkum Sands.

16. On July 8, 1980, the injunction was lifted by the D.C. Circuit Court of Appeals, and the Secretary was permitted to accept bids from and execute leases with the apparent high bidders as of December 11, 1979.

17. The Inupiat people and their representatives have never authorized, ratified or consented to the Joint Federal/State OCS Sale in the Beaufort Sea. By Resolution 80-1, plaintiff ICAS is on record as opposing oil and gas leases in the Beaufort and Chukchi Seas, and asserts that all portions of the lease-sale area more than three miles offshore are part of the domestic territory of the Inupiat people.

#### **IV. INFRINGEMENT OF TRIBAL SOVEREIGNTY**

18. The Inupiat people, since time immemorial, have enforced their laws, customs and usages, and have otherwise exercised to the fullest extent their powers of dominion and sovereign jurisdiction over the entire North Slope region, including areas more than three miles offshore.

19. Plaintiff ICAS has the inherent right to exist as a sovereign Indian Tribe, and retains all rights and powers consistent with its status. Among these is the right to be free from infringement upon its tribal sovereignty by the states, the Executive Branch of the federal government, or private parties. The Inupiat people have never been conquered or surrendered to the United States, and have never relinquished, abandoned or surrendered any of their rights, title, ownership, dominion or sovereign jurisdiction through treaty with the United States or any other power, nor has the sovereignty of the Inupiat people been expressly extinguished or diminished by Act of Congress.

20. Tribal sovereignty, including sovereignty of the plaintiff ICAS, is sponsored, recognized and protected by the Indian Reorganization Act of 1934, 48 Stat. 984, 25 U.S.C. §§ 461 *et seq.* The plaintiff ICAS exercises its powers of sovereignty through its Constitution and Bylaws which were approved by the Secretary of the Interior pursuant to that statute. Inupiat rights, as embodied in the rights of the plaintiff ICAS, are further sanctioned and secured to the Inupiat people by other federal statutes, including the Indian Civil Rights Act of 1968, 25 U.S.C. §§ 1301 *et seq.*, and the Indian Self-Determination and Education Assistance Act of 1975, 25 U.S.C. §§ 450a-450n, and the policies embodied therein.

21. Tribal sovereignty is essential to the social and cultural integrity of the Inupiat people, and to the well-being of the Inupiat as individuals. Defendants' actions have already infringed upon the tribal sovereignty of the ICAS and have severely impaired the effectiveness of its laws. If permitted to continue, such infringement will irreparably damage the Inupiat people.

22. The development activities of the federal and state defendants, to the extent they constitute an attempt to exercise sovereignty or dominion over areas in the Beaufort and Chukchi Seas more than three miles offshore, without the specific consent of the Inupiat people or of Congress, unlawfully interfere with Inupiat tribal sovereignty. The activities of the private defendants, to the extent they are dependent upon the unlawful attempt to exercise sovereignty or dominion by the federal and state defen-

dants, also constitute an unlawful interference with Inupiat tribal sovereignty.

FOR A SECOND CAUSE OF ACTION, plaintiffs aver:

### **I. REAVERMENTS**

23. Plaintiffs reaver paragraphs 1 through 22 of this complaint.

### **II. TRESPASS**

24. Prior to the passage of ANCSA in 1971, the Inupiat people had full title, ownership and dominion over the entire North Slope, including offshore areas beyond three miles which they had exclusively used and occupied since time immemorial.

25. ANCSA purported to extinguish claims based on aboriginal title in Alaska, but had no impact upon possessory, use or hunting or fishing rights, aboriginal or otherwise, beyond the three-mile limit, or upon Inupiat dominion or sovereign jurisdiction in those areas.

26. No other treaty or law of the United States purports to deprive the Inupiat people of their retained rights, title, ownership, dominion or sovereign jurisdiction over areas used and occupied by them beyond the three-mile limit. OCSLA, which pertains only to the Outer Continental Shelf itself and oil, gas and minerals contained therein, does not explicitly extinguish Inupiat rights, title, ownership, dominion or sovereign jurisdiction over such areas and resources. To the extent OCSLA purports or is interpreted to deprive plaintiffs of such rights it is unconstitutional as applied, and of no force or effect.

27. Defendants have intruded upon and disturbed and threaten to continue to intrude upon and disturb, areas used, occupied, and belonging to the Inupiat people by engaging in offshore oil and gas development in the Beaufort Sea beyond the three-mile limit. The intrusions have never been authorized or ratified by the Inupiat people, and constitute trespasses against their rights, title, ownership and dominion. Federal defendants, in particular, failed to exercise due care with respect to Inupiat rights in the area, and are liable pursuant to 28 U.S.C. § 2674 for trespass.

FOR A THIRD CAUSE OF ACTION, plaintiffs aver:

**I. REAVERMENTS**

28. Plaintiffs reaver paragraphs 1 through 127 of this complaint.

**II. TAKING OF LIBERTY AND PROPERTY  
WITHOUT DUE PROCESS**

29. The federal and state defendants' attempts to exercise dominion over the sovereign territory of the Inupiat people, particularly by unlawful authorization of development activities more than three miles offshore, constitute an unlawful deprivation of the rights, title, ownership, dominion and sovereign jurisdiction of the Inupiat people. Such actions impair the use and enjoyment of Inupiat property rights and constitute a taking of property in violation of the Due Process Clause of the Fifth and Fourteenth Amendments to the Constitution of the United States. To the extent that the actions of the federal and state defendants interfere with the rights of the Inupiat people to make their own laws and be ruled by them, the actions also deprive the Inupiat people of liberty without due process of law.

FOR A FOURTH CAUSE OF ACTION, plaintiffs aver:

**I. REAVERMENTS**

30. Plaintiffs reaver paragraphs 1 through 29 of this complaint.

**II. VIOLATION OF CIVIL RIGHTS STATUTE**

31. The Civil Rights Act of 1870, 42 U.S.C. § 1981, provides that all persons are entitled to the full and equal benefit of all laws and proceedings for the security of persons and property enjoyed by white citizens. The purpose of § 1981 is to provide that the rights of members of all races are protected.

32. Inupiat rights, title, ownership, dominion and sovereign jurisdiction, aboriginal or otherwise, in the Beaufort and Chukchi Seas are unique to the Inupiat tribal group. Although pertaining to no other class of persons, such rights are entitled to the like protection of the laws of the

United States as are the right to security of person and property held by white citizens.

33. The state and private defendants' actions impermissibly discriminate against the Inupiat people by failing to protect or by affirmatively operating in derogation of the legal rights of the Inupiat people.

FOR A FIFTH CAUSE OF ACTION, plaintiffs aver:

### **I. REAVERMENTS**

34. Plaintiffs reaver paragraphs 1 through 33 of this complaint.

### **II. BREACH OF TRUST RESPONSIBILITY**

35. The United States owes a solemn and legally enforceable trust obligation to all native peoples within its borders, which is measured by exacting fiduciary standards. The federal government, and particularly the officers of the Department of the Interior, are required to consider and resolve questions of native rights, title, ownership, dominion and sovereign jurisdiction prior to taking actions adverse to them. The terms of the trust responsibility also require the trustee to honor unextinguished native rights, title, ownership, dominion and sovereign jurisdiction, and impose a duty upon executive officials to protect the same against the infringement of third parties. Federal defendants have failed to consider or protect such rights and have unlawfully breached their trust.

FOR A SIXTH CAUSE OF ACTION, plaintiffs aver:

### **I. REAVERMENTS**

36. Plaintiffs reaver paragraphs 1 through 35 of this complaint.

### **II. ABRIDGEMENT OF NATIVE AMERICAN RELIGIOUS FREEDOM**

37. The EIS evaluating the offshore development activities of defendants contains admissions that such activities will contribute to the environmental degradation of the marine areas of the Beaufort Sea and the destruction of marine plant and animal life.



38. The Inupiat people's relationship with their marine environment and the plant and animal life found therein is both fundamental and complex, and has a strong religious component. According to the traditional religious beliefs of the Inupiat people, still widely held, the Inupiat have a kinship relationship with their environment and with other forms of life located there—the environment and other forms of life differ from humans only by virtue of prior transformations and ceremonial appeasement is thus required prior to eating animals who are, in effect, the Inupiat's brothers and sisters.

39. The Inupiat's traditional religion is an integral part of their culture, tradition, and heritage, is irreplaceable and is indispensable for their survival.

40. Defendants' activities have disrupted the environment and marine life of the North Slope, have denied and continue to deny the Inupiat access to sacred sites, interfere with appeasement ceremonies, disrupt the spiritual harmony of the area, and otherwise abridge and interfere with the religious freedom of the Inupiat people in violation of the First, Fifth and Fourteenth Amendments, and the American Indian Religious Freedom Act, 42 U.S.C. § 1996. If allowed to continue, defendant's activities threaten to bring about the cultural genocide of the Inupiat people.

FOR SEVENTH CAUSE OF ACTION, plaintiffs aver:

### **I. REAVERMENTS**

41. Plaintiffs reaver paragraphs 1 through 40 of the complaint.

### **II. CIVIL CONSPIRACY**

42. Defendants and their agents conspired among each other to infringe the rights, title, ownership, dominion and sovereign jurisdiction of the Inupiat people, and to commit the unlawful acts set forth in the complaint.

43. Defendants' conspiracy has caused and continues to cause irreparable damage to the Inupiat people.

**PRAYER FOR RELIEF**

WHEREFORE, plaintiffs pray for judgment against the defendants as follows:

44. Damages for trespass in excess of \$10,000 in specific amounts to be proven at trial.

45. Declaring that plaintiffs possess good and lawful right, title, ownership, dominion and sovereign jurisdiction over the Beaufort and Chukchi Seas beyond the three-mile limit, to at least a distance of 65 miles, the precise distance to be determined at trial, including the surface ice, the water column, the seabed and all oil, gas and other minerals contained therein.

46. Declaring that the value of all oil, gas and minerals unlawfully removed, or which may in the future be unlawfully removed, is held in a constructive trust for plaintiffs.

47. Enjoining the defendants from interfering with plaintiffs' use and enjoyment of their right, title, ownership, dominion and sovereign jurisdiction, aboriginal or otherwise, as well as their religious and political integrity by encouraging, purporting to authorize, or performing any oil and gas development activities, including blasting and drilling, unless authorized or permitted by the Inupiat people.

48. Enjoining the defendants from submitting or accepting any further bids or issuing or acting upon any lease relating to Outer Continental Shelf lands where development activities will intrude upon plaintiffs' unextinguished aboriginal right, title, ownership, dominion, or sovereign jurisdiction.

49. Ordering the Secretary of the Interior to exercise his trust responsibility toward the Inupiat people by bringing about a halt to development on federal and disputed tracts.

50. Ordering that defendants and their agents remove themselves and their structures and equipment from the property of the plaintiffs, and cease and desist from further unlawful intrusions upon the rights, title, ownership, dominion and sovereign jurisdiction of the Inupiat people.

51. Declaring that to the extent OCSLA is inconsistent

with unextinguished Inupiat rights, title, ownership, dominion and sovereign jurisdiction, it is unconstitutional as applied, and of no force or effect.

52. Awarding plaintiffs their costs and attorneys' fees in this action.

53. Awarding such other relief as appears just and equitable.

DATED this 16th day of January, 1981.

GILMORE & FELDMAN

ZIONTZ, PIRTLE, MORISSET,  
ERNSTOFF & CHESTNUT

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