petence and which primarily concern others. These matters include such things as the amount of compensation which should be granted to the natives in extinguishment of their claims, and the extent to which the United States should exercise trust or other controls over grants made to the natives.[1]

We are concerned with four matters of particular interest to us which do not appear to be adequately covered by any of the pending bills. We believe that these matters should be appropriately included in the legislation in order to achieve the objective, which seems generally desired and in everyone's interest, of having a complete and definitive legislative solution of the problem of the Alaskan native claims—a solution which will leave no uncertainties or loose ends for future resolution.[2]

These matters of particular concern to us, and our suggestions for handling them in the legislation, are generally as follows:

1. There needs to be a more comprehensive statement of the native claims which are being settled. Some of the Alaskan native claims purport to embrace water as well as land areas, but the pending bills would only settle claims to lands. Accordingly, the legislation should be expanded to extinguish native claims to waters as well as lands, particularly since there appears to be no basis for asserting native claims to waters;[3] exception could, of course, be made for any water areas included in existing reserves which might be granted as provided in Section 6 of H.R. 17129. It would also seem that all native claims which have not been heretofore resolved should be covered by the settlement, regardless of whether they are based on aboriginal use or occupancy, or are asserted under the Organic Acts of 1884 and 1900, or otherwise.

2. The various provisions of the pending bills which make native grants "subject to valid existing rights" are all right so far as they go in protecting the State of Alaska and others to whom the United States has transferred public lands or granted interests in such lands. However they need supplementation and clarification, particularly in the case of mineral leases issued by the United States. Such leases are "valid existing rights", and no doubt should be left on that score, particularly in view of the millions which have been invested in developing them and the production which has been obtained with resultant benefit to Alaska and its inhabitants. In addition, the words "subject to" are of uncertain meaning in the case of leases which are traditionally regarded as not disposing of the land covered by them. For example, those words can be read as barring the grant to natives of lands covered by Federal mineral leases. It may also be possible to read them as permitting the grants to be made burdened with the leases, but then there are further questions as to how the leases, and particularly the rights reserved therein to the United States, are to be handled thereafter.[4] There are

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[1] For example, the question of compensation primarily concerns the natives, the United States, and the State of Alaska; we could offer nothing on the point other than the general principle that settlement should be fair and equitable, having in mind, of course, that Congress has complete power to award as much or as little compensation as it sees fit, since Congress is dealing with moral claims rather than legal rights, *United States* v. *Santa Fe Pacific R. Co.*, 314 U.S. 339, 347 (1941), and *Tee-Hit-Ton Indians* v. *United States*, 348 U.S. 272, 278–82 (1955), and that there is a split of authority over whether these aboriginal claims of the natives of Alaska survived the Treaty of Cession. The Ninth Circuit held in *Miller* v. *United States*, 159 F. 2d 997, 1001–02 (1947), that Russia extinguished aboriginal title as part of the consideration for the Treaty. However, the Court of Claims reached a contrary conclusion in *The Tlingit and Haida Indians*, 147 Ct. Cl. 315, 333–34 (1959), holding that the aboriginal title of those particular Indians had not been extinguished by the Treaty.

[2] As the Secretary of the Interior indicated in his letter of April 30, 1968, transmitting the latest legislative proposal of the Department which has been introduced by request as H.R. 17129 (with certain technical changes) and as S. 3586: the extent to which the Alaskan native claims are to be recognized is exclusively a policy matter for Congressional determination, and a solution of the problem by Congress, after weighing the equities involved and the data available, is preferable to authorizing judicial proceedings because of the delays and difficulties attendant upon litigation.

[3] The Court of Claims refused to award compensation to the Tlingits and Haidas for fisheries, stating *inter alia* that "Navigable waterways are not subject to private possession." *The Tlingit and Haida Indians of Alaska et al.* v. *The United States*, No. 47900, decided January 19, 1968 (Slip opinion, pp. 7–14).

[4] The Solicitor of the Department of the Interior has held that, without legislative authorization, the Secretary cannot transfer his jurisdiction over leases or the interests of the United States as lessor and must, therefore, retain title to oil and gas in the United States when he conveys lands covered by leases. Opinion M–36254 (December 28, 1954), *Authority To Issue Patent Without Reservation of Oil and Gas Where Subsequent to a Consent by the Entryman to Such a Reservation the United States Has Issued an Oil and Gas Lease and Thereafter Has Classified the Land as Not Prospectively Valuable for Oil and Gas;* Opinion M–36436 (May 9, 1957), *Mineral Reservations in Exchanges of Indian Trust Patent Allotments Under the Act of March 3, 1921,* and Supplement to M–36436 (April 14, 1958), *Authority of the Secretary of the Interior To Assign His Jurisdiction Over an Oil and Gas Lease or the Lessor's Interest Therein.*