

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
FOURTH JUDICIAL DISTRICT AT FAIRBANKS

VERN T. WEISS, father and next  
friend of CARL WEISS, a minor  
child, and EARL HILLIKER, on  
behalf of themselves and all  
others similarly situated; the  
ALASKA MENTAL HEALTH ASSOCIATION,  
MARY C. NANUWAK and JOHN MARTIN,  
on behalf of themselves and all  
others similarly situated; and  
ANITA BOSEL, FRANCES DOULIN,  
SHARON GOODWIN, GABRIEL MAYOC,  
H.L., M.K. and ALASKA ADDICTION  
REHABILITATION SERVICES,

Plaintiffs,

vs.

STATE OF ALASKA,  
Defendant.

FILED in the Trial Court,  
State of Alaska, Fourth District

JUN 10 1994

Clerk, Trial Court

No. 4FA-82-2208 Civil

SETTLEMENT AGREEMENT  
AND  
STIPULATION TO TERMS OF DISMISSAL

WHEREAS, the state and the plaintiffs and plaintiff-intervenors have engaged in litigation since 1982 over numerous disputes relating to the trust established by the Alaska Mental Health Enabling Act of 1956, including litigation over proposed settlement terms incorporated in Ch. 66 SLA 1991; and

WHEREAS, third-party intervenors Alaska Center for the Environment, et al., and Marathon and UNOCAL have intervened to challenge proposed settlement terms incorporated in Ch. 66 SLA 1991; and

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WHEREAS, SCS CSHB 201 (FIN) ("HB 201") and SCS CSHB 371 (FIN) ("HB 371") include terms proposed as a settlement to resolve this litigation which do not become effective until dismissal of this action; and

WHEREAS, the state, plaintiffs, and intervenors (collectively "parties") seek to set forth the full terms of settlement and the manner in which they intend to implement it so as to obtain judicial approval of the settlement and dismissal of this action pursuant to Alaska Civil Rule 23(e);

NOW THEREFORE, the parties, through counsel, hereby stipulate and agree to the following terms of settlement of this action.

I

BASES OF SETTLEMENT

1. Dismissal with prejudice of the plaintiffs' claims as provided in part VI of this agreement is made in consideration of Sections 2 through 9, 12 through 40(a) and (b), 41, 43, 46, 47, 49, 50 and 51, of HB 201, Sections 1 and 2 of HB 371, and the terms of this agreement, and form the bases of the settlement. The provisions of HB 201 and HB 371:

(a) reconstitute the trust established by the Alaska Mental Health Enabling Act of 1956 with a combination of original and substitute trust land totalling approximately 930,000 acres;

(b) provide a cash payment of \$200 million dollars to be deposited into a newly created mental health trust fund which the



plaintiffs consider as additional compensation for land or interests in land not returned to trust status;

(c) establish a Trust Authority to oversee trust assets, administer the mental health trust income account, and ensure an integrated, comprehensive mental health program for the state;

(d) require the principal of the trust fund to be retained perpetually for investment, and sale proceeds, royalties, and other income from the management of trust land which is attributable to principal to be deposited into the fund;

(e) authorize the Trust Authority to spend net income of the fund and income from the management of land not otherwise attributable to principal in fulfillment of the Authority's purpose to ensure an integrated, comprehensive, mental health program; and

(f) make effective certain improvements in the state's mental health program enacted under Ch 66 SLA 1991 including the process for establishing a coordinated and comprehensive mental health program for the state of Alaska.

## II

### IDENTIFICATION OF LAND PROVIDING FOR TRUST RECONSTITUTION

1. The parties agree that the land negotiated as land to be designated as mental health land pursuant to Section 40(a)(1)&(2) of HB 201 consists of approximately 930,000 acres of original and replacement trust land identified on the lists of "Original Mental Health Land To Be Designated As Trust Land, April 28, 1994" and lists of "Other State Land To Be Designated As Trust



Land, April 28, 1994" attached hereto as Attachment A. This land is generally described as follows:

(a) Original Trust Land (Fee Estate): Approximately 435,000 acres of original trust land, which include approximately 108,894 acres of unleased coal areas, approximately 119,213 acres thought to have mineral potential, approximately 48,244 acres of commercial forest resources in the Cape Yakataga area, and approximately 158,000 acres of land tracts of various sizes. Of the 435,000 acres, approximately 212 acres are subject to long term leases, approximately 36,440 acres are subject to existing mining claims, approximately 1,095 acres are derived from the unoccupied areas of state facilities, and approximately 4,634 acres will be reconveyed by municipalities. In addition to the 435,000 acres, there are more than 20,000 acres of Alaska Mental Health Enabling Act entitlements the federal government has yet to convey.

(b) Original Trust Land (Mineral Estate Only): The oil and gas interests in the mineral estate of approximately 78,566 acres within the Cook Inlet geologic basin, the surface of which has been conveyed to third parties or is within state legislatively designated areas; the mineral estate in 19,138 acres conveyed to municipalities; and the mineral estate of 35,771 acres in the Matanuska Valley Moose Range.

(c) Substitute Trust Land (Fee Estate): Approximately 4,252 acres in the Thorne Bay area selected for timber value; approximately 1,722 acres that are part of the Fort Knox mining project selected for its mineral value; approximately 65,000 acres



selected for their mineral potential; and approximately 40,943 acres selected for their surface value, consisting of 1,169 acres of parcels within subdivisions and 39,774 acres of other land tracts of both small and large size.

(d) Substitute Land (Mineral Estate Only): Approximately 217,000 acres of mineral estate selected for their mineral potential near Fairbanks and Haines; and approximately 25,720 acres of oil and gas interests within the Cook Inlet geologic basin in the Kenai Peninsula and the lower Susitna Valley.

(e) The parties further agree that the reasons for selecting the lands as described in subsections (a) - (d) above are given merely to categorize and describe the lands. In so doing, neither party makes any representations as to the revenue producing capability of any parcel of such land.

### III

#### PROVISIONS FOR TECHNICAL CORRECTIONS TO LIST OF LANDS

1. The parties agree that any omissions, overinclusions, inconsistencies or errors now known or discovered in the lists of original and substitute trust lands transferred to the trust pursuant to Sections 40(a)(1)&(2) of HB 201 shall be resolved as follows:

(a) The State and the plaintiffs, and the State and the Trust Authority, once established, shall identify to the other party any omissions, overinclusions, inconsistencies or errors in the lists of original and substitute trust lands as soon as such problems are known or discovered, along with such information or



other explanation as is necessary to determine the reason for the claimed omission or error.

(b) Any errors or omissions to the legal descriptions of the lists of original and substitute lands submitted pursuant to Sections 40(a)(1)&(2) of HB 201 necessary to accomplish the intent of the parties shall be corrected by the Department of Natural Resources (DNR) pursuant to the authority granted DNR under Sec. 17 of HB 201.

(c) Any additions, deletions, or substitutions to the list of original and substitute lands transferred to the trust pursuant to Sections 40(a)(1)&(2) necessary to accomplish the intent of the parties shall be obtained by legislative amendment or by transfer, exchange, or conveyance.

(d) As of the date of executing this agreement, the parties have identified in Attachment B the initial omissions, overinclusions, or substitutions to the lists of original and substitute lands transferred to the trust pursuant to Sections 40(a)(1)&(2) which they agree to correct pursuant to the terms of (b) and (c) above.

#### IV

#### PROVISIONS REGARDING TRANSFER OF LAND TO TRUST AUTHORITY

1. Transfer of Land by Quitclaim Deed And Delivery of Conveyances. Land and interests in land conveyed to the Trust Authority shall be granted in trust to the "Alaska Mental Health Trust Authority, trustee" by quitclaim deed. On or before the entry



of any order for dismissal, the State shall tender to the Superior Court the required deeds conveying to the Trust Authority the appropriate State interest in the lands designated as mental health lands pursuant to Sections 40(a)(1)&(2). Upon approval of this settlement by the court and dismissal of this action, the deeds shall be placed in escrow for delivery to the Authority upon its request. The parties recognize that certain of these deeds will use parcel numbers which reference the State maps that describe the lands in Attachment A in lieu of full legal descriptions and, accordingly, may not be in recordable form at the time they are tendered to the court. The State agrees to use its best efforts and to work with the Authority to complete the preparation of recordable deeds for delivery to the Authority as soon as practicable after dismissal.

2. Authorization to Convey State Land as Substitute Land.

The State warrants that it has the legal authorization necessary to convey the land or interest in land designated as mental health lands pursuant to Section 40(a)(2) of HB 201. To the extent that such authorization is subject to a pending conveyance or patent from the federal government, and such conveyance or patent is different than that set forth in Section 40(a)(2) of HB 201, the State shall compensate the trust for the difference with other land (or interests in land) of similar type or character and equal value and similar revenue producing potential, unless otherwise agreed by the Authority and DNR.



3. Encumbrances. Land conveyed to the trust pursuant to Sections 40(a)(1)&(2) of HB 201 remains subject to valid existing encumbrances or valid existing interests as provided in Section 40(b) of HB 201. The Authority may challenge the validity of any encumbrance or interest. Possible inconsistency with the Enabling Act is not grounds to challenge the validity of an encumbrance or interest. The Authority shall be bound by and be able to enforce the terms of valid encumbrances and valid interests.

4. Hazardous Substances. (a) If it is discovered that any hazardous substance or substances came to be located on or discharged from a parcel of land conveyed to the Trust Authority under Sections 40(a)(1)&(2) of HB 201 such that the affected parcel is not in compliance with any federal, state, or local environmental laws, the issue shall be resolved as provided in this section.

(b) If the hazardous substance came to be located on or discharged from a parcel of original mental health trust land after being conveyed to the state under the Enabling Act but prior to conveyance to the Trust Authority, or on a parcel of replacement land at any time prior to conveyance to the Trust Authority, the issue shall be resolved in such manner as the Trust Authority and DNR mutually agree. If the Trust Authority and DNR cannot reach agreement, the Trust Authority in its discretion may elect to retain the affected parcel as trust land or tender it back to DNR. If the Trust Authority tenders an affected parcel to DNR, the sole remedy is that DNR in its discretion shall either cause such



affected parcel to be remediated to comply with such environmental law or laws or exchange the affected parcel for other land (or interests in land) of equal value and similar revenue-producing potential valuing and determining the revenue producing potential of the affected parcel without the hazardous substance. If such a replacement exchange occurs, the Trust Authority shall reconvey the affected parcel to the state. If the Trust Authority tenders an affected parcel to DNR under this subsection, the state shall, at its expense, appear for, defend, and hold harmless the Trust Authority from any claim or action asserted by a third party based on the presence of any hazardous substance located on the affected parcel prior to its remediation or the replacement exchange of such land.

(c) If the hazardous substance came to be located on or discharged from a parcel of original mental health trust land before being conveyed to the state under the Enabling act, or for both original mental health trust land and substitute land, after conveyance to the Trust Authority under Sections 40(a)(1)&(2) of HB 201, responsibility shall be allocated between the Trust Authority and the state as provided by applicable law.

(d) Nothing in this section is intended to limit the Trust Authority's or the state's rights to assert any claims or defenses available to them with respect to third parties.

5. Conveyances Recorded at State Expense. All conveyances, releases of interest, cancellation of lis pendens, or other documents required by the terms of this agreement shall be



recorded at the state's expense in the recording district in which the land is located.

6. Land Closed to Mineral Entry. All parties to this agreement shall jointly move the court to continue the mineral closing order on original trust land and extend such order to substitute land, such order or orders to be effective until the regulations required by HB 201 become effective. Any interest claimed or granted in contravention of such an order or orders are void.

7. Access to Trust Land. The State has reserved or will reserve legal rights-of-way and easements for access and for utility services to trust land. The rights-of-way and easements shall be consistent with state and federal law, and shall be located to assure adequate and feasible access for the purposes for which the right-of-way or easement is intended. Costs associated with maintaining easements and rights-of-way will be addressed in the regulations promulgated under HB 201. Nothing in this section requires the state to provide access across non-state land.

8. Competing Native Allotments. In the event original mental health land to be returned to the trust under Section 40(a)(1) of HB 201 is conveyed to the BLM by the State because of a valid Native Allotment, DNR will convey to the Authority the land conveyed to the state by the federal government under the Enabling Act to replace the land subject to the Native allotment, consistent with the annual priority list filed with the BLM by DNR.



9. Conveyances of Remaining Mental Health Land Selections.

The Trust Authority will prioritize remaining mental health selections and provide this listing to DNR for incorporation in the annual conveyance priority list filed with the Bureau of Land Management. DNR will consult with the Authority when it determines the appropriate ranking of the mental health selections among other state conveyance priorities. DNR shall assist the Authority in its efforts to ensure that annual conveyance priorities are completed in a timely manner by BLM.

V

TRUST FUND AND TRUST AUTHORITY

1. Trust Authority as Fiduciary. In exercising its powers, duties and responsibilities as trustee the Trust Authority is under a fiduciary obligation as set forth in AS 37.14.007 and 37.14.009, and may employ consultants, accountants, attorneys and staff in the exercise of its responsibilities. The Authority shall annually review the allocation of proceeds, income or other money received from the management of trust land to assure proper attribution to principal and shall annually report on the management of trust assets and the development of a comprehensive mental health program for the State.

2. Trust to Receive Gifts. The parties' intent in establishing the mental health trust fund and mental health trust income accounts under Sections 12, 15 & 16 of HB 201 is that the trust may receive and the trust income account may be properly used by the Authority for soliciting gifts, bequests, and contributions

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for a purpose consistent with the funding of an integrated comprehensive mental health program for the State.

3. Records to be Available To Authority. The records, surveys, reports and other data regarding trust land and proposed substitute land accumulated by the plaintiffs' Mental Health Lands Project are the property of the state and shall be available for inspection by the Authority at all times, consistent with applicable law. The records, surveys, reports and other data of DNR regarding management of trust land shall be available for inspection by the Authority at all times, consistent with applicable law. Unless otherwise agreed by the Authority and DNR, all of the records discussed herein shall be located in the unit established to manage trust land pursuant to Section 22 of HB 201.

4. Administration of Trust Income. The transfer of the net income of the fund to the income account by the Permanent Fund Corporation is not discretionary and is required by HB 201. Similarly, the allocations and transfer of income from trust land to the trust fund and income account by DNR is not discretionary and is also required by HB 201. Except for the administrative expenses of the Authority subject to the Executive Budget Act under Section 16 of HB 201, and to the fullest extent consistent with the Alaska Constitution, the Trust Authority may use the money in the income account for the purposes authorized in Section 16 of HB 201 without, and free of, further legislative appropriation. The Trust Authority shall use the money in the income account in fulfillment



of the Authority's purpose to ensure an integrated, comprehensive mental health program for the State.

5. Income and Proceeds Account. It is the intent of the parties that the money deposited in the mental health trust income and proceeds account prior to December 15 will be deposited in either the mental health trust fund or the mental health trust income account as appropriate. To the extent possible, the state will undertake this allocation administratively. If legislation is required to accomplish this result, the parties agree to use their best efforts to seek and obtain passage of such legislation.

6. Development of Contracts, Operational Procedures and Regulations. The Authority and DNR shall negotiate in good faith and shall contract for the management of trust assets upon terms that are mutually agreeable to the Authority and DNR, and which reflect the duties and responsibilities imposed on the Authority and DNR pursuant to HB 201. The parties recognize that the details of contracting procedure, management of trust land, and other operational policies are left to be resolved under HB 201 by the Authority, DNR and other entities through a cooperative and public rulemaking process. The parties' understanding and intent on how this process will work is set forth in Attachments C and D, which the parties acknowledge are not contractual but are expressions of intent and interpretation only. To facilitate the development of a management unit, and policies and procedures reflecting the intent of the parties in entering into this agreement prior to the effective operation of the Authority, DNR agrees to consult with a



transition team of representatives from the beneficiary community to advise and deliberate with DNR and other affected state agencies.

VI

SETTLEMENT, DISMISSAL AND MODIFICATION

1. Seeking Approval of Settlement. The parties agree to expeditiously file any motions, memoranda, proposed orders or other papers and to participate in any hearings necessary or convenient to obtaining preliminary and final approval from the superior court of the settlement embodied in HB 201, HB 371 and this agreement.

2. Construction. All parties have participated in drafting this agreement and agree that any canon of construction construing ambiguities against the drafter does not apply.

3. Severability. If any provision of this agreement, or any settlement provision in HB 201 or HB 371, is declared invalid for any reason, such a finding does not affect the validity of other provisions herein.

4. Attorney Fees. Attorney fees and costs shall be awarded and paid as determined by the court. Paragraph 6(e) requires dismissal of appeals to the Supreme Court because they are moot. The parties request that attorney fees be awarded as if the orders had not been appealed.

5. Modification and Future Enforcement. By this agreement, the parties stipulate to a mutual dismissal of all claims and defenses, and acknowledge that the trust is reconstituted in accordance with State v. Weiss, 706 P.2d 681 (Alaska 1985). The



provisions of Sections 2 through 9, 12 through 40(a) and(b), 41, 43, 46, 47, 49, 50 and 51 of HB 201 and Sections 1 and 2 of HB 371 constitute material terms upon which the plaintiffs have agreed to a dismissal and acknowledged that the trust is reconstituted. If the Legislature materially alters or repeals any of those provisions, the plaintiffs' sole remedy is a new action alleging that the mental health trust has not been adequately reconstituted and to seek such relief as may be appropriate in light of the plaintiffs' claims. In light of the dismissal of each parties' claims, no modification of this agreement may be made except in writing signed by all the parties. Nothing in this section shall limit any party's right to enforce this agreement or applicable state statutes.

6. Settlement and Dismissal. Upon final approval of the settlement embodied in HB 201, HB 371 and this agreement by the court pursuant to Alaska Civil Rule 23, within the time frame set forth in HB 201 and HB 371 for the settlement provisions to become effective, the parties stipulate and agree to the entry of an order or orders:

- (a) Approving the terms of this agreement and the settlement provisions of HB 201 and HB 371;
- (b) Dismissing Weiss et al. v. State, 4FA-82-2208 Civil;
- (c) Dismissing with prejudice all class claims, including without limitation those of plaintiffs and plaintiff-intervenors, known or unknown, asserted or unasserted, that arise on or before the date of dismissal and arise from or relate to the

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1978 redesignation legislation, any other actions taken by the state since statehood in managing and administering the land granted to the state under the Mental Health Enabling Act or the proceeds generated from that land, or any other actions taken by the state since statehood in managing and administering the trust created by the Alaska Mental Health Enabling Act;

(d) Requiring plaintiffs to dismiss with prejudice all other claims asserted by them, whether in the form of intervention, consolidation, appeals, cross-appeals, or amicus, in all other pending litigation, arising out of the state's administration of the trust established by the Enabling Act since statehood including Richards v. State, 4FA-93-2195 Civ.; Kashwitna Farms, Harry and Consuelo Wassink v. State and Hawkins v. Wassink, 3AN-88-0056 Civ. consolidated; Snowcrest Farms, Ray Hendershot and Royce Johnson, Falcon Lake Dairy, Elvin and Dorothy Johnson, Kashwitna Farms, Harry and Consuelo Wassink, v. State, Department of Natural Resources, Supreme Court No. S-6042; James White v. Commissioner, Alaska Department of Natural Resources, Supreme Court No. S-5609; Usibelli Coal Mine Inc. v. State, Department of Natural Resources, 3AN-93-5470 Civ.; Vern T. Weiss et al. v. Usibelli Coal Mine Inc. and State of Alaska, Supreme Court No. S-6125; Appeal of Vern T. Weiss et. al., IBLA No. 91-224 (Tyonek); Vern T. Weiss et al. v. Secretary of the Interior of the United States of America, Tyonek Native Corporation, and Cook Inlet Region, Inc., A94-072 Civ. (D. Alaska);



(e) Approving this stipulation of plaintiffs, state and third-party intervenors Marathon and Unocal, and Alaska Center for the Environment, et al., to move for the dismissal, as moot, all pending appeals and cross appeals arising out of this action.

(f) Dissolving the preliminary injunction issued in this action on July 9, 1990; and

(g) Expunging the Renotice of Lis Pendens.

(h) The orders requiring dismissal of plaintiffs claims in subsections (b) through (g) above shall only be entered upon a finding that conveyances of land and payments of cash required by HB 201 and HB 371 have or will be made to the satisfaction of the court.

7. Relief from Judgment. By their terms, the settlement provisions in HB 201 and HB 371 do not become effective unless this action is first finally and timely dismissed, with any appeals timely resolved in favor of dismissal. If the court gives final approval of the settlement embodied in HB 201, HB 371 and this agreement, and enters the order or orders dismissing this action (as set forth in paragraph 6 (a)-(g) above) and if, thereafter, the timeliness requirements of HB 201 and HB 371 are not met, such that their settlement provisions do not become effective, any party may seek relief from such order or orders pursuant to Alaska Civil Rule 60(b)(6). The failure of the settlement provisions of HB 201 and HB 371 to become effective would justify seeking relief from judgment and no party shall oppose such a motion.

DATED this \_\_\_\_ day of June, 1994, at Anchorage, Alaska.

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Attorney for Plaintiffs  
Vern Weiss and Earl Hilliker

By \_\_\_\_\_  
David T. Walker (Date)

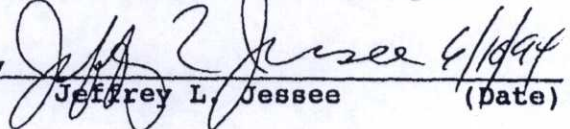
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for Bruce M. Botelho (Date)

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