



THE STATE
of **ALASKA**
GOVERNOR MIKE DUNLEAVY

Department of Environmental
Conservation

OFFICE OF THE COMMISSIONER

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December 17, 2021

The Honorable Merrick Garland
United States Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

The Honorable Debra Haaland
Secretary of the Department of the Interior
1849 C Street, N.W.
Washington, DC 20240

Re: Notice of Intent to Sue ELSON NIKE

Dear Mr. Garland and Madam Secretary Haaland:

Under the Alaska Native Claims Settlement Act (ANCSA), Alaska Native Corporations (ANC) were to get, in part, title to certain lands in exchange for termination of their aboriginal rights to land in Alaska. Instead of getting clean land, as was contemplated, the Bureau of Land Management (BLM) determined in a public report requested by Congress, that the federal government transferred 920 contaminated sites to the ANCs.¹ The BLM updated that number to 1,179 contaminated sites in 2019. For many of these sites, the federal government, specifically the Department of the Interior (DOI), neither before transfer nor after, has investigated nor cleaned up these sites despite the State of Alaska's repeated insistence.

The Alaska Department of Environmental Conservation (ADEC) is giving you notice of its intention to bring a federal citizen suit (Complaint) against DOI for violating 42 U.S.C. 6972(a)(1)(A) of the Resource Conservation and Recovery Act (RCRA) and 42 U.S.C. 9659(a)(1) of the Comprehensive Environmental Response, Compensation and Liability Act for noncompliance with a permit, standard, regulation, condition, requirement, prohibition or order under RCRA and CERCLA at the ELSON NIKE (Site). ADEC also seeks recovery of past and future response costs incurred by ADEC in responding to discharges at the Site. *See* AS 46.03.822; AS 46.03.760; 42 U.S.C. 9607(a)(4)(B).

Congress was aware of the transfer of contaminated lands to ANCs as early as 1990 when Congress first requested an inventory of contaminated lands conveyed through ANCSA. *See* Public Law 101-512 (November 1990). In 2014, Congress again instructed the DOI to complete a comprehensive inventory of contaminated lands conveyed through ANCSA to ANCs. *See* Public Law 113-235 (December 2014). Among other things, Congress wanted "[a] detailed plan on how the Department intends to complete cleanup of each contaminated site." *Id.* at 454. Seven years later, the BLM has produced only a lip-service report identifying the Site with cursory mention of the health, safety,² and economic concerns to Alaska Native communities.

¹ The 2016 Report is publicly available at:

https://www.blm.gov/sites/blm.gov/files/documents/files/PublicRoom_Alaska_ContaminatedLands_ReporttoCongress_0.pdf

By letter dated May 27, 2021, ADEC, yet again, urged DOI to investigate and cleanup the sites identified by BLM including this Site. *See* May 27, 2021 letter at <http://dec.alaska.gov/spar/csp/federal/formal-correspondence/>. As of the date of this Notice, the DOI has neither responded to this letter, nor has it taken a material step in cleaning up the ELSON NIKE or any other site identified in ADEC's letter.

This Site was owned by the United States until it was transferred. ADEC alleges that this site was identified by BLM as contaminated and included contaminants that were released to the environment while under federal ownership and DOI transferred this site to ANCs. These discharges of contaminated soil and groundwater at the Site are in violation of 40 C.F.R. Part 268 and 42 U.S.C. 9621 in addition to AS 46.03.710 and AS 46.03.745. These discharges were not contained and cleaned up as required by 40 C.F.R. Part 268 and 42 U.S.C. 9621 and State law including AS 46.04.020, 18 AAC 75 and other predecessor statutes and regulations. In addition, ADEC has, and will continue, to incur costs responding to discharges of contaminants into the environment.

The claims identified by ADEC are not exclusive. ADEC sends this Notice without waiving or otherwise prejudicing its rights to advance other claims pursuant to state, federal or common law.

During the applicable notice period, ADEC is willing to discuss effective remedies for the violations identified in this letter. If the DOI seeks to avoid litigation, please contact this office to begin discussions within 20 days to allow meeting arrangements prior to the close of the notice period.

Sincerely,



Jason W. Brune
Commissioner

cc: Michael S. Regan, Administrator, Environmental Protection Agency
Michelle Pirzadeh, Regional Administrator, Environmental Protection Agency
Treg R. Taylor, Attorney General, State of Alaska