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## Sacred Places: Indian Rights After the Exxon Valdez Oil Spill

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## **SACRED PLACES: INDIAN RIGHTS AFTER THE EXXON VALDEZ OIL SPILL**

*Dune Lankard\**

I am very excited to be here, because it is very seldom that I get a chance to talk about environmental racism, and how it affects me on a daily basis in Alaska. Prior to the Exxon Valdez oil spill on March 24, 1989,<sup>1</sup> I had a very simple life as a commercial fisherman and subsistence fisherman in Prince William Sound in the Copper River Delta.<sup>2</sup> My education is from both of those places. I have never been to college. I have been offered four law school scholarships because of the work that I do, and I fight every single day for the environment.

I think it is very important for you to understand who I am. I am an Eyak Athabaskan Indian. I have spent one-quarter of my life fighting for the environment and fighting for our Native people. There are 120 Eyaks on

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\* Dune Lankard, Founder and Director of the Eyak Preservation Council, Spokesperson for the Eyak Traditional Elders Council of the Eyak Nation. The following is based on a speech delivered at the *Fordham Environmental Law Journal* Symposium on Environmental Justice on March 3, 1999. Footnotes were added by the *Journal*.

1. On March 24, 1989, the Exxon Valdez released 240,000 barrels of oil into Alaska's Prince William Sound. See CONRAD SMITH, *MEDIA AND APOCALYPSE: NEWS COVERAGE OF THE YELLOWSTONE FOREST FIRES, EXXON VALDEZ OIL SPILL, AND LOMA PRIETA EARTHQUAKE* 77 (1992).

2. The Copper River Delta is a 700,000-acre wetlands located on the North Gulf coast of Alaska. For more information on the Copper River Delta, see generally RIKI OTT, *ALASKA'S COPPER RIVER DELTA* 11-17 (1998).

the face of the earth.<sup>3</sup> We only have one full-blooded Eyak left, and that is our chief, 81-year-old Marie Smith Jones.<sup>4</sup> When she passes on, both our Eyak legacy and our Eyak heritage will forever be gone. It is a miracle that I am even here today, because the assimilation of our way of life and of our people has been dramatic. What you are witnessing and what you will hear today is a modern day assimilation of an entire race of people that never numbered more than one thousand.

Yet we are a very proud, tiny nation that lived along the coast of Alaska, from what is now known as Yakutat to Cordova, which constitutes approximately a 300-mile stretch of coastline along the Pacific Ocean.<sup>5</sup> The Eyaks migrated from the interior of Alaska, about 3,500 years ago, and moved east to west: the Tlingits<sup>6</sup> were assimilating the Eyaks, pushing us to the west.<sup>7</sup> We fought the Chugach Eskimos,<sup>8</sup> and the Aleuts,<sup>9</sup> who were com-

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3. For a discussion on the history of the Eyak Indians see generally *Protecting the Copper River Delta, The Eyak People: A Delta Culture Fighting For Survival* (visited Feb. 2, 2000) <<http://ww.nwf.org/nwf/copperriver/eyak.html>>.

4. For an example of the work done by Chief Marie Smith Jones, on behalf of the Eyak Traditional Elders Council, see *Protecting the Copper River Delta: A Letter to Congress From the Eyak Traditional Elders Council* (last modified Sept. 21, 1998) <<http://www.nwf.org/nwf/copperriver/eyletter.html>>.

5. See *id.* (describing the boundaries of the traditional Eyak homelands).

6. See Frederica de Laguna, *Northwest Coast* (visited Feb. 2, 2000) <<http://www.mnh.si.edu/arctic/features/croads/tingit.html>> (detailing the history of the Tlingits).

7. See generally John William Uhler, *Wrangler Saint Elias National Park Information Page, Ethnographic Aspects* (visited Feb. 2, 2000) <<http://www.Wrangell.st.elias.national-park.com/info.htm>>.

8. See generally FREDERICA DE LAGUNA ET AL., *ARCHAEOLOGY OF THE YAKUTAT BAY AREA, ALASKA* 4 (1964) (describing Indian tradition of Chugach raids).

ing out of the west. So throughout our history, we have been a very nomadic tribe, and we have constantly been traveling along the Gulf of Alaska. If we stayed in any one given location, the assimilation would have happened much sooner, and I would not be here right now.

We have suffered years of broken treaties and broken promises.<sup>10</sup> Recently, we were forced to give up one-half of the Alaska Native Claims Settlement Act ("ANCSA") land base in the Eyak Corporation.<sup>11</sup> In 1971, the Alaska Native Claims Settlement Act was both founded and funded by oil companies that discovered oil in Prudhoe Bay, and entered into an oil lease sale of \$962 million with the State of Alaska.<sup>12</sup> The governor at the time, Wally Hickel, brokered one of the richest, largest land claim settlements in the history of the United States.<sup>13</sup> The native people, 65,000 of us, retained a mere 44 million acres out of 380 million acres.<sup>14</sup> Origi-

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9. See generally ROZA G. LIAPUNOVA, *ESSAYS ON THE ETHNOGRAPHY OF THE ALEUTS: AT THE END OF THE EIGHTEENTH AND THE FIRST HALF OF THE NINETEENTH CENTURY* 3-18 (1996); KEVIN OSBORN, *THE PEOPLES OF THE ARCTIC* (1990); DON E. DUMOND, *THE ESKIMOS AND THE ALEUTS* 77-78 (1977).

10. See generally DONALD MITCHELL, *SOLD AMERICAN: A STORY OF ALASKA NATIVES AND THEIR LAND* (1974).

11. Alaska Native Claims Settlement Act of 1970, Pub. L. No. 92-203, 85 Stat. 688 (1971) (codified as amended at 43 U.S.C. §§ 1601-28 (1982)) (providing that 44 million acres of land be available for selection by Alaskan natives for their ownership and exclusive use). See also OSBORN, *supra* note 9, at 90-91 (elaborating on the Alaska Native Claims Settlement Act).

12. See JOHN STROHMEYER, *EXTREME CONDITIONS* 71 (1993); see also Marilyn J. Ward Ford, *Twenty-five Years of the Alaska Native Claims Settlement Act: Self Determination or Destruction of the Heritage, Culture, and Way of Life of Alaska's Native Americans?*, 12 J. ENVTL. L. & LITIG. 305, 324-25 (1997).

13. See STROHMEYER, *supra* note 12, at 75.

nally, we wanted 60 million acres and 2 percent of the royalties from every resource extracted from our native land.<sup>15</sup> We ended up with 44 million acres and no resource royalties.<sup>16</sup>

On March 24, 1989, the Exxon Valdez spilled oil onto the pristine coast of Alaska.<sup>17</sup> Hopefully the Exxon Valdez oil spill was an accident. However, what happened next was no mistake. We only received \$286 million in compensatory damages for 30,000 plaintiffs.<sup>18</sup> The federal courts have said that our subsistence way of life could not be factored on an economic basis; therefore, only a percentage of the punitive damage settlement will go to commercial fishermen.<sup>19</sup> The courts have decided that since our way of life was already affected by the railroads in 1907,<sup>20</sup> and earlier by the canneries in 1887,<sup>21</sup> our way of life had already changed. The courts have ruled that there is no economic basis for our subsistence lifestyle, so we do not need to be compensated

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14. See *id.* at 175; see also John F. Walsh, *Settling the Alaska Native Claims Settlement Act*, 38 *STAN. L. REV.* 227 (1985).

15. See generally 43 U.S.C. §1608(b) (1982) (part of the Alaskan Native Claims Settlement Act).

16. See STROHMEYER, *supra* note 12, at 75.

17. See SMITH, *supra* note 1, at 77-79.

18. See, e.g., Deborah Bardwick, *The American Tort System's Response to Environmental Disaster: The Exxon Valdez Oil Spill as a Case Study*, 19 *STAN. ENVTL. L.J.* 259, 278 (2000).

19. See *id.* (giving general information on the punitive damages against Exxon).

20. See generally Interview with Dune Lankard and Marie Smith Jones, *Multinational Monitor* (March 1993) available at <<http://www.essential.org/monitor/hyper/issues/1993/03/mm0393.html>>.

21. With the arrival of Americans in Alaska came the opening of canneries. See generally *id.* See also *Protecting the Copper River Delta, The Eyak People: A Delta Culture Fighting for Survival* (visited Feb. 23, 2000) <<http://www.nwf.org/nwf/copperriver/eyak.html>>.

for the damage caused by the oil spill.<sup>22</sup> How can that be? How can anyone not factor in the impacted twenty-five species that we have subsisted on for thousands of generations and say that there is no economic basis to our existence? The ocean is our grocery store.

The federal government and the State of Alaska received \$1 billion from the Exxon Corporation for an oil spill restoration fund that was intended to protect the remaining pristine habitat in the spill zone.<sup>23</sup> The spill zone covered 1,500 miles of coastline, from Bligh Reef to Chignik.<sup>24</sup> The Exxon Valdez Oil Spill Trustee Council<sup>25</sup> was appointed by the President of the United States. The mandate of the Council was to spend the money on habitat restoration in the spill zone.<sup>26</sup> One of the stipulations of the mandate was that the federal government wanted to buy our native ANCSA land on the 1,500 miles of coastline.<sup>27</sup>

What I believe is that the government said if you want a restoration program, or if you would like us to preserve or protect your Native land, you have to sell it to us. The government demanded one-third fee-simple land title, one-third conservation easements and one-third timber rights in every Trustee Council offer to ANCSA corporations. Once the \$5.0 billion dollar punitive damage settlement is finally paid, it will cause a di-

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22. See Bardwick, *supra* note 18, at 286.

23. See generally SMITH, *supra* note 1, at 78.

24. See *Exxon Valdez Oil Spill Trustee Council: Historical Information* (visited Feb. 23, 2000) <<http://www.oilspill.state.ak.us/history/history.htm>>.

25. The President appoints three seats to the Council, while the Governor of the State of Alaska appoints the other three. For more on the Exxon Valdez Oil Spill Trustee Council, see *Exxon Valdez Oil Spill Trustee Council* (visited Feb. 23, 2000) <<http://www.oilspill.state.ak.us/html>>.

26. See Kevin R. Murray et al., *Natural Resource Damage Trustees: Whose Side Are They Really On?*, 5 ENVTL. LAW 407, 424, 447 (1999).

27. See Bardwick, *supra* note 18, at 283.

vision of culture and a division of people. There will be two races: one will be extremely wealthy, and the others, the landowners who have thousands of years of history, will be extremely poor. The only way we could be able to reap any revenues from the Exxon Valdez oil spill settlements was to sell our ANCSA land. That is how, on March 2, 1999, we were forced to give up one-half of Eyak Corporation ANCSA land base. Even though the land has been preserved, we were forced to give up fee title.<sup>28</sup> If the government had chosen to pursue conservation easements, therefore limiting development, without taking the title of our land away from our native people, we would have protected a million and a half acres in the spill zone, rather than only 700,000 acres.

In the past eight years, we have protected 210,000 acres in Prince William Sound, using the Exxon Valdez Oil Spill Restoration Council monies.<sup>29</sup> I have never agreed to the fee simple title land transfer component, but I have agreed that as long as the fish keep returning, subsistence continues, and the ecosystem remains wild, we will continue this argument over who owns our land, and that argument will continue forever.

Historically, how we made our decisions in the past was simple. We thought about seven generations behind us, which were our ancestors that came before us, and we thought seven generations ahead.<sup>30</sup> At the same time, we incorporated our decisions in how they would affect the children seven generations in front of us. What that means is that we look at things a lot differ-

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28. *See id.*

29. *See generally Exxon Valdez Oil Spill Trustee Council: The Restoration Plan* (visited Feb. 23, 2000) <<http://www.oilspill.state.ak.us/restplan/restplan.htm>> (detailing the Restoration Plan adopted by the Trustee Council).

30. *See generally Joel Connelly, Many Natives View Land Sale as Mixed Blessing* (visited Feb. 5, 2000) <<http://www.seattle-pi.com/local/exon193.shtml>>.

ently than the government or the corporations, who base their decisions on quarterly profits. We make our decisions based on sound judgment. This is how we have preserved our Eyak way of life. Together, we have an opportunity to walk out of this room and make wise decisions that will last forever. We have to be bold, we have to be visionary, we have to be strong. We have to have the strength of our convictions. That is our Eyak legacy.



